Office of General Counsel

SPRING 2021
FACULTY RESOURCE GUIDE

UNIVERSITY OF
MARYLAND

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SPRING 2021 **FACULTY RESOURCE GUIDE**

Dear UMD faculty member,

Your teaching, research, outreach, engagement and service has continued, even in these uncertain times, to positively impact our students and the communities we serve in Maryland and throughout the country and the world. Thank you for your dedication and commitment.

When we distributed the first Faculty Resource Guide in 2016, it was our goal to support Maryland faculty members by making it easier to find relevant guidance and support not just from our office but from talented, dedicated colleagues in other units across the university. While we have had to maintain our physical distances, this past year has brought us closer together as we have helped each other overcome pandemic challenges to collectively continue to advance our beloved university. We are in awe of how faculty and staff have collaborated to support students, their families and the public at large, exemplifying what it means to be #TerrapinSTRONG.

The *Faculty Resource Guide* is an annual publication of the Office of General Counsel. It presents FAQs related to teaching, supporting students, conducting research, and other common scenarios, and provides hotlinks to relevant web-based information and to offices that can provide faculty with assistance on a wide range of topics.

It is our privilege to be your law firm. We look forward to working with you and your colleagues. Please continue to stay safe and healthy, and best wishes on all fronts.

Sincerely,

The Office of General Counsel

1. **May I copy and distribute or post on my course web site materials (print, web, or video) created or owned by others?**

   See the <u>University Libraries' Copyright Guide</u> and, in particular, the materials under <u>Using Copyrighted Materials</u>, <u>Exemptions and Fair Use</u> and <u>Tools and Resources</u>.

2. **What procedures apply to choosing textbooks?**

   For guidance on choosing textbooks, review the <u>Faculty Handbook</u> and applicable policies including the <u>Policy on Textbook Affordability Measures</u>. You may also consult the <u>open educational resources</u> website. If you want to assign a book you authored, you must comply with the UMD's <u>Policy Concerning the Use of Self-Authored Teaching Materials</u>.

3. **What can I do if I find my course materials for sale online?**

   Consult the guidance on <u>Commercial Use of Course Materials</u> on the <u>Office of General Counsel</u>'s web site.

4. **What resources are available to make my online course materials accessible?**

   Visit the Division of Information Technology (DIT) <u>IT Accessibility page</u> and the list of <u>IT Accessibility Services</u> to explore tools, services and resources to make course materials accessible. Faculty may start evaluating the accessibility of their courses by using the <u>UMD Accessibility Checklist</u>, and they may request a consultation with the DIT Learning Technology Design group at <u>lTdesign@umd.edu</u>. Faculty are also encouraged to review the <u>University of Maryland Web Accessibility Policy</u> to learn about IT accessibility requirements.

5. **How do I learn more about the posting readings and other course materials to Enterprise Learning Management System (ELMS-Canvas?)**

   Consult the guidance found in the <u>Best Practices for Posting Readings to ELMS</u>, at the University Libraries web site.

6. **Do I have to allow a dog accompanying a student into my classroom or office?**

   With limited exceptions, if the student has a qualifying disability and the dog is a service animal, the animal must be permitted to accompany the student. Please contact the University's <u>Accessibility & Disability Service</u> (ADS) for assistance.

7. **Am I required to accommodate student religious observances?**

Students should be permitted to make up academic assignments that are missed due to absences for religious observances. See generally the University System of Maryland Policy Concerning the Scheduling of Academic Assignments on Dates of Religious Observance. Also see the statement on student attendance in the Faculty Handbook.

8. **Are there special considerations for teaching or interacting with student athletes?**

Student athletes are subject to the same academic and conduct rules as other students. See UMD Policy on Conduct and Ethics for Student-Athletes. To discuss academic issues, contact the Athletic Council or the Academic Support & Career Development Unit. Contact the Athletics Compliance Office with questions about NCAA rules interpretation and compliance.

9. **How are cheating, plagiarism, and other forms of academic misconduct addressed?**

Consult the University's Code of Academic Integrity or contact the Office of Student Conduct for assistance.

10. **What can I do to address disruptive classroom behavior?**

The Behavioral Evaluation & Threat Assessment Team (BETA Team) evaluates reports about students whose behavior is concerning, disruptive, or threatening.

11. **How are grade disputes handled?**

See UMD Procedures for Review of Alleged Arbitrary and Capricious Grading—Undergraduate Students and UMD Graduate Policy and Procedures for Review of Alleged Arbitrary and Capricious Grading for graduate students.

When should I consult with the Office of General Counsel?

Sooner rather than later! If you think you may need to speak with an attorney, call the main number for the Office at 301.405.4945 or contact an attorney.

1. **What must I do to keep student information private?**

   The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records. The UMD Policy and Procedures on the Disclosure of Student Education Records implements FERPA on campus. Contact the Office of the Registrar or the Office of General Counsel for guidance.

2. **Should I obtain written consent from a student who has asked me to write a recommendation?**

   Yes. A sample permission form (in PDF format) is available under the title "FERPA Release for Recommendations" through the Resources and Referrals for Employees section of the Office of General Counsel website. Contact the Office of General Counsel for additional guidance.

3. **What should I do if I see a person who may be a threat to themselves or others?**

   For emergencies and other imminently dangerous situations, contact the UMD Police Department from campus phones at 911 or 301-405-3333. Dial #3333 from any Verizon Wireless, AT&T, Sprint, or T-Mobile cell phone. For non-emergencies, contact the UMD Police Department at 301-405-3555.

4. **What can I do if I am concerned about a campus community member's health?**

   Community members should be referred to the University Health Center for physical health services. For mental health services, contact either the Counseling Center or the University Health Center's Behavioral Health Services department.

5. **How can a student report a hate bias incident?**

   The student may submit a Bias Incident Report Form, email biassupport@umd.edu, or for pervasive discrimination, contact the Office of Civil Rights & Sexual Misconduct to file a Discrimination complaint. If the student believes the incident was criminal in nature or an immediate threat, you may suggest the student file a tip with the UMD Police Department.

6. **How can I assist a student who reports being subjected to discrimination or harassment?**

   The Office of Civil Rights & Sexual Misconduct (OCRSM) is a resource for members of the UMD community on all forms of discrimination and harassment. Complaints may be filed with OCRSM using these Discrimination Complaint forms. You may have an obligation to make a report to OCRSM under UMD Policy and federal law if you qualify as a "Responsible University Employee."

7. What should I do if a student reports to me (or if I become aware) that the student has been sexually assaulted?

Review the Confidential Resources on the website of the Office of Civil Rights & Sexual Misconduct (OCRSM) to share with the student, if desired. Refer to the RUE Reporting Obligations document, for guidance on how to respond to a disclosure and how to report it to OCRSM to fulfill your reporting obligations.

8. To whom may I refer a victim of sexual assault who wants to talk with someone confidentially?

The CARE to Stop Violence Program in the University Health Center offers confidential services to victims of sexual assault, relationship violence, stalking, and sexual harassment. They may also speak to any other confidential resources.

9. What should I do if a student reports to me (or if I become aware) that the student has been the victim of child abuse or neglect?

Under Maryland law, all members of the campus community are required to report suspected child abuse or neglect to Child Protective Services or the police. In addition, Maryland law imposes additional reporting requirements on health practitioners, law enforcement officers, educators/professional employees, human service workers, and other professional employees, when acting in a professional capacity, who have reason to believe a child has been subjected to abuse or neglect. Consult the USM Policy on the Reporting of Suspected Child Abuse and Neglect and related FAQs. Review the UMD Policies and Procedures on the Reporting of Child Abuse and Neglect for reporting deadlines and procedures.

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1. **Where can I get assistance in developing a proposal for research funding?**

   Contact your college/departmental business office (if applicable) and review the Office of Research Administration's Proposal Development Quick Reference Guide.

2. **Who should I contact to help me address issues involving copyright, authorship, or other publication issues?**

   See the University Libraries' Copyright Guide, specifically please see the materials under "Author Rights" or contact the Office of General Counsel.

3. **My department or research center wants to publish a book, proceedings of a conference it held or other scholarly publications developed by the department. What should I do?**

   Contact the Office of the Associate Dean for Collection Strategies and Services of University Libraries. That office has been designated as the copyright and publishing agreement clearinghouse for publications produced by campus departments, programs, or research centers under the auspices of the University of Maryland and as the authorized signatory for publishing agreements made on behalf of the University. E-mail questions and contracts to lib-upubcopyright@umd.edu.

4. **I developed an invention during the course of my research. What should I do?**

   Submit an invention disclosure to the Office of Technology Commercialization and review its online resources "For Inventors."

5. **I am thinking about forming a startup company. What campus resources are available to assist me?**

   Consult Faculty and Graduate Student Startup Support on the Office of Technology Commercialization website and the Innovation and Entrepreneurship page on the Division of Research website.

6. **I am thinking about forming a 501(c)(3) organization. What campus resources are available to assist me?**

   Before taking any steps to create a 501(c)(3), consider why you believe it is necessary to create a separate non-profit organization. The University System of Maryland Foundation and the University of Maryland College Park Foundation both accept charitable donations on behalf of UMD. If you plan to use UMD personnel or resources for your 501(c)(3), it must be affiliated with UMD per USM Policy IX-2.00, *Policy on Affiliated Foundations*, which requires approval from the UMD President. Academic units that wish to create a 501(c)(3) should first obtain approval from the applicable dean and the Provost's Office. Keep in mind that 501(c)(3)s are separate legal entities that require their own administrative structure (e.g., payroll, benefits, HR, legal).

7.   What guidelines and support exist for research involving animals?

Review the policies related to animal research and contact the Institutional Animal Care and Use Committee (IACUC) for assistance.

8.   I received an agreement directly from the sponsor of my research. What should I do?

All research-related agreements and all federal government contracts (even if not for research) must be routed to the Office of Research Administration (ORA) for review and execution using the proper routing form. Contact your college business officer or departmental administrator the ORA Contract Administrator assigned to your school or college.

9.   What guidelines and support exist for research involving human subjects?

Review the applicable Policy on Human Subjects of Research and the Institutional Review Board (IRB) website for resources, forms and assistance.

10.   What office should I contact for assistance with laboratory safety?

The Office of Research Safety in the Department of Environmental Safety, Sustainability, and Risk (ESSR) provides assistance and advice on biological safety, radiation safety, general lab and chemical safety, scientific diving and boating safety, safety equipment and personal protective equipment. You may also e-mail questions to labsafety@umd.edu. Additionally, all laboratories, machine shops, and makerspaces are required to register in BioRAFT, a platform for central management of research safety.

11.   When do I need to know about export controls?

If you are (1) working with "dual use" technologies (which have both civilian and military applications), (2) sending or transporting research materials, data, or equipment overseas, (3) sharing or receiving export controlled information or third party proprietary technical information with/from non-U.S. citizens (even here on campus*), (4) traveling outside the U.S. with laptops or other equipment, or (5) wish to collaborate with or travel to countries under sanction, you should contact the Export Compliance Office and review its website.

*Discussing or otherwise sharing export controlled information with a non-U.S. citizen is considered a "deemed export," even when the discussion occurs within the U.S.

12. **What should I do if I encounter possible research misconduct?**

Review the Research Integrity page on the Faculty Affairs website and the UMD Policy and Procedures Concerning Scholarly Misconduct, which was amended and approved on March 12, 2019.

13. **May I use UMD resources (e.g., my office, laboratory equipment, GAs or RAs) in performing work for my private company?**

If you want to use UMD resources for your startup or any other private purpose, you must first receive approval from your Department Chair and Dean, and execute all appropriate agreements with UMD. Use of UMD facilities requires a Facility Use License in accordance with the UMD Policy on the Use of University Facilities by External Users for Research-Related Activities. In connection with your application for a license, you will need to demonstrate compliance with UMD's Conflict of Interest Policy and Procedures. For assistance with starting the Facilities Use Application process, please contact your Department Chair or the Dean of your College.

14. **How may I host a US or international student or researcher in my lab for an extended period of time?**

If the visitor is a US citizen, your department must issue an offer letter (under Non-Paid Appointments, click on Domestic Visitors at the bottom of page) to the visitor and his or her employer to serve as a non-paid visiting researcher. If the person is an international student or researcher, you must submit a foreign visit request to the Export Compliance Office before the offer letter may be issued. The Faculty Affairs Office describes the screening approval and offer letter process here.

15. **Is there anything else I need to know about foreign collaborations or using foreign equipment in the course of my research?**

The federal government is focusing on potential foreign influence in research. Please be sure you have fully and accurately captured all foreign support (current and pending) on your proposals to the federal government.

Pursuant to Section 117 of the Higher Education Act of 1965, UMD is required to submit twice-yearly reports on foreign grants, gifts, and contracts. Before working with foreign organizations, please ensure that the Office of Research Administration and/or the Office of the Provost is aware and has approved the arrangement.

Additionally, effective August 13, 2020, Section 889 of the 2019 National Defense Authorization Act prohibits the federal government and its contractors, grantees, and loan recipients from procuring or using certain "covered telecommunication equipment or services" that are produced by Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities) as a "substantial or essential component of any system, or as critical technology as part of any system." This prohibition extends to equipment that contains components manufactured by the listed companies, sometimes called Original Equipment Manufacturer (OEM); as an example, a Panasonic-brand camera that includes Hikvision parts is considered to be covered telecommunication equipment. You should not use delegated procurement authority to procure any items from these companies or their subsidiaries; instead, please contact Procurement and Business Services.

When should I consult with the Office of General Counsel?

Sooner rather than later! If you think you may need to speak with an attorney, call the main number for the Office at 301.405.4945 or contact an attorney.

16. I am using personally-identifiable health information (PHI) in my research. Does the Health Insurance Portability and Accountability Act of 1996 (HIPAA) apply to me and, if it does, do I need a Business Associate Agreement?

HIPAA typically applies to universities or their units only when they are offering health services to non-students and invoicing and/or accepting insurance for those services. As a result, even if you use PHI in your research, it is very unlikely that HIPAA will apply or that you might need a Business Associate Agreement; in fact, Business Associate Agreements do not permit the use of PHI for research. Please review the HIPAA Decision Tree and contact the Office of General Counsel for more information. Keep in mind; you may need to comply with UMD Institutional Review Board protocols.

17. What should I do If I suspect that a University employee or contractor is engaged in improper, unethical, or illegal conduct related to their research awards?

The University complies with the federal government's Whistleblower Protection Program. Please see the Division of Research's Whistleblower Protection website for more information, including how to submit an anonymous report.

18. I have a compliance concern not listed here. What do I do?

Please see Business & Contractual Relationships section (pg.13, question 11).

1. **May I consult or engage in outside professional activities for pay?**
   Consult the UMD Policy on Conflict of Interest and Conflict of Commitment and Procedures if the activities are research-related. You should also consult the conflict of interest provisions under the State Ethics Law that applies to all State employees. Keep in mind; you must complete an annual Outside Professional Activities (OPA) report. You may access the OPA web page through the Payroll & Human Resources System section of ARES.

2. **Do I have authority to sign contracts for UMD (e.g., consultant, software, nondisclosure, material transfer or research agreements)?**
   No, unless you have a written delegation of signature authority. For a comprehensive description of UMD's current delegations of signature authority, please reference the President's Memorandum titled Delegation of Authority to Sign Contracts.

   Contracts, including 'Click-through agreements," that are binding on UMD must be properly reviewed and signed by a UMD official with signature authority. If the contract relates to research, contact the Office of Research Administration for assistance. If the contract relates to a procurement, contact Procurement and Business Services (please note that delegated procurement authority is not the same as delegated signature authority). For any other contract, check with your department administrative or business officer or contact the Office of General Counsel for assistance.

3. **If I am authorized to sign contracts, can I use a digital signature, electronic signature, or e-signature platform?**
   Yes, you may use a digital or electronic signature if the other party agrees to accept electronic signatures, and if you use e-signature utility that maintains a signature transaction record or adds a textual or graphic statement to the document to prove that it was executed with an electronic signature. Adobe Acrobat's electronic signature certificates (accessed through Adobe's 'Tools' menu) and the Adobe Sign e-signature platform both satisfy this second requirement.

   Digital and electronic signatures are not the same as an e-signature platform. Adobe Sign is UMD's only approved e-signature platform. (Please note that DocuSign is not an approved platform. If the other party intends to use DocuSign, they should convert the signed version to a PDF and send the PDF to UMD for signature.)

4. **May I download "available" software to use in my work at UMD?**
   The Division of Information Technology maintains a database of software available for downloading. If you want to download software not available through the database, contact your unit's IT professional or consult the IT security and IT Accessibility web pages. Many "available" software downloads require a click-through agreement, which is a legally binding contract. Many click-through agreements contain terms that UMD is prohibited from accepting.

5. **Are there any concerns about using my delegated procurement authority to purchase equipment from foreign countries?**

Effective August 13, 2020, Section 889 of the 2019 National Defense Authorization Act prohibits the federal government and its contractors, grantees, and loan recipients from procuring or using certain "covered telecommunication equipment or services" that are produced by Huawei, ZTE, Hytera, Hikvision, and Dahua and their subsidiaries as a "substantial or essential component of any system, or as critical technology as part of any system." You should not use delegated procurement authority to procure any items from these companies or their subsidiaries; instead, please contact Procurement and Business Services.

6. **Does UMD have guidelines that apply to my use of UMD's name and trademarks?**

Please reference the Office of Strategic Communication's Brand Toolkit. This toolkit provides links to resources relating to University communications, the elements of an appropriate UMD website, the licensing and use of UMD's trademarks, filming on campus, as well as photo and video libraries including stock imagery. Contact Trademark Licensing to address specific questions relating to the use of UMD's name and/or existing trademarks, or to discuss the development or approval of new trademarks.

7. **An external entity wants to film me for a TV show or news story. What should I do?**

Entities that wish to film campus or individuals on campus must submit an application to the Office of Strategic Communications and sign a contract with UMD if the request is approved.

8. **Does UMD have liability insurance that covers me while I'm working?**

The State of Maryland is self-insured under State law. A summary of the coverage that applies to state employees acting within the scope of their employment is available on the website of the Maryland State Treasurer. In addition, the Maryland Tort Claims Act covers employees acting within the scope of their employment. Contact the Office of Risk Management for assistance.

9. **What happens if I am injured on the job?**

You should first read Workers' Compensation Frequently Asked Questions and review the workers' compensation website. You must then file a report of the incident.

10. **Does UMD have insurance for when I travel on business?**

Coverage for State employees who are involved in an accident while using a State vehicle for work is addressed on the Risk Management website within the Department of Environmental Safety, Sustainability and Risk. For information about travel outside the US, view Risk Management's Travel Safety resource page, International Travel on the Export Compliance Office website and/or speak with a counselor in the Office of International Student and Scholar Services.

11. **Does the University have a resource for reporting various compliance concerns?**

Yes! In addition to the Whistleblower Protections discussed in the Research FAQ, above, the Division of Administration & Finance offers an ethics, integrity, and compliance reporting system so that you can easily and confidentially report problems and concerns. You also can find additional resources for reporting concerns related to discrimination/harassment, research integrity, safety, and accessibility.

When should I consult with the Office of General Counsel?

Sooner rather than later! If you think you may need to speak with an attorney, call the main number for the Office at 301.405.4945 or contact an attorney.

1. **I am sued for something that occurred during my work at UMD?**

   Contact the Office of General Counsel at 301.405.4945 for assistance at your earliest convenience.

2. **I am sued, who will defend me?**

   The Office of the Attorney General for the State of Maryland will represent and defend the State of Maryland, its agencies, and employees in state and federal courts when they are sued, if the employees acted in good faith in the performance of their public duties and without malice or gross negligence. If you are sued in your capacity as a UMD employee, contact the Office of General Counsel.

3. **I receive a court order or subpoena or am contacted by an attorney or regulator seeking information about my work or a student?**

   Contact the Office of General Counsel immediately.

4. **I suspect or become aware of a fiscal irregularity at UMD involving, for example, fraudulent, unethical, or illegal business activity?**

   Review the USM Policy on Reporting Fiscal Irregularities and the UMD Procedures for Reporting Fiscal Irregularities. You may report the activity through the University System of Maryland Office of Internal Audit Fraud Hotline (pg. 13, question 11).

5. **Someone sent me a request (or wants to make a request) for written or electronic records in my possession including, for example, research data or records, student recommendations, or e-mails.**

   Immediately forward the request to the Office of General Counsel and direct the person to file the request through the UMD Maryland Public Information Act website, after which a decision will be made as to whether the materials are subject to the Act.

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