

BOARD OF HIGHER EDUCATION
REQUEST FOR COMMITTEE AND BOARD ACTION

NO.: BHE 21-44

BOARD DATE: May 4, 2021

**AUTHORIZATION FOR COMMISSIONER TO SOLICIT PUBLIC COMMENT ON 610
CMR 14.00: COORDINATION WITH LOCAL LAW ENFORCEMENT TO PREVENT AND
RESPOND TO SEXUAL MISCONDUCT**

MOVED: The Board of Higher Education hereby authorizes the Commissioner to proceed in accordance with the Administrative Procedure Act, M.G.L. c. 30A, § 3, and solicit public comment on the proposed regulation 610 CMR 14.00: Coordination with Local Law Enforcement to Prevent and Respond to Sexual Misconduct.

VOTED: Motion adopted by BHE 5/4/2021.

Authority: M.G.L. c. 15A, § 4 and 9; M.G.L. c. 69, § 30 *et seq.*; M.G.L. c. 6, § 168E(c), as amended by Section of Chapter 337 of the Acts of 2020.
M.G.L. c. 30A, § 3; 950 CMR 20.00.

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Massachusetts Board of Higher Education

Proposed New Regulations for Coordination with Local Law Enforcement to Prevent and Respond to Sexual Misconduct

Background

In January 2021, the Governor signed *An Act Relative to Sexual Violence on Higher Education Campuses*, (Chapter 337 of the Acts of 2020). Generally, this law—commonly referred to as the “2021 Campus Sexual Assault Law”—establishes two new broad sets of requirements for all public and private institutions of higher education located in the Commonwealth and authorized to grant degrees: (1) a new requirement for institutions of higher education to administer periodic sexual misconduct climate surveys (codified as a new section 168D to M.G.L. c. 6); and (2) a new requirement that institutions of higher education adopt certain policies, procedures, and reporting requirements with regard to identifying, preventing and responding to sexual misconduct involving students or employees of the institution (codified as a new section 168E to M.G.L. c. 6).

The proposed regulations (610 CMR 14.00) relate exclusively to language embedded in subsection (c) of Section 168E of M.G.L. c. 6, which requires all public and private higher education institutions located in the Commonwealth and authorized the grant degrees, “to the extent feasible,” to enter into memoranda of understanding (MOUs) with local law enforcement agencies regarding the respective roles and responsibilities of the parties in the prevention of and response to on-campus and off-campus sexual misconduct. The full text of M.G.L. c. 6, § 168E(c) reads as follows:

(c) Each institution shall, to the extent feasible, adopt a memorandum of understanding with local law enforcement agencies to establish the respective roles and responsibilities of each party related to the prevention of and response to on-campus and off-campus sexual misconduct. In adopting the memorandum of understanding, institutions and local law enforcement agencies shall develop policies and procedures that comply with all applicable confidentiality and privacy laws and that: (i) set out the jurisdiction of the local law enforcement agencies based on criteria such as location and type of incident and provide for cross-jurisdictional or multi-jurisdictional response and investigation, as appropriate; (ii) establish protocols, as permitted by federal and state law, for cases where a student or employee consents to the release of relevant documentation and information generated or acquired during local law enforcement or campus police investigations; and (iii) include methods for notifying the appropriate district attorney's office. If an institution is subject to the jurisdiction of more than 1 local law enforcement agency, 1 memorandum of understanding among the institution and the local law enforcement agencies shall comply with this subsection.

The 2021 Campus Sexual Assault Law includes a specific timeline on regulation promulgation, mandating the Department of Higher Education (the Department) to, “promulgate regulations

to implement subsection (c) of Section 168E of chapter 6 of the General Laws not later than August 1, 2021.” Section 2 Chapter 337 of the Acts of 2020.

The proposed regulations seek to establish the minimum, baseline requirements for the statutorily-mandated MOUs, including:

- content criteria;
- an annual reporting and certification procedure for institutions to inform the Department on their progress in establishing MOUs; and
- a reporting process for institutions to submit to the Department determinations on the “feasibility” of entering in to MOUs with local law enforcement agencies.

Finally, the regulations require the Department to create and publish an annual report on the status of each institution’s compliance with the statutory and regulatory MOU requirements.

Department staff have engaged in informal stakeholder vetting and have reached substantial, preliminary agreement on the proposed content and approach. The draft regulations are subject to a final review by the Executive Office for Administration and Finance (ANF), which shall be completed before the regulations are put out for public comment. The proposed draft regulations are attached as **Attachment A**.

Staff Recommendation

Staff recommend that the Board approve 610 CMR 14.00, subject to ANF review, to be submitted to the Secretary of the Commonwealth’s Office for publication in the Massachusetts Register, which will initiate the presentment of the proposed regulations to the public for comment in accordance with the Timeline set forth below.

Comment Period and Regulatory Compliance Timeline

DATE	TASK/OCCURENCE
May 4, 2021	<ul style="list-style-type: none"> • BHE Meeting (approve draft regulations to be put out for public comment)
May 14, 2021	<ul style="list-style-type: none"> • Draft regulations, small business impact/fiscal effect statements, and notice of public hearing to be brought to the Secretary of the Commonwealth's Office for publication in next edition of the <i>Massachusetts Register</i> (May 28, 2021) • Letters to be sent to DHCD/MMA per E.O. 145
May 26, 2021	<ul style="list-style-type: none"> • Last day for notice of public hearing to be sent to the <i>Boston Globe</i> for publication on May 28
May 28, 2021	<ul style="list-style-type: none"> • Publication of draft regulations and notices of public hearing in the <i>Massachusetts Register</i>
May 28 - June 18, 2021	<ul style="list-style-type: none"> • Public comment period/public hearing
June 22, 2021 (BHE Meeting)	<ul style="list-style-type: none"> • Target date for completion of final version of regulations and resubmission of EO 562 packet to ANF and GOV (and also for internal approvals and external stakeholder vetting to be concluded)
Week of June 28, 2021	<ul style="list-style-type: none"> • Final regulations distributed to BHE for review
July 6 or 7, 2021 (TBD)	<ul style="list-style-type: none"> • Potential* subcommittee/Special BHE meeting (final regulations presented for approval *The necessity of a special Meeting will be confirmed by the June 22, 2021 BHE meeting.
July 8, 2021	<ul style="list-style-type: none"> • Last day to submit final small business impact statement to Secretary of the Commonwealth's Office.
July 9, 2021	<ul style="list-style-type: none"> • Last day to submit final regulations to Secretary of the Commonwealth's Office for publication in the next edition of the <i>Massachusetts Register</i> (July 23, 2021)
July 23, 2021	<ul style="list-style-type: none"> • Publication of the final Regulations in the <i>Massachusetts Register</i> • Regulations will be final