

Attachment A

UNITED STATES MERCHANT MARINE ACADEMY
KINGS POINT, NEW YORK

December 1, 2005

SUPERINTENDENT’S INSTRUCTION 2005-15

SUBJECT: Statement of Student Rights under the Family Educational Rights and Privacy Act (FERPA)

PURPOSE: To promulgate the statement of student rights required by the Family Educational Rights and Privacy Act of 1974, as amended (FERPA). This statement will be published annually to the student body.

BACKGROUND: FERPA generally prohibits disclosure of information contained in a student’s educational records without the prior written consent of the student. However, FERPA provides for certain exceptions by party and by circumstance. It requires that a statement of student rights and these exceptions be published to the student body annually.

The statement is as follows:

The Family Educational Rights and Privacy Act (FERPA) affords students certain rights with respect to their education records. These rights include:

- 1. **The right to inspect and review the student’s education records within 45 days of the day the Academy receives a written request for access.**

To inspect his or her transcript or any other academic record a student should submit to the Office of the Registrar a **written** request identifying the record he or she wishes to inspect. The Office of the Registrar will make arrangements for access and notify the student of the time and place where the records may be inspected.

To inspect non-academic records including conduct records the student should submit a **written** request to the Office of the Commandant of Midshipman identifying the record that he/she wishes to inspect.

Students are not permitted to inspect financial information provided by their parents or letters of recommendation placed in their record after January 1, 1975 to which the student has waived his or her rights to inspect or review and that are related to the student’s admission, application for employment or job placement or receipt of honors.

Students may be issued on their request a copy of their transcript without charge. Copies of other records will also be provided and a modest charge may be required.

- 2. **The right to request the amendment of the student’s education records that the student believes are inaccurate or misleading.**

A student may ask the Academy to amend a record that he/she believes is inaccurate or misleading. The student should write to the Registrar or to the Commandant, as appropriate, clearly identifying

the part of the record he or she wants changed and stating specifically why it is inaccurate or misleading. If the Academy decides not to amend the record as requested by the student, the Academy will notify the student of the decision and advise the student of his or her right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the student when notified of the right to a hearing.

3. The right to consent to disclosures of personally identifiable information contained in the student's educational records, except to the extent that FERPA authorizes disclosure without consent.

One of the major exceptions which permit disclosure without consent is disclosure to school officials with legitimate educational interests. A school official is a person employed by the Academy in an administrative, supervisory, academic or research, or support staff position (including law enforcement unit personnel and health staff); a person or company with whom the Academy has contracted (such as an attorney, auditor, or collection agent); a person serving on the Board of Visitors, the Advisory Board or the Board of Trustees; a student serving on an official committee, such as on an Honor Board, or assisting another school official in performing his or her tasks. School officials also include the Administrator of the U. S. Maritime Administration and officials within the Maritime Administration authorized by the Administrator to assist with student compliance with their service obligation contracts. An Academy official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility. A list of Academy officials having access to student records is available from the Office of the Registrar.

Upon the request of officials of another school in which a student seeks or intends to enroll, the Academy may disclose educational records without the student's consent.

Federal law also permits student records to be disclosed without prior written consent to the following parties, or in the following circumstances:

Accrediting organizations in order to carry out accrediting functions

Organizations conducting certain studies for or on behalf of the Academy

Appropriate parties in connection with financial aid to a student in order to determine eligibility, amount or conditions of financial aid, or to enforce the terms and conditions of aid;

Parents when a student is under 18 or over 18 but still a dependent as defined by Section 152 of the Internal Revenue Code;

Certain government officials of the U. S. Department of Education, the Comptroller General, and state and local educational authorities, in connection with an audit, authorized representatives of the U. S. Attorney General for law enforcement purposes or state or federally supported education programs

Individuals who have obtained a judicial order or lawfully issued subpoena

School officials who have a need to know concerning disciplinary action taken against a student

Appropriate parties in the event of health and safety emergencies when necessary to protect the health and safety of the student or others

State and local authorities within the juvenile justice system to whom information is specifically required to be reported or disclosed pursuant to specific state laws adopted prior to November 19, 1974;

The victim of a crime of violence or a non-forcible sex offence is entitled to know the results of a disciplinary proceeding related to that crime;

The parent or legal guardian of a student under the age of 21, is entitled to information regarding any violation of Academy policy or state, federal or local law, governing the use or possession of alcohol or a controlled substance

Those requesting directory information on a student provided the student has not requested his or her information be withheld

Any other condition or individual not named here but for a legitimate purpose within federal law.

The Academy keeps a record of disclosures made to third parties without the student's prior consent except those to other Academy officials, including the Administrator of the U. S. Maritime Administration and his authorized representatives. Such records are part of a student's education record and are available for the inspection of the student concerned.

Except for the disclosures of directory information (see below), the Academy will inform a party to whom a disclosure of personally identifiable information from the records of a student is made that disclosure is made only on the condition that the party will not disclose the information to any other party without the student's prior written consent.

4. The right to file a complaint with U.S. Department of Education concerning alleged failures by the Academy to comply with the requirements of FERPA.

Such complaints should be directed to the Family Policy Compliance Office at the following address:

Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-4605

DIRECTORY INFORMATION. The Academy, at its discretion, may provide the following directory information: student's name, home address, home telephone number, campus telephone number, home electronic mail address, campus electronic mail address, photograph, date and place of birth, major field of study, current class schedule, dates of attendance, class year, enrollment status (e.g. full-time at the Academy, full-time Sea Year, Leave of Absence or deferred graduate), participation in officially

recognized activities and sports, weight and height of members of athletic teams, degrees, honors and awards received, the most recent educational institution attended. A student who wishes the Academy to withhold Directory Information must notify the Registrar in writing within ten days after the first day of class each term.

Original signed

JOSEPH D. STEWART
Vice Admiral, USMS
Superintendent

Attachment B

**UNITED STATES MERCHANT MARINE ACADEMY
KINGS POINT, NEW YORK**

April 14, 2006

Superintendent's Instruction 2006-08

Subj: POLICY AGAINST HARASSMENT, SEXUAL HARASSMENT, OR DISCRIMINATION

1. Purpose: To establish policy, assign responsibilities, and set procedures outlining the Academy policy against harassment, sexual harassment, or discrimination.
2. References:
 - a) Title VII of the Civil Rights Act of 1964 (as amended);
 - b) Title IX of the Education Amendments of 1972 (20 USC 1681-1688);
 - c) Maritime Administration Order 770-713-3;
 - d) Secretary of the Navy Instruction 5300.26;
 - e) and other federal, departmental, agency, or Academy policies governing personal conduct, discrimination, and harassment.
3. Applicability: This policy applies to all Academy personnel, including midshipmen, faculty, staff, and personnel of tenant agencies, whether federal employees, military personnel or NAFI employees.
4. Supercedes Superintendent's Instruction 2003-05, "POLICY AGAINST SEXUAL HARASSMENT, SEXUAL ASSAULT OR DISCRIMINATION."
5. Definitions
 - a) Harassment. Harassment is the verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of that person's race, skin color, religion, gender, national origin, age, or disability. Harassment can also occur if conduct is directed toward a person's relatives, friends, or associates.
 - b) Sexual Harassment. For the purposes of this Instruction, sexual harassment is defined as any unwelcome sexual advance, request for sexual favors, or unwelcome verbal or physical conduct of a sexual nature that occurs in the workplace or on campus, where:
 - i) Submission to such conduct is made either explicitly or implicitly a term or condition of a person's career or Regimental duties; or,
 - ii) Submission to or rejection of such conduct by a person is used as a basis for career or Regimental decisions affecting that person; or,
 - iii) Such conduct has the purpose or effect of unreasonably interfering with an individual's work and academic performance; or,
 - iv) Such conduct creates an intimidating, hostile or offensive working and duty environment.
 - c) Quid pro quo harassment. Quid pro quo is a Latin phrase meaning "something for something." With quid pro quo sexual harassment, a midshipman or employee must submit to some form of unwelcome sexual conduct in exchange for receiving favorable treatment, such as a promotion, waiver of penalties, privileges, or some other form of benefit or relief.
 - d) Hostile environment harassment is unwelcome sexual conduct in the regimental, barracks, or workplace environment that unreasonably interferes with conditions or creates an intimidating, hostile or offensive setting. For Midshipman, the workplace includes any place where the Midshipman is participating in an academy sponsored event, e.g. at or participating in athletic contests, club events, team movements, official travel, and during sea year training. For such an environment to be a hostile environment under sexual harassment law, however, the conduct must be continuous or pervasive.
 - e) Discrimination is defined as unfavorable or unfair treatment of a person or class of persons in comparison to others who are not members of the protected class because of race, sex, color, religion, national origin, age, physical/mental handicap, or sexual orientation.

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6. Policy.
- a) Harassment. sexual harassment, or discrimination in any form will not be tolerated.
 - b) Requirement to report. Allegations of, harassment, or discrimination received by any Academy midshipman, faculty member, staff member, or other employee will be reported immediately through the appropriate chain of command.
 - c) Obligation to act. All commanders and supervisors (whether midshipmen, faculty or staff) will be held responsible for the actions of their subordinates. Individuals who are aware of or observe violations of this Instruction will be held accountable if they fail to appropriately respond to such violations and exercise their leadership responsibilities.
 - d) Victim's rights.
 - i) All efforts will be made to encourage victims of harassment, sexual harassment, or discrimination to report any incident. Every effort will be made to assist the alleged victims throughout the inquiry and assure victims that their concerns will be dealt with through the command channels.
 - ii) The Superintendent will appoint faculty, staff and midshipmen to the Human Relations Committee, which will aggressively address the concerns of victims of harassment, sexual harassment, or discrimination.
 - iii) Alleged victims of harassment, sexual harassment, or discrimination will be offered assistance in securing appropriate medical care, and mental health support.
 - e) Privacy and Confidentiality. Refer to **Superintendent Instruction 2006-10 Privacy and Confidentiality**
 - f) Prohibition against retribution. Loyalty to our values and to our institution must supercede misplaced "loyalty" to someone who has violated the law and betrayed our institutional values. Shunning of midshipmen who attempt to maintain high standards and report harassment, sexual harassment, or discrimination will not be tolerated and will be dealt with by midshipmen and commissioned officers who have responsibility for maintaining and enforcing standards. Commanders, supervisors or other superiors will be held accountable for ensuring that such behavior does not occur.
 - g) Other Offenses – In any reported case of harassment, or discrimination, it is academy policy to defer adjudication of any other offences that may be alleged to have occurred in conjunction with the reported harassment, sexual harassment, or discrimination until the harassment, sexual harassment, or discrimination case is resolved.
 - h) Education and Training. Training is required for all midshipmen, staff, and faculty. Specific attention will be paid to the education of all midshipmen regarding preventing and reporting instances of harassment, sexual harassment, or discrimination, of them or their fellow midshipmen.
 - i) False accusations. False accusations of harassment, sexual harassment, or discrimination will be referred to Academy and civilian legal authorities for appropriate disciplinary action and/or civil and criminal prosecution.
 - j) The Academy reserves the right, in its discretion, to refer any case to investigative and prosecutorial authorities.
7. Procedures
- a) Midshipmen
 - i) Midshipmen may report instances of harassment, sexual harassment, or discrimination through their chains-of-command; company officers and other Commandant's uniformed staff members; chaplains; midshipmen counselors; Midshipmen Human Relations Officers; or any trusted advisor, coach, or faculty or staff member. After-hours, 24/7, reports may be made to the Command Duty Officer (CDO) and the Duty Chaplain.
 - ii) Staff members, midshipmen officers, and Midshipmen Human Relations Officers receiving reports of harassment, sexual harassment, or discrimination are responsible for forwarding the information to appropriate Academy supervisory personnel to stop the harassing behavior, for investigative and possible disciplinary action, and to provide for the safety and support of alleged victims.

- iii) The Head, Department of Professional Development & Career Services will establish additional procedures or guidelines for reporting instances of harassment, sexual harassment, or discrimination for midshipmen at sea.
 - iv) MIDN Resolution of Harassment Refer to Appendix A and B.
 - b) Faculty, staff, NAFI employees, and military personnel
 - i) Faculty, staff and NAFI employees may report instances of harassment, sexual harassment, or discrimination to their first line supervisor/manager. They also have the option of reporting these incidents to the Deputy Superintendent or to MARAD's Director of Civil Rights (DCR).
 - ii) Military members assigned to USMMA may report instances of harassment, sexual harassment, or discrimination through their service chain-of-command or the Deputy Superintendent.
 - iii) Faculty, staff, and NAFI employees should report instances of harassment, sexual harassment, or discrimination no later than 45 days after the last alleged incident or tangible employment action.
 - iv) Victims may also file a charge through the Equal Employment Opportunity Commission (EEOC). The EEOC is a federal government agency that was created to protect victims of harassment or discrimination. They may be contacted at 1-800-669-4000 or through their website at <http://www.eeoc.gov>
- 8. Responsibilities
 - a) The Commandant of Midshipmen shall:
 - i) Establish, monitor and document a comprehensive annual education and training program for all midshipmen.
 - ii) Oversee the appropriate investigative and disciplinary response to all midshipmen-related allegations of harassment, sexual harassment, or discrimination.
 - iii) Ensure the safety, dignity, and necessary support of alleged midshipmen victims of harassment, sexual harassment, or discrimination, as well as the fair and professional treatment of alleged midshipmen perpetrators.
 - iv) Ensure that all members of the Commandant's staff are familiar with the provisions of this policy.
 - v) Advise the Human Relations Committee Chair of harassment, sexual harassment, or discrimination cases involving midshipmen in a timely manner, and to provide same with an abstract of each completed case file, including findings, recommendations and disciplinary actions taken.
 - vi) Shall establish procedures and guidelines for reporting instances of harassment, sexual harassment, or discrimination made through the chain-of-command.
 - vii) Shall offer the assistance of an advocate to the victim.
 - b) The Deputy Superintendent shall:
 - i) Establish, monitor and document a comprehensive annual education and training program for faculty, staff, and employees of tenant agencies.
 - ii) In accordance with MARAD policies, oversee the appropriate investigative and disciplinary response for all faculty, staff, and employee allegations of harassment, sexual harassment, or discrimination.
 - iii) Ensure the safety, dignity, and necessary support of alleged faculty staff, and employee victims of harassment, sexual harassment, or discrimination, as well as the fair and professional treatment of alleged perpetrators.
 - iv) Ensure that all personnel are familiar with the provisions of this policy.
 - v) Advise the Human Relations Committee Chair of harassment, sexual harassment, or discrimination cases involving a member of the faculty or staff (or an employee of a tenant agency) in a timely manner, and to provide same with an abstract of each completed case file, including findings, recommendations and disciplinary actions taken.
 - c) The Chair of the Human Relations Committee shall:

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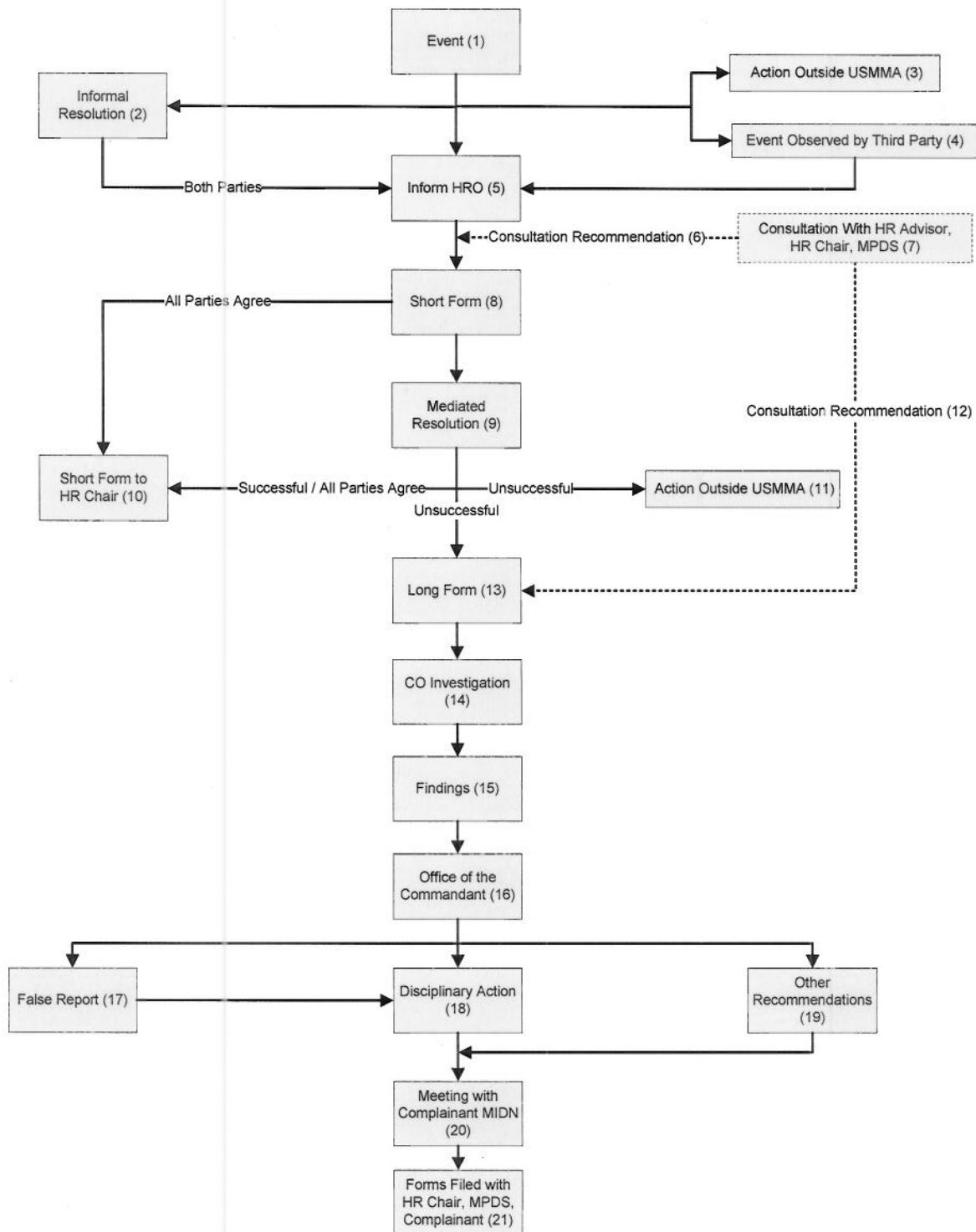
- i) Assist the Superintendent, Commandant of Midshipmen, Academic Dean, and Assistant Superintendent for Administration in their efforts to foster a positive human relations climate on campus.
 - ii) Advise the Commandant of Midshipmen and Deputy Superintendent concerning appropriate responses and actions regarding alleged victims and perpetrators of harassment, sexual harassment, or discrimination.
 - iii) Serve as a central, confidential repository for all cases involving allegations of harassment, sexual harassment, or discrimination, and inform the Commandant of Midshipmen and/or Deputy Superintendent of any past cases which may have involved the alleged perpetrator.
 - iv) Receive appropriate training or guidance regarding the management of confidential records.
- d) The Head, Department of Professional Development & Career Services shall:
- i) Develop appropriate procedures for midshipmen to report incidents of harassment, sexual harassment, or discrimination during sea year training or during an internship.
 - ii) Provide appropriate training in responding to incidents of harassment, sexual harassment, or discrimination sea year or during an internship, including reporting the incident and seeking guidance from vessel personnel, shipping company personnel, or the Academy.
- e) The Head, Department of Health Services shall:
- i) Provide training in crisis response to appropriate midshipmen, faculty and staff.
- f) All Academy midshipmen, staff, faculty and employees of tenant agencies shall:
- i) Adhere to the provisions of this Instruction at all times.
 - ii) Report incidents of harassment, sexual harassment, or discrimination to a superior officer, supervisor, or other appropriate authority or agency.
 - iii) Respond to allegations of harassment, sexual harassment, or discrimination promptly and professionally.

(original signed)

Joseph D. Stewart
Vice Admiral, USMS
Superintendent

Appendix A

Resolution of Harassment and Discrimination Complaints at USMMA



Appendix B

An **Event (1)** occurs which the *Complainant MIDN* perceives as harassment or discrimination.

The *Complainant MIDN* may file **No Report (3)** or take no action, in which case no further action is possible.

The *Complainant MIDN* may address the issue directly with the *Offender* and negotiate an **Informal Resolution (2)**. If both parties agree that the issue is resolved, they notify the **Human Relations Officer (HRO) (5)** who, after **Consultation (6)** with the **HR Advisor, HR Chair, and/or the Midshipmen Personal Development Service (MPDS) (7)**, completes the **Short Form Report (8)**. Assuming all parties remain in agreement, the Short Form is presented to the **Human Relations Chair (10)** and no further action results.

The *Complainant MIDN* can elect to pursue legal or civil **Action outside the Academy (4)**, in which case the Academy may be notified at a later point.

If the *Complainant MIDN* judges that addressing the *Offender* directly is not feasible, the **Event (1)** is reported to the **HRO (5)** who consults with the **HR Advisor, HR Chair, or the Midshipmen Personal Development Service (MPDS) (7)**. One **Recommendation (6)** can be to complete **the Short Form (8)**; another **Recommendation (12)** can be to complete the **Long Form (13)**.

If the **Short Form (8)** is recommended, the HRO offers to participate in a **Mediated Resolution (9)**. If the **Mediated Resolution (9)** is agreed to by all parties, the **Short Form (8)**, including the results of the **Mediated Resolution (9)**, are filed with the **HR Chair (10)** and no further action results.

If the outcome of the **Mediated Resolution (9)** is not acceptable to all parties or if the **Consultation Recommendation (12)** was for the **Long Form (13)**, the **Long Form (13)** is completed. [The *Complainant MIDN* may also elect to pursue legal or civil **Action outside the Academy (11)**.]

Completing the **Long Form (13)** triggers an **Investigation** by a designated **Company Officer (14)**, who provides the investigation **Findings (15)** to the **Office of the Commandant (16)**.

The Commandant can recommend **Disciplinary Action (18)** for the *Offender* or make **Other Recommendations (19)** [e.g., clinical evaluation]. The Commandant also arranges a **Meeting with the Complainant MIDN (20)** to present his recommendations. If the **CO Investigation (14)** indicates that the original complaint was a **False Report (17)**, the Commandant may take **Disciplinary Action (18)** against the *Complainant MIDN*.

All Forms are filed with the **HR Chair, MPDS and the Complainant MIDN (21)**.

Attachment C

**UNITED STATES MERCHANT MARINE ACADEMY
KINGS POINT, NEW YORK**

April 14, 2006

Superintendent's Instruction 2006-10

1. **Subj:** CONFIDENTIALITY AT USMMA
2. **Purpose:** To define the principles that determine the confidentiality of medical information and to clarify how these principles affect the dissemination of information at USMMA.
3. **References:**
4. **Applicability:** This policy applies primarily to midshipmen, but also has relevance to all Academy personnel, including faculty, staff, and personnel of tenant agencies, whether federal employees, military personnel or NAFI employees.
5. **Supersedes Superintendent's Instruction 2003-05, POLICY AGAINST SEXUAL HARASSMENT, SEXUAL ASSAULT OR DISCRIMINATION."**
6. **Definitions:**

Confidentiality describes a specific understanding between two parties regarding the disclosure of personal health information (PHI). At USMMA, confidentiality applies when:

 - a) there is an officially-defined role between the two people, such as between a Midshipman and a faculty member, between a Midshipman and a healthcare provider or between two Midshipmen; and
 - b) the PHI is officially relevant (e.g., to the discharge of a Midshipman's duty, to an established federal policy, to an applicable state regulation, or to an established healthcare standard).
7. **Policy**

USMMA and its midshipmen, faculty, staff, clergy, and healthcare providers adhere to established guidelines (e.g., The Health Insurance Portability and Accountability Act of 1996, HIPAA) regarding the confidentiality of PHI. The dissemination of PHI disclosed in a confidential relationship is subject to general guidelines and specific exceptions to those guidelines (as outlined below). For example, in most instances confidential PHI provided by a Midshipman can be released only to appropriate parties and only with the signed consent of the Midshipman. Confidentiality is not, however, equivalent to secrecy or concealment; in a federal institution, the dissemination of officially relevant information cannot be determined by an idiosyncratic "arrangement" between any two people. Similarly, information that cannot be kept confidential does not become "public property." Even when information cannot be kept confidential, the dissemination of sensitive information is always on a "need to know" basis. In all circumstances, respect for a Midshipman's PHI demands that the information be accorded all possible privacy and handled with sensitivity. The inappropriate discussion of confidential information (e.g., in the cafeteria or the locker room) in itself can be cited as an infraction as outlined in, for example, *Superintendent's Instruction 2003-05*.
8. **Procedures**

The expectation of confidentiality depends more upon the official roles and responsibilities of the two people involved than it does upon the content of the PHI. Thus, a Midshipman's expectation of confidentiality is determined by the person whom he/she chooses to inform. There are three broad categories:

 - a) **Communications to Clergy – The Broadest Expectation of Confidentiality**

Communications to Clergy invoke the broadest expectation of confidentiality. A Midshipman can refuse to disclose and can prevent a clergyman from disclosing any confidential communication made to the clergyman (or clergyman's assistant) made either as a formal act of

religion or as a matter of conscience. Midshipman communications to a clergyman can only be disclosed with the express written consent of the Midshipman. [See Attachment 1.]

- b) **Communications to a Healthcare Provider – A Moderate Expectation of Confidentiality**
Any communications between a Midshipman and a healthcare provider shall be confidential (i.e., can be released only to an appropriate party and only with signed consent). The following exceptions apply:
- i) *Midshipman Consent*: A Midshipman may request the dissemination of confidential PHI by providing a signed release. It is noteworthy that applications for USNR MMR commissioning and USCG licensing require the submission of complete medical records. Healthcare providers cannot submit records known to be incomplete, inaccurate or misleading. Thus, although a Midshipman's medical records cannot be released without signed consent, failure to provide consent for the release of the complete medical record means that the applications for commissioning and licensing remain incomplete and cannot be processed.
 - ii) *Treatment Emergencies*: The disclosure of confidential PHI necessary for emergency treatment is presumed to be in accordance with the Midshipman's wishes.
 - iii) *Public Safety*: The healthcare provider is allowed to disclose confidential PHI to prevent a Midshipman from harming him/herself or others.
 - iv) *USMMA Emergency Medical Technicians (EMTs)*: USMMA EMTs are Midshipmen medically trained and certified as healthcare providers. This dual role requires that the responsibilities of USMMA EMTs be specified with regard to their handling of PHI. USMMA EMTs, in the course of providing emergency treatment to a Midshipman, are allowed to provide:
 - a) To the Office of the Commandant: Information regarding accountability and potentially hazardous situations. That is, EMTs can provide the date and time of the call; the treated Midshipman's Name, Class, and Company; the location of the incident; and information regarding transport. The existence of any potential hazard at the site and the names of other Midshipmen who may have been present do not qualify as PHI; therefore, this information may be presented to the Office of the Commandant as well. This information is summarized using the EMS Accountability form completed by the Midshipman EMS Officer (not the EMS Crew Chief) at the site.
 - b) To the Department of Public Safety: USMMA EMTs can provide PHI requested by law enforcement officials who require the information to locate a suspect or stop a crime; or to avert a serious threat to the health and safety of a person or the public at large. Assisting law enforcement officials in securing the safety and well-being of the USMMA community is a priority of the EMTs.
 - v) *Treatment (Consultation)*: To facilitate the treatment process, healthcare providers may disclose confidential PHI without Midshipman consent in the course of clinical consultation "to obtain appropriate professional consultations." This exception ensures Midshipmen will receive services "of an acceptable quality;" the professionals consulted are also bound by confidentiality guidelines. Additionally, allowances are made for information to be "disclosed... to the extent necessary to allow responsibility for payment to be made."
 - vi) *Legal Requirements*: A court order issued by a judge must be followed. A judge may hold a hearing to determine which part, if any, of the record is privileged and what falls under the exception to privilege. State statutes make clear that a healthcare provider must follow a court order.
 - vii) *Mandatory Reporting Statutes*: As a corollary to public safety, an exception to confidentiality exists with regard to danger or self or others. Additionally, there may be mandatory reporting statutes for child abuse, elderly person abuse, and disabled adult abuse. [See Attachment 2.]
- c) **Communications to USMMA Faculty and Staff – No Expectation of Confidentiality**

An infraction or violation reported by a Midshipman to any member of USMMA staff (e.g., the chain of command, the faculty, or the administration) is equivalent to reporting it to the federal government. The Academy will protect midshipmen confidentiality regarding alleged violations to the greatest extent possible. Confidentiality cannot be guaranteed, however, since an effective investigation may require revealing certain information to the alleged perpetrator and potential witnesses. Information about the allegations, however, should be shared only with those who need to know about it. [See Attachment 3.]

9. Confidentiality and Specific Types of Infractions

a) Confidentiality and Reports of Sexual Harassment and Sexual Assault

- i) Sexual harassment and sexual assault are crimes. The Academy is mandated to provide a safe and nondiscriminatory environment for all members of the USMMA community. The Academy's priority, therefore, is to utilize every appropriate agency and means to investigate each report of sexual harassment or sexual assault made to a USMMA staff or faculty member. Given this, keeping a midshipman's personal information confidential cannot simultaneously be the priority of the Academy. A midshipman reporting an incident of sexual harassment or assault to a USMMA faculty or staff member thus has a limited expectation of confidentiality.
- ii) Reporting an incident of sexual harassment or sexual assault to other available resources invokes different expectations of confidentiality, determined primarily by the role of the person to whom they report. The expectations of confidentiality as outlined in Section 8 (Procedures) apply.
- iii) In order to facilitate a safe and nondiscriminatory environment for all, midshipmen are encouraged to make official reports of all harassment and assault incidents. In the event that a victimized Midshipman defers filing such an official report, the Midshipman is nevertheless encouraged to use alternative resources (e.g., Patten Clinic, the hospital emergency room, local victims' services agencies), all of which are bound by confidentiality guidelines, to obtain necessary care and assistance. Both clergy and healthcare providers are dedicated to helping a Midshipman secure appropriate care.
- iv) Towards the goal of providing a safe and nondiscriminatory environment, the Academy should train all Midshipmen:
 - a) to understand that, although officially reporting an incident as a victim is not mandatory, they are strongly encouraged to do so;
 - b) to recognize that expectations of confidentiality are determined by the role of the person receiving the report;
 - c) to recognize that alternate (non-official) resources are available to ensure that even if an official report is not made, Midshipmen have adequate access to medical care and support;
 - d) to recognize that they have the option to report an incident at a later date even if initially they declined to file an official report; and
 - e) to understand that options later available to them may be dependent upon actions taken soon after the incident (e.g., acting to preserve rather than destroy possible physical evidence).

b) Confidentiality and Alcohol Misuse

- i) Midshipmen receive instruction in recognizing alcohol-related difficulties and addressing these difficulties promptly. Difficulties which are not part of a disciplinary referral and do not reflect an underlying medical diagnosis can remain confidential when a self-referred midshipman requests assistance. If, however, a midshipman is referred as part of a disciplinary procedure, or if the difficulty appears likely to involve an alcohol-related medical diagnosis, the midshipman will be asked to provide written consent to allow the

ACTT to communicate with, for example, the Office of the Commandant (in the case of a disciplinary referral), the selected substance treatment program (for the referral for Outpatient Substance-Use Evaluation), or BUMED.

- ii) A midshipman's decision to provide written permission to release substance-related medical information is often a source of misunderstanding within the Regiment. It is true that a midshipman's medical records can only be released with his/her signed consent. It is also true, however, that the Office of the Commandant needs to communicate with the ACTT to verify that a midshipman has met the terms of his disciplinary action. Also, for example, the Department of Shipboard Training needs to communicate with the ACTT to verify that a midshipman has been cleared for sea duty assignment. It is also noteworthy that applications for USNR commissioning and USCG licensing require the submission of complete medical records. Healthcare providers cannot submit records known to be incomplete, inaccurate or misleading. Thus, failure to provide consent for the release of the complete medical record means that a midshipman's applications for commissioning and licensing remain incomplete and cannot be forwarded to the appropriate agencies.

10. Expiration. This Superintendent's Instruction is effective until superceded or rescinded

(original signed)

Joseph D. Stewart
Vice Admiral, USMS
Superintendent

Attachment 1

Military Rules of Evidence

Rule 503.

Communications to clergy

(a) General rule of privilege

A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman's assistant, if such communication is made either as a formal act of religion or as a matter of conscience.

(b) Definitions.

As used in this rule:

- (1) A "clergyman" is a minister, priest, rabbi, chaplain, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting the clergyman.
- (2) A communication is "confidential" if made to a clergyman in the clergyman's capacity as a spiritual adviser or to a clergyman's assistant in the assistant's official capacity and is not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the purpose of the communication or to those reasonably necessary for the transmission of the communication.

(c) Who may claim the privilege.

The privilege may be claimed by the person, by the guardian, or conservator, or by a personal representative if the person is deceased. The clergyman or clergyman's assistant who received the communication may claim the privilege on behalf of the person. The authority of the clergyman or clergyman's assistant to do so is presumed in the absence of evidence to the contrary.

Attachment 2

Patient Confidentiality

Patient Confidentiality

Physicians have always had a duty to keep their patients' confidences. In essence, the physician's duty to maintain confidentiality means that a physician may not disclose any medical information revealed by a patient or discovered by a physician in connection with the treatment of a patient. In general, AMA's Code of Medical Ethics states that the information disclosed to a physician during the course of the patient-physician relationship is confidential to the utmost degree. As explained by the AMA's Council on Ethical and Judicial Affairs, the purpose of a physician's ethical duty to maintain patient confidentiality is to allow the patient to feel free to make a full and frank disclosure of information to the physician with the knowledge that the physician will protect the confidential nature of the information disclosed. Full disclosure enables the physician to diagnose conditions properly and to treat the patient appropriately. In return for the patient's honesty, the physician generally should not reveal confidential communications or information without the patient's express consent unless required to disclose the information by law. There are exceptions to the rule, such as where a patient threatens bodily harm to himself or herself or to another person.

The AMA's ethical guidelines are not binding by law, although courts have used ethical obligations as the basis for imposing legal obligations. Moreover, maintaining patient confidentiality is a legal duty as well as an ethical duty. A physician's legal obligations are defined by the *US Constitution*, by federal and state laws and regulations, and by the courts. Even without applying ethical standards, courts generally allow a cause of action for a breach of confidentiality against a treating physician who divulges confidential medical information without proper authorization from the patient.

Despite these ethical and legal obligations, access to confidential patient information has become more prevalent. Physicians in integrated delivery systems or networks now have access to the confidential information of all the patients within their system or network. Confidential information also is disseminated through clinical repositories and shared databases. Sharing this information allows patients to be treated more efficiently and safely. The challenge for physicians is to utilize this technology, while honoring and respecting patient confidentiality.

What Is a Breach of Confidentiality?

A breach of confidentiality is a disclosure to a third party, without patient consent or court order, of private information that the physician has learned within the patient-physician relationship. Disclosure can be oral or written, by telephone or fax, or electronically, for example, via e-mail or health information networks. The medium is irrelevant, although special security requirements may apply to the electronic transfer of information.

The legal basis for imposing liability for a breach of confidentiality is more extensive than ethical guidelines, which dictate the morally right thing to do. Although current law in this area has been referred to as "a crazy quilt of state and federal law," protecting patients' confidentiality is the law of the land. Included in the patchwork are federal and state constitutional privacy rights, federal and state legislation and regulation governing both medical records and licensing, and specific federal and state legislation designed to protect sensitive information (*e.g.*, HIV test results, genetic screening information, mental health records, and drug and alcohol abuse rehabilitation information).

Patient Consent to Release Confidential or Privileged Information

The general rule regarding release of a patient's medical record is that information contained in a patient's medical record may be released to third parties only if the patient has consented to such disclosure. The patient's express authorization is required before the medical records can be released to the following parties: patient's attorney or insurance company; patient's employer, unless a worker's compensation claim is involved; member of the patient's family, except where the family member has been appointed the patient's attorney under a durable power of attorney for health care; government agencies; and other third parties. Some state laws expressly allow disclosure to any person upon consent of the patient. Other state laws permit release on patient consent only to specified classes of persons. Further, once the patient has given consent to release the

record, the disclosure requirement may be mandatory for the holder of the medical record or merely permissive.

HIPAA has created additional patient confidentiality considerations. Under the privacy regulations, covered entities may usually release protected health information without authorization only to facilitate treatment, payment or health care operations. Visit the AMA's [HIPAA](#) Web page for further information.

Managed care organizations (MCO) frequently require members to sign a general release form on enrollment in the plan. These forms authorize the release of medical information to the MCO. Typical language used in a release might be "that any provider may furnish the MCO such medical information as may be required and that the member acknowledges the MCO's right to conduct a professional utilization review program of health services and to coordinate benefits and/or reimbursements with other health or insurance programs." Before forwarding medical records to an MCO, utilization review programs or other health programs, physicians, hospitals, and others should get a signed copy of the patient's release of medical records.

Who Can Consent to the Release?

Who may grant permission to release medical record information is likewise governed by state law. Generally, the authority to release medical information is granted to: (1) the patient, if a competent adult or emancipated minor; (2) a legal guardian or parent if the patient is incompetent or a minor child; and (3) the administrator or executor of the patient's estate if patient is deceased. The patient's right to authorize release of medical records is codified in many state statutes. These statutes all state that medical records are confidential and cannot be disclosed, except in specifically provided circumstances. However, the extent of the patient's right to access varies from state to state. Some states allow the health care professional or provider to determine patient's right of access. In comparison, some states expressly grant patients access to the medical information contained in their medical records.

What Has to Be in the Release?

Typical elements of a valid general release include:

1. Patient's name and identifying information;
2. Address of the health care professional or institution directed to release the information;
3. Description of the information to be released;
4. Identity of the party to be furnished the information;
5. Language authorizing release of information;
6. Signature of patient or authorized individual; and
7. Time period for which release remains valid.

Some state laws add other elements, such as specifying on the form the reasons for disclosure or a caveat that the authorization may be revoked.

Failure to get the appropriate release for medical records may have serious results. Twenty-one states punish disclosure of confidential information by revoking a physician's medical license or taking other disciplinary action.

Implied Consent and Public Policy Exceptions or Required Disclosures

A patient's consent to disclosure of confidential information contained in a medical record may also be implied from the circumstances. For example, medical personnel directly involved in a patient's care or treatment generally have access to the medical record. Even if the patient has not expressly authorized disclosure of his or her medical record, such consent is implied from the patient's acceptance of treatment or hospitalization. Consent is also implied when a patient is transferred from one health care practitioner or facility to another. In such circumstances, disclosure of confidential patient information may be necessary to ensure continuation of patient care or treatment. State and federal statutes may also authorize or require disclosure of medical records

to health care professionals or providers involved in the patient's treatment or upon transfer of the patient from one facility to another.

Safeguarding patient confidences also is subject to certain exceptions that are ethically and legally justified because of overriding social considerations. If there is a reasonable probability that a patient will inflict serious bodily harm on another person, for example, the physician should take precautions to protect the intended victim and notify law enforcement authorities. Communicable diseases and gunshot and knife wounds should be reported as required by applicable statutes or ordinances. Thus, the physician's duty of confidentiality at times must give way to a stronger countervailing societal interest.

General Management Safeguards and Security Tips

Physicians should have their contracts with system vendors, consultants, and all health care providers participating in a data repository reviewed by an attorney. They should also have comparable confidentiality and security policies; implement security controls over sensitive patient information (*e.g.*, HIV status, pregnancy termination, and history of mental health problems or drug and alcohol abuse); maintain good system security; and train staff and secure agreements concerning confidentiality and security. It is also advisable to have security experts periodically assess the security of the clinical data repository and require that users who access the information sign appropriate user agreements.

Physicians should set up office procedures to prevent the release of medical records without a copy of the patient's release. The system could be as simple as attaching an office form to any request for medical records. The form would have a checklist indicating date of receipt of the request, date of receipt of the copy of the patient's release form, and date that the medical records were authorized to be sent to the requester.

Why Protecting Patient Confidentiality Is Still Important

Ethics and laws regarding confidentiality evolved long before the information highway was envisioned. The old laws and ethical precepts do not always fit neatly with today's computerized systems. Given the difficulties with compliance, some physicians and networks have only paid lip service to protecting patient confidentiality. This approach is short-sighted and unwise. The law will gradually catch up with the new system and seek to protect confidential patient information. In the interim, physicians should attempt to protect information to the extent possible and to comply with the "crazy quilt" of federal and state laws.

Physicians should inform patients of the limits of confidentiality protections and allow the patients to decide whether treatment outweighs the risk of the disclosure of sensitive information. A patient expects to have his or her privacy respected by the physician and should not be disappointed. If a record must be released, the patient should sign an appropriate release authorizing the disclosure of information in the medical record. General releases will not suffice for records containing HIV or other sensitive material.

Physicians should become familiar with laws involving the duty to maintain confidentiality. Any breach in confidentiality—even one that seems minor—can result in mistrust and, possibly, a lawsuit and/or disciplinary action.

Prepared by the American Medical Association, Office of General Counsel, Division of Health Law Copyright
1998 American Medical Association

Attachment 3

5 CFR Part 2635,

contains the “Standards of Ethical Conduct for Employees of the Executive Branch”

(http://www.usoge.gov/pages/forms_pubs_otherdocs/fpo_files/reference/rfsoc_99.pdf), which also references the

Privacy Act (5 USC 522).

Section B

Item (6) exempts “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy”.

Item (7) addresses investigations and records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information

- (A) could reasonably be expected to interfere with enforcement proceedings,
- (B) would deprive a person of a right to a fair trial or an impartial adjudication,
- (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
- (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,
- (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
- (F) could reasonably be expected to endanger the life or physical safety of any individual;

Attachment D

**UNITED STATES MERCHANT MARINE ACADEMY
KINGS POINT, NEW YORK**

April 14, 2006

Superintendent's Instruction 2006-11

Subj: POLICY AGAINST SEXUAL ASSAULT

References: a) Title VII of the Civil Rights Act of 1964 (as amended); b) Maritime Administration Order 770-713-3; c) and other federal, departmental, agency, or Academy policies governing sexual assault

1. Purpose: To establish policy, assign responsibilities, and set procedures outlining the Academy policy against sexual assault involving midshipmen..
2. Applicability: Application of this policy may involve all Academy personnel, including midshipmen, faculty, staff, and personnel of tenant agencies, whether federal employees, military personnel or NAFI employees. ? Statement about other than Midshipmen being victim of an assault.
3. Supersedes Superintendent's Instruction 2003-05, "POLICY AGAINST SEXUAL HARASSMENT, SEXUAL ASSAULT OR DISCRIMINATION"
4. Definitions
 - a) By definition, *sexual assault is a crime of violence*. Sexual assault refers to sexual intimacy forced or threatened on one person by another, including: rape; assault with the intent to commit rape or sodomy; indecent assault; and forcible sodomy. Psychologically pressuring an individual for sexual favors, or any attempt to take advantage of an individual under duress or incapable of making a decision on his or her own is a direct violation of the policy. This includes situations in which an individual is under the influence of alcohol, drugs and/or prescribed medications.
5. Policy.
 - a) Sexual assault in any form will not be tolerated. Threats made verbally, in writing, and/or transmitted electronically are included in this definition.
 - b) Requirement to report: Allegations of sexual assault received by any Academy midshipman, faculty member, staff member, or other employee will be reported immediately through the appropriate chain of command in order that proper law enforcement agents can be informed.
 - c) Obligation to act. All commanders and supervisors (whether midshipmen, faculty or staff) will be held responsible for the actions of their subordinates. Individuals who are aware of or observe violations of this Instruction will be held accountable if they fail to appropriately respond to such violations and exercise their leadership responsibilities.
 - d) Victim's rights.
 - i) The Academy's priority is that any Midshipman who is the victim of an assault have confidential access to proper medical and psychological care. Although victims of sexual assault are ***strongly encouraged*** to report any incident, proper and confidential medical and psychological care must be readily available to a victimized Midshipman regardless of his/her decision to report an incident.
 - ii) Every effort will be made to assist the alleged victim throughout the administrative/legal inquiry; a victimized Midshipman must have confidence that his/her concerns will be dealt with appropriately through the command channels. The Commandant will offer the assistance of a victim advocate. Alleged victims of sexual assault will also be offered appropriate legal and personal assistance.
 - iii) The Superintendent will appoint faculty, staff and midshipmen to the Human Relations Committee, which will assertively address the concerns of victims of sexual assault.
 - e) Privacy and Confidentiality.
 - i) Please refer to Superintendent Instruction 2006-10 (Confidentiality at USMMA).
 - ii) Of special note with regard to this Instruction:
 - a) For a victim of sexual assault, proper medical care, psychological care, and personal support are available through Patten Clinic and the Office of the Chaplain on a confidential basis.

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Page 2

- b) Reports made to staff members (e.g., uniformed personnel, faculty, and coaches), Midshipmen Officers, and Midshipmen do not invoke an expectation of confidentiality since these reports must be forwarded to appropriate Academy supervisory personnel. Regardless of the expectation of confidentiality, details of a reported incident should only be discussed on a “need to know” basis to safeguard a victim’s privacy as much as possible.
 - c) All personnel shall receive training (appropriate to their level of responsibility in reporting incidents of assault and maintaining respect for a victim’s privacy
 - f) Prohibition against retribution. Loyalty to our values and to our institution must supercede misplaced “loyalty” to someone who has violated the law and betrayed our institutional values. Shunning of midshipmen who attempt to maintain high standards and report sexual assault will not be tolerated and will be dealt with by midshipmen and commissioned officers who have responsibility for maintaining and enforcing standards. Commanders, supervisors or other superiors will be held accountable for ensuring that such behavior does not occur.
 - g) Other Offences. In any reported case of sexual assault, it is Academy policy to defer adjudication of any other offences that may be alleged to have occurred in conjunction with the reported sexual assault until the sexual assault case is resolved. This policy shall apply to the actions of the complainant midshipman, as well as to actions of witnesses to the incident and other individuals providing material evidence pertinent to the investigation. However, the senior ranking midshipman present will be responsible and accountable for all infractions committed by junior midshipmen.
 - h) Education and Training. Annual training is required for all midshipmen, staff, and faculty. Specific attention will be paid to the education of all midshipmen regarding preventing and reporting instances of assault upon them or their fellow midshipmen.
 - i) False accusations. False accusations of sexual assault will be referred to Academy and civilian legal authorities for appropriate disciplinary action and/or civil and criminal prosecution.
 - j) Medical staff. All medical personnel will receive training in dealing with sexual assault.
 - k) The Academy reserves the right, in its discretion, to refer any case to investigative and prosecutorial authorities.
6. Procedures
- a) Midshipmen may report instances of sexual assault through their chains-of-command; company officers and other Commandant’s uniformed staff members; chaplains; midshipmen counselors; Midshipmen Human Relations Officers; or any trusted advisor, coach, or faculty or staff member. After-hours, 24/7, reports may be made to the Command Duty Officer (CDO) and the Duty Chaplain.
 - b) Midshipmen should understand that only reports made to Office of the Chaplain personnel or to healthcare providers can be treated as confidential reports. [Please refer to Superintendent Instruction 2006-10 (Confidentiality at USMMA).] All other reports are considered to be official reports to be followed administratively from the time of the report.
 - c) Staff members, midshipmen officers, and Midshipmen Human Relations Officers receiving reports of sexual assault are responsible to provide for the safety and support of alleged victims and for forwarding the information to appropriate Academy supervisory personnel. Academy personnel are the responsible to report the incident immediately to the Department of Public Safety and/or the Commandant, either directly or through the Command Duty Officer for investigation.
 - d) For emergent instances of sexual assault, midshipmen should immediately seek assistance from Academy Security, the Command Duty Officer (CDO), Duty Chaplain, available medical staff, or, when off the Academy, local law enforcement and hospital emergency rooms.
 - e) The Commandant of Midshipmen will establish procedures and guidelines for reporting instances of sexual assault made through the chain-of-command.

Superintendent Instruction 2006-11

- f) The Head, Department of Professional Development & Career Services will establish additional procedures or guidelines for reporting instances of sexual assault for midshipmen at sea.
7. Responsibilities
- a) The Commandant of Midshipmen shall:
- i) Establish, monitor and document a comprehensive annual education and training program for all midshipmen.
 - ii) Oversee the appropriate investigative and disciplinary response to all midshipmen-related allegations of sexual assault.
 - iii) Ensure the safety, dignity, and necessary support of alleged midshipmen victims of sexual assault as well as the fair and professional treatment of alleged midshipmen perpetrators.
 - iv) Ensure that all members of the Commandant's staff are familiar with the provisions of this policy.
 - v) Prepare and distribute a wallet card containing emergency contact information, including numbers for sexual assault hotlines, etc.
 - vi) Advise the Human Relations Committee Chair of sexual assault cases involving midshipmen in a timely manner, and provide same with an abstract of each completed case file, including findings, recommendations and disciplinary actions taken.
 - vii) Inform the complainant that the option to consult a Victim's Advocate is available.
- b) The Deputy Superintendent shall:
- i) Establish, monitor and document a comprehensive annual education and training program for faculty, staff, and employees of tenant agencies.
 - ii) In accordance with MARAD policies, oversee the appropriate investigative and disciplinary response for all faculty, staff, and employee allegations of sexual assault.
 - iii) Ensure the safety, dignity, and necessary support of alleged faculty staff, and employee victims of sexual assault, as well as the fair and professional treatment of alleged perpetrators.
 - iv) Ensure that all personnel are familiar with the provisions of this policy.
 - v) Advise the Human Relations Committee Chair of sexual assault involving a member of the faculty or staff (or an employee of a tenant agency) in a timely manner, and to provide same with an abstract of each completed case file, including findings, recommendations and disciplinary actions taken.
- c) The Chair of the Human Relations Committee shall:
- i) Assist the Superintendent, Commandant of Midshipmen, Academic Dean, and Assistant Superintendent for Administration in their efforts to foster a positive human relations climate on campus.
 - ii) Advise the Commandant of Midshipmen and Chief of Staff concerning appropriate responses and actions regarding alleged victims and perpetrators of sexual assault.
 - iii) Serve as a central, confidential repository for all cases involving allegations of sexual assault and inform the Commandant of Midshipmen and/or Chief of Staff of any past cases which may have involved the alleged perpetrator.
 - iv) Receive appropriate training or guidance regarding the management of confidential records.
- d) The Head, Department of Professional Development & Career Services shall:
- i) Develop appropriate procedures for midshipmen to report incidents of sexual assault during sea year training or during an internship.
 - ii) Provide appropriate training in responding to incidents of sexual assault during sea year or during an internship, including reporting the incident and seeking guidance from vessel personnel, shipping company personnel, or the Academy.
- e) The Head, Department of Health Services shall:
- i) Provide training in crisis response to appropriate midshipmen, faculty and staff.
 - ii) Establish appropriate medical and mental health procedures for responding to allegations of rape or sexual assault, and ensure that health services staff are appropriately trained.

Superintendent Instruction 2006-11

- f) All Academy midshipmen, staff, faculty and employees of tenant agencies shall:
 - i) Adhere to the provisions of this Instruction at all times.
 - ii) Report incidents of sexual assault to a superior officer, supervisor, or other appropriate authority or agency in order that the USMMA Department of Public Safety and other proper law enforcement agents can be informed.
 - iii) Respond to allegations of sexual assault promptly and professionally.
- 8. Expiration. This Superintendent's Instruction is effective until superceded or rescinded.

(original signed)
Joseph D. Stewart
Vice Admiral, USMS
Superintendent

Attachment E

UNITED STATES MERCHANT MARINE ACADEMY
KINGS POINT, NEW YORK

2 August 2010

SUPERINTENDENT'S INSTRUCTION 2010-05

Subj: POLICY AGAINST SEXUAL ASSAULT

References: a) Title VII of the Civil Rights Act of 1964 (as amended); b) Maritime Administration Order 770-713-3; c) and other federal, departmental, agency, or Academy policies governing sexual assault

1. Purpose: To establish policy, assign responsibilities, and set procedures outlining the Academy policy against sexual assault involving midshipmen and other Academy personnel.
2. Applicability: This policy applies to all Academy personnel, including midshipmen, faculty, staff, and personnel of tenant agencies, whether federal employees, military personnel or NAFI employees.
3. Supersedes: Superintendent's Instruction 2006-11, "Policy Against Sexual Assault"
4. Definitions:
 - a) "Sexual assault" refers to sexual intimacy forced or threatened on one person by another, including: rape; forcible sodomy; assault with the intent to commit rape or sodomy; indecent assault; and other unwanted sexual touching or contact. Psychologically pressuring an individual for sexual favors, or any attempt to take advantage of an individual under duress or incapable of making a decision on his or her own is a direct violation of the policy. This includes situations in which an individual is under the influence of alcohol, drugs and/or prescribed medications. By definition, *sexual assault is a crime of violence*.
 - b) "Lack of consent" can include situations where resistance is overcome by duress; by acts of violence or harm or the threat of harm; by virtue of the victim's mental or physical inability to resist; because the victim is unconscious, of unsound mind or incapable of consent due to intoxication by alcohol or other drugs. The failure of the victim to offer physical or verbal resistance does not connote consent in these circumstances.
 - c) "Victim" for purposes of this instruction means any person who alleges direct physical, emotional or pecuniary harm as a result of a sexual assault, or who is identified upon the report of another person or by other information as a person who has been subjected to a sexual assault.
5. Policy:
 - a) Sexual assault in any form will not be tolerated. Threats made verbally, in writing, and/or transmitted electronically are included in this definition.
 - b) Requirement to report: Allegations of sexual assault received by any Academy midshipman, faculty member, staff member, or other employee will be reported immediately through the appropriate chain of command in order that proper law enforcement agents can be informed.
 - c) Obligation to act. All commanders and supervisors (whether midshipmen, faculty or staff) will be held responsible for the actions of their subordinates. Individuals who are aware of or observe violations of this Instruction will be held accountable if they fail to appropriately respond to such violations and exercise their leadership responsibilities.

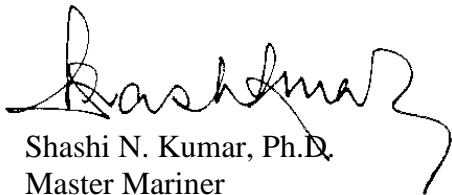
- d) Victim's rights.
 - i) The Academy's priority is that any Midshipman who is the victim of an assault has confidential access to proper medical and psychological care. Although victims of sexual assault are *strongly encouraged* to report any incident, proper and confidential medical and psychological care must be readily available to a victimized Midshipman regardless of his/her decision to report an incident.
 - ii) Every effort will be made to assist the alleged victim throughout the administrative/legal inquiry; a victimized Midshipman must have confidence that his/her concerns will be dealt with appropriately through the command channels. Any person receiving a report of sexual assault will offer the assistance of a victim advocate. Alleged victims of sexual assault will also be offered appropriate legal, medical and personal assistance.
 - iii) The Superintendent will appoint faculty, staff and midshipmen to the Human Relations Committee, which will assertively address the concerns of victims of sexual assault.
- e) Privacy and Confidentiality.
 - i) Please refer to Superintendent Instruction 2006-10 (Confidentiality at USMMA).
 - ii) Of special note with regard to this Instruction:
 - a) For a victim of sexual assault, proper medical care, psychological care, and personal support are available through Patten Clinic and the Office of the Chaplain on a confidential basis.
 - b) Reports made to staff members (e.g., uniformed personnel, faculty, and coaches), Midshipmen Officers, and Midshipmen do not invoke an expectation of confidentiality since these reports must be forwarded to appropriate Academy supervisory personnel. Regardless of the expectation of confidentiality, details of a reported incident should only be discussed on a "need to know" basis to safeguard a victim's privacy as much as possible.
 - c) All personnel shall receive training (appropriate to their level of responsibility) in reporting incidents of assault and maintaining respect for a victim's privacy
- f) Disciplinary Action: In addition to any criminal proceedings which may be instituted by Federal or local law enforcement authorities, midshipmen accused of sexual assault may be subject to investigation and disciplinary proceedings pursuant to the Midshipman Regulations. Other Academy personnel accused of sexual assault may be subject to investigation and discipline pursuant to Maritime Administrative Order (MAO) 770-751, Disciplinary and Adverse Actions.
- g) Prohibition against retribution. Loyalty to our values and to our institution must supersede misplaced "loyalty" to someone who has violated the law and betrayed our institutional values. Shunning of midshipmen who attempt to maintain high standards and report sexual assault will not be tolerated and will be dealt with by midshipmen and commissioned officers who have responsibility for maintaining and enforcing standards. Commanders, supervisors or other superiors will be held accountable for ensuring that such behavior does not occur.
- h) Other Offences. In any reported case of sexual assault, it is Academy policy to defer adjudication of any other offences that may be alleged to have occurred in conjunction with the reported sexual assault until the sexual assault case is resolved.

- This policy shall apply to the actions of the complainant midshipman, as well as to actions of witnesses to the incident and other individuals providing material evidence pertinent to the investigation. However, the senior ranking midshipman present will be responsible and accountable for all infractions committed by junior midshipmen.
- i) Education and Training. Annual training is required for all midshipmen, staff, and faculty. Specific attention will be paid to the education of all midshipmen regarding preventing and reporting instances of assault upon them or their fellow midshipmen.
 - j) False accusations. False accusations of sexual assault will be referred to Academy and civilian legal authorities for appropriate disciplinary action and/or civil and criminal prosecution.
 - k) Medical staff. All medical personnel will receive training in dealing with sexual assault.
 - l) The Academy reserves the right, in its discretion, to refer any case to investigative and prosecutorial authorities.
6. Procedures:
- a) Midshipmen may report instances of sexual assault through their chains-of-command; company officers and other Commandant's uniformed staff members; chaplains; midshipmen counselors; Midshipmen Human Relations Officers; or any trusted advisor, coach, or faculty or staff member. After-hours, 24/7, reports may be made to the Command Duty Officer (CDO) and the Duty Chaplain.
 - b) Midshipmen should understand that only reports made to Office of the Chaplain personnel or to healthcare providers can be treated as confidential reports. [Please refer to Superintendent Instruction 2006-10 (Confidentiality at USMMA).] All other reports are considered to be official reports to be followed administratively from the time of the report.
 - c) Staff members, midshipmen officers, and Midshipmen Human Relations Officers receiving reports of sexual assault are responsible to provide for the safety and support of alleged victims and for forwarding the information to appropriate Academy supervisory personnel. Academy personnel are responsible to report the incident immediately to the Department of Public Safety and/or the Commandant, either directly or through the Command Duty Officer for investigation.
 - d) For emergent instances of sexual assault, midshipmen should immediately seek assistance from Academy Security, the Command Duty Officer (CDO), Duty Chaplain, available medical staff, or, when off the Academy, local law enforcement and hospital emergency rooms.
 - e) The Commandant of Midshipmen will establish procedures and guidelines for reporting instances of sexual assault made through the chain-of-command.
 - f) The Head, Department of Professional Development & Career Services will establish additional procedures or guidelines for reporting instances of sexual assault for midshipmen at sea.
 - g) Any midshipman or other personnel who has been sexually assaulted or thinks s/he may have been sexually assaulted should:
 - i) Go to a safe location away from the attacker.
 - ii) Report the assault as provided above.
 - iii) Seek medical care as soon as possible. Even if there are no visible physical injuries, there may be a risk of becoming pregnant or acquiring a sexually transmitted disease.

- iv) Ask the healthcare provider to conduct a sexual assault forensic examination (SAFE) to preserve forensic evidence.
 - v) If there is suspicion of having been drugged, request that a urine sample be collected.
 - vi) Preserve all evidence of the assault. Do not bathe, wash hands or brush teeth. Do not clean or straighten up the crime scene.
 - vii) Write down, tape or record by any other means all the details about the assault and assailant.
7. Responsibilities:
- a) The Commandant of Midshipmen shall:
 - i) Establish, monitor and document a comprehensive annual education and training program for all midshipmen and other personnel which will include the policy set out in this instruction and information to promote awareness of the incidence of rape, acquaintance rape, and other criminal offenses of a sexual nature that involve midshipmen or other Academy personnel.
 - ii) Oversee the appropriate investigative and disciplinary response to all midshipmen-related allegations of sexual assault.
 - iii) Ensure the safety, dignity, and necessary support of alleged midshipmen victims of sexual assault as well as the fair and professional treatment of alleged midshipmen perpetrators.
 - iv) Ensure that all members of the Commandant's staff are familiar with the provisions of this policy.
 - v) Prepare and distribute a wallet card containing emergency contact information, including numbers for sexual assault hotlines, etc.
 - vi) Advise the Human Relations Committee Chair of sexual assault cases involving midshipmen in a timely manner, and provide same with an abstract of each completed case file, including findings, recommendations and disciplinary actions taken.
 - vii) Inform the complainant that the option to consult a Victim's Advocate is available.
 - b) The Chief of Staff shall:
 - i) Establish, monitor and document a comprehensive annual education and training program for faculty, staff, and employees of tenant agencies.
 - ii) In accordance with MARAD policies, oversee the appropriate investigative and disciplinary response for all faculty, staff, and employee allegations of sexual assault.
 - iii) Ensure the safety, dignity, and necessary support of alleged faculty, staff, and employee victims of sexual assault, as well as the fair and professional treatment of alleged perpetrators.
 - iv) Ensure that all personnel are familiar with the provisions of this policy.
 - v) Advise the Human Relations Committee Chair of sexual assault involving a member of the faculty or staff (or an employee of a tenant agency) in a timely manner, and to provide same with an abstract of each completed case file, including findings, recommendations and disciplinary actions taken.
 - c) The Chair of the Human Relations Committee shall:
 - i) Assist the Superintendent, Commandant of Midshipmen, Academic Dean, and Assistant Superintendent for Administration in their efforts to foster a positive human relations climate on campus.

- ii) Advise the Commandant of Midshipmen and Chief of Staff concerning appropriate responses and actions regarding alleged victims and perpetrators of sexual assault.
- iii) Serve as a central, confidential repository for all cases involving allegations of sexual assault and inform the Commandant of Midshipmen and/or Chief of Staff of any past cases which may have involved the alleged perpetrator.
- iv) Receive appropriate training or guidance regarding the management of confidential records.
- d) The Head, Department of Professional Development & Career Services shall:
 - i) Develop appropriate procedures for midshipmen to report incidents of sexual assault during sea year training or during an internship.
 - ii) Provide appropriate training in responding to incidents of sexual assault during sea year or during an internship, including reporting the incident and seeking guidance from vessel personnel, shipping company personnel, or the Academy.
- e) The Head, Department of Health Services shall:
 - i) Provide training in crisis response to appropriate midshipmen, faculty and staff.
 - ii) Establish appropriate medical and mental health procedures for responding to allegations of rape or sexual assault, and ensure that health services staff are appropriately trained.
 - iii) Consult with the appropriate law enforcement to ensure proper preservation of evidence potentially necessary for proof of criminal sexual assault.
- f) All Academy midshipmen, staff, faculty and employees of tenant agencies shall:
 - i) Adhere to the provisions of this Instruction at all times.
 - ii) Report incidents of sexual assault to a superior officer, supervisor, or other appropriate authority or agency in order that the USMMA Department of Public Safety and other proper law enforcement agents can be informed.
 - iii) Respond to allegations of sexual assault promptly and professionally.

b) Expiration. This Superintendent's Instruction is effective until superseded or rescinded.



Shashi N. Kumar, Ph.D.
Master Mariner
Interim Superintendent and Academic Dean

Attachment F



**Report on
Policies and Programs that Relate to
Sexual Harassment and Sexual Violence
Applicable to the Midshipmen
and Other Personnel of the
United States Merchant Marine Academy**

March 22, 2010



U. S. Department
of Transportation

**Maritime
Administration**

U. S. Merchant
Marine Academy

March 22, 2010

The Honorable Ray LaHood
Secretary of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Dear Mr. Secretary:

In accordance with the provisions of the 2009 Duncan Hunter Defense Authorization Bill, I am pleased to submit our report relating to sexual harassment and sexual violence applicable to the midshipmen and other personnel of the United States Merchant Marine Academy.

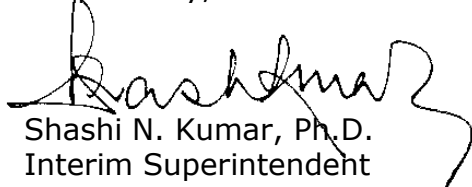
During the reporting period (July 1, 2008 through June 30, 2009), the Academy received no reports of acts of rape, sexual violence, or sexual harassment. However, the Academy did receive two complaints of alleged sexual harassment that occurred while the two midshipmen were aboard a commercial vessel.

While there were no reported complaints on campus, the Academy recognizes that it must do more to educate its midshipmen, faculty, and staff with respect to sexual harassment and sexual assault. In 2010, the Academy will be examining our current training in order to further educate them on the policies and protections that are available to protect them against sexual harassment and sexual violence.

In 2010, the Academy will also administer a survey to midshipmen, faculty and staff to gauge the current human relations climate, as well as understand the perceptions of the effectiveness of existing policies and programs. Based upon the conclusions drawn from that survey, we will amend our policies, and direct resources as necessary to address negative findings.

The combined leadership of the United State Merchant Marine Academy and the Maritime Administration remain committed to work together to ensure that the working and living environment at the United States Merchant Marine Academy remains one of respect and equality.

Respectfully,

A handwritten signature in black ink, appearing to read "Shashi N. Kumar".

Shashi N. Kumar, Ph.D.
Interim Superintendent

Policies and Programs that Relate to
Sexual Harassment and Sexual Violence
Applicable to the Midshipmen and Other Personnel of the
United States Merchant Marine Academy

Reporting Requirement

Section 3507 of the 2009 Duncan Hunter Defense Authorization Bill requires the United States Merchant Marine Academy (USMMA) to report to Congress regarding the Academy's policies and programs that relate to sexual harassment and sexual violence applicable to the "[midshipmen] and other personnel of the Academy."

Period Covered by this Report

This Report covers the Program Year (Academic Year) 2008-2009, which began on 1 July 2008 and ended on 30 June 2009.

Sexual Assaults, Rapes, and other Sexual Offenses

Table 1 lists cases of sexual violence reported and substantiated during the reporting period by USMMA officials.

Table 1 Sexual Assaults, Rapes, and Other Sexual Offense Reported and Substantiated at the U.S. Merchant Marine Academy 1 July 2008 through 30 June 2009		
Type of Offense	Number of Cases Reported	Number of Cases Substantiated
Sexual Assault	0	0
Rape	0	0
Other Sexual Offenses	0	0

Source: USMMA Office of Security, 2008 and 2009 Crime Awareness and Campus Security Reports (as required by the Campus Security Act, PL-101-542).

The USMMA did receive two complaints of alleged sexual harassment that occurred while the two midshipmen were aboard a commercial vessel. While final resolution is pending, the Academy has already taken steps to augment its sea year training.

Policies, Procedures, and Processes Regarding Sexual Assaults, Sexual Harassment, and other Sexual Offenses

POLICY AND PROCEDURES: Midshipmen attending the USMMA are considered civilian personnel, and are subject to the federal and state laws and regulations that

apply to the general public. They are also subject to Academy regulations as established by the Superintendent (46 CFR 310.67), which set forth policies and procedures regarding standards of conduct, discipline, and other matters.

For the purposes of this Report, "other Academy personnel" are considered those civil service federal personnel of the U.S. Government who are employed by the Maritime Administration (MARAD) of the Department of Transportation (DOT) and who are assigned to USMMA. As civil service federal employees, these individuals are subject to MARAD and DOT policy, as well as laws and regulations governing federal employees as established by Congress, the Office of Personnel Management (OPM), or other cognizant federal agencies. There is a small number (less than 20) of uniformed military personnel from the Department of Defense (all branches of the Armed Services) and the Department of Homeland Security assigned to the USMMA; these Academy personnel are also subject to the provisions of the Uniform Code of Military Justice (UCMJ).

The USMMA follows the protocol outlined in Table 2 when responding to allegations of sexual violence or sexual harassment:

Table 2 Protocol for Responding to Allegations of Sexual Violence or Sexual Harassment at the U.S. Merchant Marine Academy	
Type of Offense	Course of Action and Jurisdiction
Any case involving criminal sexual assault or sexual violence that involves either midshipmen or other Academy personnel	Case handled by the MARAD Office of Chief Counsel, working with the local U.S. Attorney in a federal court. In cases where the alleged crime took place off federal property, prosecution would take place in the appropriate local state jurisdiction.
Cases involving midshipmen only, in which allegations of sexual assault have been made, but where criminal charges are not brought, are dismissed, or are not prosecuted within a court of law.	Adjudicated through the USMMA Executive Board disciplinary process laid out in the Midshipman Regulations. The Executive Board is an administrative body, assessing overall suitability for retention.
Cases involving allegations of sexual harassment solely between midshipmen.	Adjudicated through the USMMA Executive Board disciplinary process.
Cases involving allegations of sexual harassment solely against MARAD employees	Adjudicated using DOT/MARAD Equal Employment Opportunity procedures.
Cases involving allegations of sexual harassment solely against DoD or DHS personnel	Adjudicated external to USMMA, per the cognizant DoD or DHS agency

Table 2 (Continued) Protocol for Responding to Allegations of Sexual Violence or Sexual Harassment at the U.S. Merchant Marine Academy	
Cases involving allegations of sexual harassment involving <i>both</i> midshipmen and MARAD/DoD/DHS employees	Adjudicated through a combination of the above, depending upon whether the alleged violator is a midshipman, or an employee of the USMMA, DoD or DHS.

During the reporting period, the below listed policies were in place to address the responsibilities of the Academy, and outline the rights of midshipmen in cases involving allegations of sexual harassment or sexual violence. These publications are available to midshipmen and Academy personnel through the USMMA intranet.

1. Superintendent's Instruction 2005-13, "Statement of Student Rights under the Family Educational Rights and Privacy Act (FERPA)" (Attachment A)
2. Superintendent's Instruction 2006-08, "Policy Against Harassment, Sexual Harassment, or Discrimination" (Attachment B)
3. Superintendent's Instruction 2006-10, "Confidentiality at USMMA" (Attachment C)
4. Superintendent's Instruction 2006-11, "Policy Against Sexual Assault" (Attachment D)

During the Program Year, USMMA midshipmen received a number of training modules on the USMMA policies and programs governing sexual harassment and sexual violence awareness, prevention, and education, as presented in Table 3. Training for midshipmen is administered by the Commandant of Midshipmen, with assistance from medical personnel and counselors in the Department of Health Services, staff of the Department of Professional Development and Career Services (focused on Sea Year), and volunteer members of the Human Relations Committee. In total, a midshipman would typically receive 19 hours of training during the course of his/her attendance at the USMMA. Samples of training materials are contained in Attachment E; these include procedural flowcharts and other helpful documents.

Table 3 Sexual Violence and Sexual Harassment Education and Training Provided to Midshipmen at the U.S. Merchant Marine Academy	
Group	Subjects Taught (length, scheduling)
Fourth Class (Freshmen)	<ul style="list-style-type: none"> • Initial brief on policies on sexual assault and sexual harassment (1 hour, accomplished by second day of Indoctrination) • Comprehensive briefings on sexual assault and sexual harassment policies, confidentiality, procedures, awareness, and response (4 hours, accomplished during second week of Indoctrination) • Alcohol Awareness Training, incl. date rape (4 hours, accomplished within first six weeks of academic year)
Third Class (Sophomores)	<ul style="list-style-type: none"> • Refresher training on sexual assault, sexual harassment, confidentiality, and HR policies (1 hour) • Presentation on Date Rape (1 hour) • Alcohol Awareness Refresher Training (1 hour) • Sexual assault and sexual harassment awareness in a shipboard environment during Sea Year (1 hour)
Second Class (Juniors)	<ul style="list-style-type: none"> • Refresher training on sexual assault, sexual harassment, confidentiality, and HR policies (1 hour) • Presentation on Date Rape (1 hour) • Alcohol Awareness Refresher Training (1 hour)
First Class (Seniors)	<ul style="list-style-type: none"> • Refresher training on sexual assault, sexual harassment, confidentiality, and HR policies (1 hour) • Presentation on Date Rape (1 hour) • Alcohol Awareness Refresher Training (1 hour)
<i>Midshipman Officers</i>	<ul style="list-style-type: none"> • <i>Training on handling reports of alleged sexual assault or sexual harassment (1 hour)</i>
Total Training Time	19 hours (20 hours for Midshipman Officers)

Academy personnel involved in processing allegations of sexual harassment or sexual violence fall into four broad categories, and receive training from different sources (See Table 4).

Table 4 Training Received for the Preservation of Evidence Potentially Necessary for Proof of Criminal Sexual Assault for Personnel at the U.S. Merchant Marine Academy	
Group	Training Received
Medical Personnel (USMMA Department of Health Services and contract medical staff)	Pertinent training for initial response, medical treatment, and preservation of evidence, as required by New York State and other medical accrediting bodies; subject to protocols established for confidentiality.

<p style="text-align: center;">Table 4 (Continued) Training Received for the Preservation of Evidence Potentially Necessary for Proof of Criminal Sexual Assault for Personnel at the U.S. Merchant Marine Academy</p>	
Group	Training Received
Security Personnel (USMMA Office of Security)	USMMA Federal Police Officers receive general training for initial response and preservation of evidence. In addition, USMMA practice has been to rely upon the expertise of local police departments (specifically the Nassau County Police Department Special Victims Unit) to investigate claims of rape or sexual violence.
Chaplains (assigned members of the USN Chaplain Corps)	Pertinent training through the United States Navy; subject to protocols established for confidentiality. When permitted by the victim, the Chaplains work with the Department of Health Services and Office of Security, and follow their protocols for preservation of evidence.
USMMA Commandant Staff	Trained to be fully knowledgeable in the administration of Academy policy. They also have been trained to refer victims to the Department of Health Services and Office of Security, who have established protocols for preservation of evidence.

Action Plan for the Next Program Year

The actions listed below are planned for the Program Year (Academic Year) 2009-2010, which begins on 1 July 2009 and ends on 30 June 2010.

1. As required by Section 3507, paragraph (C), the Department of Transportation will administer a survey to midshipmen and Academy personnel to assess their perceptions concerning the policies, training, and procedures on sexual harassment and sexual violence involving Academy personnel; the enforcement of such policies; the incidence of sexual harassment and sexual violence involving Academy personnel; and, any other issues relating to sexual harassment and sexual violence involving Academy personnel. USMMA will work closely with DOT and MARAD officials, and consult with other federal service academies, to develop appropriate questions, analyze the collected data, and develop conclusions and recommendations. This survey will be administered in May 2010, with recommendations due by 30 September 2010.
2. The USMMA will administer a number of focused education programs during Sexual Assault Awareness Month (April 2010). These will include education modules on Academy policy and reporting procedures, measures to prevent sexual violence, confidentiality, victim's rights, and other pertinent subjects.
3. The USMMA will review the protocols and procedures for the preservation of evidence potentially necessary for proof of criminal sexual assault, and ensure that appropriate training is received by law enforcement personnel, medical personnel, and Commandant's Staff.