

Superintendent Instruction 2016--02

United States Merchant Marine Academy Kings Point, New York

20 May 2016

SUPERINTENDENT INSTRUCTION 2016-02

**Subj: SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE,
STALKING, PREVENTION EDUCATION, AND RESPONSE POLICY**

References: (a) 20 U.S.C §1681, *et seq.*, Title IX of the Education Amendments of 1972 (as amended)
(b) 20 U.S.C. §1092 (f), *The Jeanne Clery Disclosure of Campus Security Policy and Campus Statistics Act*
(c) 20 U.S.C. §1232g, *The Family Educational Rights and Privacy Act (FERPA)*
(c) 42 U.S.C. §2000e, *et seq.*, Title VII of the Civil Rights Act of 1964 (as amended)
(d) MAO 770-713-3, *Prevention and Elimination of Harassment in the Workplace*
(e) and other federal, departmental, agency, or Academy policies governing sexual assault.

1. **Purpose:** To establish policy, assign responsibilities, and set procedures outlining the United States Merchant Marine Academy (Academy) policy on sexual assault, dating violence, domestic violence, stalking, prevention education, and response that involves Midshipmen and/or 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 contract employees.
3. **Supersedes:** Superintendent's Instruction 2012-08, "Policy on Sexual Assault Prevention and Response."
4. **Policy:**
 - a) The Academy is deeply committed to fostering a safe campus where Midshipmen can thrive in an environment free of sexual assault, dating and domestic violence, and stalking. The Academy supports and nurtures a campus climate that allows Midshipmen, faculty, and staff to perform at their highest abilities while still being assured of their essential safety and well-being. Every member of the Academy community is responsible for fostering mutual respect and refraining from conduct that violates this policy. Sexual assault, dating violence, domestic violence, stalking and any other form of violence are unacceptable and will not be tolerated.
 - b) The Academy will use training, education, and awareness to minimize sexual assault, dating and domestic violence, and stalking, to promote the sensitive and professional

handling of victims of sexual assault, to offer victim assistance and counseling, to hold those who commit sexual assault offenses accountable, to provide confidential avenues for reporting, and to reinforce a commitment to Academy values.

- c) This policy applies –
 - i) Both on and off Academy grounds and during duty and non-duty hours.
 - ii) To working, living, and recreational environments (including both at the Academy, off the Academy grounds, and at sea).
- d) The Academy will treat all victims of sexual assault, dating and domestic violence, and stalking with dignity, fairness, and respect. A victim's rights include the following:
 - i) The right to be treated with fairness and respect for his or her dignity and privacy, and to be free from any suggestion that he or she is at fault when these crimes and violations are committed, or that he or she should have acted in a different manner to avoid such crimes;
 - ii) The right to receive immediate and effective medical and/or psychological care and attention, including long-term follow-up treatment, if eligible;
 - iii) The right to be reasonably protected from the accused offender, and to be free from retaliation by the Academy, the accused, and/or their friends, family and acquaintances; and,
 - iv) The right, if desired, to confidential or restricted reporting of the sexual assault incident.
- e) The Academy will approach every reported incident of sexual assault, dating and domestic violence, and stalking seriously by following proper guidelines. The information and circumstances of the allegations will be disclosed on a need-to-know basis only.

5. **Definitions:**

- a) **Sexual assault** is a crime of violence defined as intentional touching of a sexual nature against the will (by use of force, physical threat, or abuse of authority) or without the consent of the victim. The victim of sexual assault can be male or female and the perpetrator of the sexual assault can be of the same or opposite sex. Sexual assault includes, but is not limited to, the following:
 - i) Unwanted kissing, groping, fondling, or other more aggressive physical acts, such as rape, nonconsensual sodomy (oral or anal sex), or attempts to commit these acts;

- ii) Sexual contact with someone whom you reasonably should have known was impaired and, thus unable to consent, due to the use of alcohol or drugs (including prescription medications);
 - iii) Sexual contact with someone who is “passed out,” sleeping, or otherwise incapacitated;
 - iv) Sexual contact with someone who is unable to say “no” and/or change their mind due to the presence of coercion or intimidation; and
 - v) Sexual contact with someone who is under the age of consent in the jurisdiction in which the sexual assault occurs.
- b) **Dating violence**, also known as relationship violence, is defined as controlling, abusive, behavior in a romantic and/or dating relationship. It can happen in straight or Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) relationships. It can include verbal, emotional, physical, or sexual abuse, or any combination thereof.
- c) **Domestic violence** is defined as controlling, abusive behavior which involves violence and/or other abuse by one person against another in a domestic setting, such as in marriage or cohabitation. Domestic violence can take place in heterosexual or same-sex relationships, and sometimes also involves violence against the children in the family. Domestic violence can take a number of forms including physical, verbal, emotional, economic and sexual abuse, or any combination thereof.
- d) **Stalking** is a form of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking can occur in a dating relationship, friendship, or past relationship, or can be perpetrated by a stranger.
- e) **Consent** is an affirmative decision to engage in mutually agreed upon sexual activity and is given by clear words or actions. Consent may not be inferred from silence, passivity or lack of resistance alone. Consent to one form of sexual activity does not imply consent to other forms of sexual activity, and the existence of a current or previous dating or sexual relationship is not sufficient to constitute consent to additional sexual activity. Assent shall not constitute consent if it is given by a person who is unable to lawfully give his or her consent because of youth, disability, intoxication or other condition, or coercion or intimidation.

6. **Procedures:**

- a) Victims of sexual assault, dating or domestic violence, or stalking are strongly encouraged to report such assaults as soon as possible, whether the assault took place on or off campus. A victim has the option to make either a restricted or unrestricted report.
- b) Types of Reporting:

- i) **Restricted Reporting:** Restricted reporting allows Midshipmen who are victims of sexual assault, dating violence, domestic violence or stalking, on a confidential basis, to disclose the details of their assault to specifically identified individuals and receive medical treatment and counseling at a location of the victim's choice (on or off-campus), without triggering the official investigative process. Midshipmen who are assaulted and desire restricted reporting under this policy should report the assault to the Academy's Sexual Assault Response Coordinator (SARC), or to a Victim Advocate (VA) or an Academy Health Care Provider (HCP), each of whom must immediately forward the report to the SARC. VAs or Academy HCPs who fail to report assaults to the SARC will be held accountable for such failure. Midshipmen may also confidentially report the assault to the Academy's Chaplain. This policy on restricted reporting is in addition to the current protections afforded privileged communications with a chaplain and does not alter those protections. Restricted reports cannot be made to anyone other than those identified in this paragraph. Midshipmen who initially elect to make a restricted report can, at any time after their initial restricted report, decide to pursue unrestricted reporting, which will result in the initiation of criminal and administrative investigatory proceedings. Sexual Assault Forensic Exam evidence kits collected from victims on restricted reports can only be kept for the duration of their stay at the Academy.
 - ii) **Unrestricted Reporting:** Unrestricted reporting allows Midshipmen who are victims of sexual assault, dating violence, domestic violence or stalking access to advocacy support, medical treatment, and counseling. In addition, an unrestricted report will result in the initiation of criminal and administrative investigations of their allegations. An unrestricted report can be made to the SARC, a VA, an Academy HCP, a Midshipman Human Relations Officer, Department of Public Safety, law enforcement, through the chain of command (including Company Officers and other Commandant's uniformed staff members), or to any trusted advisor, faculty, or staff member. A report of sexual assault made to anyone other than the SARC must immediately be forwarded to the SARC, who will have primary responsibility for handling the report, including notifying the appropriate law enforcement personnel and the Academy staff responsible for the administrative investigation. Details regarding the incident will be limited to only those personnel who have legitimate need to know. Use of the unrestricted reporting option is encouraged as it provides for immediate formal criminal and administrative investigations. It is the only option that can lead to holding offenders accountable) and preventing them from re-offending.
- c) Any Midshipman or other personnel who has been sexually assaulted or believes they may have been sexually assaulted should:
- iii) Get away from the attacker immediately to a safe place.

- iv) Report the assault in one of the two ways described above in Paragraph 6(b).
 - v) Preserve all evidence. Do not wash, comb, or clean any part of your body, and do not change clothes if possible.
 - vi) Protect the crime scene: close and lock the door where the crime occurred.
 - vii) Seek medical care as soon as possible. Even if there are no visible physical injuries, there may be risk of becoming pregnant or acquiring sexually transmitted diseases.
 - viii) Agree to a sexual assault forensic examination to preserve evidence.
- d) **Requirement to Report:** Allegations of sexual assault, dating violence, domestic violence, and stalking received by any Academy Midshipman Officer, faculty member, staff member, contract employee, or other employee must be reported immediately to the SARC or to the VA on duty, who will take appropriate action pursuant to this policy. Individuals who fail to report such allegations will be held accountable.
- e) **Academy Response in Cases of Imminent Danger:** The Academy will ensure that a sexual assault victim's election between an unrestricted and restricted report is honored to the maximum extent possible. However, disclosure of confidential communications is authorized when there is imminent threat to the health or safety of the victim or another person.
- f) **Disciplinary Action for the Accused in Unrestricted Reports of Sexual Assault:** In addition to any criminal proceedings that may be instituted by Federal or local law enforcement authorities, the Academy may pursue an administrative investigation and disciplinary proceedings against an accused Midshipman pursuant to the Midshipman Regulations and/or Procedures for Superintendent's Disciplinary Hearing in the Case of Sexual Assault/Harassment. Other Academy personnel accused of sexual assault may be subject to investigation and discipline pursuant to the Maritime Administrative Order (MAO) 770-751, *Disciplinary and Adverse Actions*.

Throughout the disciplinary proceedings, the accused and the victim will have the following rights:

- i) The right to have access to an advisor of their choice. Participation of the advisor in any proceeding is governed by federal law and the Academy's administrative procedures;
- ii) The right to a prompt response to any complaint and to have their complaint investigated and adjudicated in an impartial and thorough manner by individuals who receive annual training in conducting investigations of sexual violence;

- iii) The right to an investigation and disciplinary process conducted in a manner that recognizes the legal and policy requirements of due process and is not conducted by individuals with a conflict of interest;
 - iv) The right to have a disciplinary process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more 10 days except when law enforcement specifically requests and justifies a longer delay;
 - v) The right to exclude prior sexual history or past mental health history from admittance in Phase I (determination stage) of the disciplinary process. Past sexual violence findings may be admissible in Phase II (sanction stage) of the disciplinary process;
 - vi) The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions;
 - vii) The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the sanction(s), if any; and
 - viii) The right to know the sanction(s), if any, imposed on the accused based upon the outcome of the disciplinary proceeding and the reason for the actual sanction, if any, imposed.
- g) **Prohibition Against Retaliation:** Loyalty to the Academy and its core values must supersede misplaced “loyalty” to someone who has violated the law and betrayed those values. Thus, no individual shall be retaliated against in any way by a member of the Academy community for participation in this complaint procedure. Every effort will be made to protect members of the Academy community so that they may use or participate in this complaint procedure without fear of reprisal or retaliatory action. Threats or other forms of intimidation and retaliation against the victim, witnesses, or any other individual implementing or using the complaint procedure are violations of this policy and, thus, may be grounds for disciplinary action. Individuals who believe they have been retaliated against in violation of this policy should immediately notify the SARC. Supervisors, Midshipman or commissioned officers, and other personnel in the chain of command will be held accountable for ensuring that such behavior does not occur.
- h) **Addressing Collateral Misconduct in Sexual Assault Cases:** Ensuring the safety of Midshipmen who report violations of this policy is the Academy’s primary concern. In order to facilitate reporting, the Academy will, with limited exceptions, provide amnesty for certain disciplinary infractions to a Midshipman who reports an incident, whether directed towards that Midshipman or another Midshipman that are in violation of this policy.

Disciplinary infractions covered by amnesty include the following:

1. Alcohol related offenses, including underage drinking;
2. Violations associated with liberty, leave, or accountability;
3. Professional relationships, fraternization, & visitation between Midshipmen in Midshipmen rooms;

4. Sexual misconduct;
5. Visiting homes of Academy staff without authorization; and
6. Violations of any item associated with Class Rates and Privileges.

Exceptions: Amnesty will be considered on a case by case basis for the following:

1. Minor disciplinary infractions that place or placed the health or safety of any other person at risk,
2. Infractions for which a Midshipman has previously been found to have committed the same disciplinary infraction; or
3. Infractions that constitute honor offenses.

If amnesty is provided, no conduct proceedings or conduct record will result for such disciplinary infractions. Amnesty for these disciplinary infractions also may be offered to Midshipmen who intervene to help others before a violation of this Policy occurs and to Midshipmen who receive assistance or intervention. Abuse of amnesty requests may result in a decision by the Commandant not to extend amnesty to the same Midshipman repeatedly.

The Deputy Commandant of Midshipmen shall maintain records regarding the provisions of amnesty for at least five (5) years.

7. **Education and training:** Prevention and response training is the most critical component to the success of the program. The goals of the program are to raise awareness and to train critical stakeholders in their part to end crimes of sexual assault, dating and domestic violence, and stalking. The following training requirements will serve as the minimum standard:
 - a) **Plebe Candidates** will receive prevention education training within the first two weeks of reporting to the Academy. The training will address issues of sexual assault, sexual harassment, dating and domestic violence, stalking, and bystander intervention.
 - b) **All Midshipmen** will receive annual awareness training on the topics of sexual assault, dating and domestic violence, and stalking (in addition to any other required training, such as Plebe Candidate training, or pre-Sea Year or Post-Sea Year training). Training topics will vary by class with the intent of actively raising awareness levels.
 - c) **Sea Year Midshipmen** will receive pre-sea year training to prepare them for the challenges of sea year, briefed on the need to become familiar with shipping company sexual harassment and sexual assault (SH/SA) policies, and receive post-sea year training to prepare them for reintegration to the Academy upon their return from sea.

- d) **Midshipmen Officers** will receive leadership and bystander intervention training in an effort to prepare them to prevent and respond effectively to incidents of sexual assault. This training will be provided for each rotation.
- e) **All Faculty, Administrators, and Staff** will receive annual training to raise awareness, advise on available resources to victims and explain how to respond effectively to incidents of sexual assault.
- f) **First Responders** such as chaplains, clinic personnel, Department of Public Safety and emergency medical technicians (EMT's) will receive annual training.
- g) **Victim Advocates** will receive ongoing training on victim support topics to prepare them for their critical roles.
- h) The **SARC** will receive an annual minimum of 20 hours of continuing education in sexual assault prevention and response topics.

8. **Responsibilities:**

f) The **Superintendent** shall:

- i) Coordinate with the SARC to ensure that all faculty, administrators, and staff receive annual comprehensive training on sexual assault, dating and domestic violence, and stalking prevention and response and are familiar with the provisions of this Policy.
- ii) In accordance with MARAD policies, oversee the appropriate administrative investigatory and disciplinary response for all faculty, administrator, and staff allegations of sexual assault, dating and domestic violence and stalking.
- iii) Ensure that victims of sexual assault, dating and domestic violence, and stalking receive sensitive care and support and are not subjected to retaliation as a result of reporting the incident.
- iv) Notify the SARC immediately of sexual assault, dating and domestic violence and stalking incidents involving faculty, administrators, and staff whether as victims or perpetrators.

g) The **Commandant of Midshipmen** shall:

- i) Ensure that victims of sexual assault, dating and domestic violence, and stalking receive sensitive care and support and are not subjected to retaliation as a result of reporting the incident.
- ii) Coordinate with the SARC to insure that all Midshipmen receive comprehensive training on sexual assault, dating and domestic violence, and

stalking prevention and response, in small groups of approximately 30 Midshipmen or fewer, annually.

- iii) Schedule prevention education training for Plebe Candidates in small groups of approximately 30 students or fewer within the first two weeks of indoctrination training.
- iv) Ensure that all members of the Commandant's staff are familiar with the provisions of this policy.
- v) Distribute a wallet-sized card containing emergency contact information; cards can be obtained from the SARC.
- vi) Notify the SARC immediately of sexual assault, dating and domestic violence, and stalking incidents involving Midshipmen whether as victims or accused.
- vii) Inform victims of available victim advocacy services.
- viii) In consultation with the SARC, appoint a minimum of at least one Midshipman (1/C) as a Regimental Sexual Assault Victim Advocate (RSAVA), one Midshipman (1/C) as a Regimental Human Relations Officer (RHRO), and a minimum of one Midshipman (1/C) per company as a Human Relations Officer (HRO). Ensure that selection of these Midshipmen takes into account leadership abilities, maturity level and the ability to provide support in highly charged situations.
- ix) Ensure sexual assault, dating and domestic violence, and stalking prevention information (posters, policy, victim advocate posters) are posted on all Company bulletin boards and in other locations deemed appropriate by the Commandant, such as in individual barracks rooms, barracks heads, etc.
- x) Require Midshipmen to attend annual training and any other required training and awareness events as necessary.

h) The **SARC** shall:

- i) Serve as the primary point of contact for any and all actions relating to sexual assault, dating and domestic violence, and stalking awareness, prevention, training, and victim advocacy.
- ii) Establish, monitor, and document a comprehensive prevention and education program for all Midshipmen, faculty and staff.
- iii) Train and oversee the Victim Advocates in the performance of their duties.

- iv) Train and oversee RSAVA, RHRO and HROs in the performance of their duties.
- v) Ensure victims are properly advised of their options for restricted or unrestricted reporting. Maintain written records for all incidents.
- vi) Notify the Superintendent within 24 hours of any incidents of sexual assault, dating and domestic violence, and stalking. For the purpose of public safety, on restricted reports, report information concerning sexual assault incidents in a manner that does not reasonably lead to identification of the victim.
- vii) Serve as the central, confidential repository for all cases involving sexual assault, dating violence, domestic violence, and stalking incidents, including informing the Superintendent and/or the Commandant of Midshipmen of any emerging incidents, tracking investigations of cases, and serving as the point of contact for victims.
- viii) Coordinate and facilitate the monthly Sexual Assault Review Board (SARB) to discuss systematic issues regarding incidents and to discuss sexual assault prevention strategies and training program goals.
- ix) Produce materials to market the program such as posters, informational papers, and wallet-sized cards.
- x) Coordinate sexual assault, dating and domestic violence, and stalking awareness events such as guest speakers, professional groups, etc. with assistance from the Regiment, Faculty, Staff and Athletics.
- xi) Maintain 24/7 sexual assault hotline capability.
- xii) Coordinate and facilitate sexual assault, dating and domestic violence, and stalking prevention training for the Academy with assistance from Victim Advocates and law enforcement, Academy Counsel, and appropriate professionals.

i) **Victim Advocates** shall:

- i) Be supervised in the performance of their duties by the SARC.
- ii) Report to and coordinate directly with the SARC when assisting a victim of sexual assault, dating and domestic violence, and stalking.
- iii) Provide crisis intervention, referrals, and on-going non-clinical support to sexual assault, dating and domestic violence, and stalking victims.

- iv) Inform victims of their options for restricted or unrestricted reporting and explain the scope and limitations of the VA's role as an advocate.
 - v) Be trained and certified by the SARC when all required initial training is complete.
- j) The **Head, Department of Professional Development & Career Services** shall:
- i) Develop specific appropriate procedures for Midshipmen to report incidents of sexual assault, dating and domestic violence, and stalking during sea years or internships, and incorporate the SARC within those procedures as an added resource for Midshipmen. Ensure the Sea Year Guide references current Academy and maritime industry sexual assault and sexual harassment policies, procedures and training requirements.
 - ii) Coordinate and schedule appropriate sexual assault prevention training and bystander intervention for all Midshipmen as part of their mandatory requirements before the first sea year, and assist with debriefing after their sea year to re-integrate Midshipmen into the regimental and educational setting.
 - iii) Provide Maritime industry best practice, advice and recommendations to update or improve sexual assault and sexual harassment training provided to the Midshipmen before they embark on their first sea year.
 - iv) Serve as a liaison between the Academy and shipping companies with respect to sexual assault and sexual harassment training and coordination of sexual assault and sexual harassment policies and reporting procedures.
 - v) Notify the SARC of any sexual assault or sexual harassment incidents within 24 hours of receiving information from a Midshipman and/or shipping company.
- k) The **Head, Department of Health Services** shall:
- i) Confirm training of appropriate medical personnel in handling the medical and psychological aspects of assisting victims of sexual assault, dating and domestic violence, and stalking.
 - ii) When required, and in consultation with Academy Counsel, initiate or develop Memoranda of Understanding (MOUs) and Memoranda of Agreement (MOAs) with non-Academy medical support agencies to ensure adequate response in areas of medical transport and counseling as needed.
 - iii) Notify the SARC when a Midshipman, faculty, or staff reports a sexual assault.

l) The **Head, Department of Public Safety** shall:

- i) Provide sensitivity training in responding to victims of sexual assault, dating and domestic violence, and stalking as well as training on victim assistance, available resources, and related law enforcement responses.
- ii) Partner with the local DOT OIG office, FBI office and the Kings Point and Nassau County Police Departments, as appropriate, to create response procedures when incidents of sexual assault are reported.
- iii) Notify the SARC of all instances of sexual assault reports.

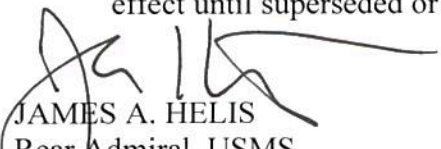
m) The **Command Chaplain** shall:

- i) Provide pastoral and spiritual support to victims of sexual assault, dating and domestic violence, and stalking as requested by the victim.
- ii) Encourage the victim to seek appropriate assistance and counseling.
- iii) Direct incidents of sexual assault, dating and domestic violence, and stalking to the SARC with the victims consent, and maintain confidentiality and privileged communication at the request of the victim.

n) All **Academy Midshipmen Officers, staff members, faculty members and contract employees or other employees** shall:

- i) Adhere to the provisions of this policy at all times.
- ii) Report incidents of sexual assault, dating and domestic violence, and stalking to the SARC or VA on duty.
- iii) Respond to allegations of sexual assault, dating and domestic violence, and stalking promptly and professionally.

9. **Expiration:** This Superintendent Instruction goes into effect immediately and remains in effect until superseded or rescinded.



JAMES A. HELIS
Rear Admiral, USMS
Superintendent

Dist. via Email

Responsible Official: Superintendent