

**BOARD OF HIGHER EDUCATION**

**REQUEST FOR COMMITTEE AND BOARD ACTION**

**COMMITTEE:** Fiscal Affairs and Administrative Policy      **NO.:** FAAP 15-15

**COMMITTEE DATE:** December 2, 2014

**BOARD DATE:** December 9, 2014

---

**MASSACHUSETTS STATE UNIVERSITIES SEGMENTAL AFFIRMATIVE ACTION PLAN**

**MOVED:** The Board of Higher Education hereby authorizes and approves the amended **Equal Opportunity, Diversity and Affirmative Action Plan for Massachusetts State Universities**. Attached hereto as "Attachment A."

The Board directs the Commissioner to work with the State Universities and the Community Colleges in the coming year to reconcile the segmental Affirmative Action plans to the extent possible, consistent with relevant variations in that nature of individual campuses, with the goal of developing a common, statewide statement of policies and procedures to govern campus responses to campus sexual violence. The Board further asks the University of Massachusetts to participate in those discussions.

The Board directs the Commissioner to report back to the BHE no later than December 2015 on the Commissioner's recommendations in this regard.

**Authority:** Massachusetts General Laws c. 15A, §9(w); 610 CMR 6

**Contact:** Constantia T. Papanikolaou, General Counsel

## Background

The Board of Higher Education (BHE) is required, by statute, to “establish an affirmative action policy and implement a program necessary to assure conformance with such policy throughout the system.” M.G.L. c.15A, §9(w). In furtherance of this mandate, the BHE has promulgated regulations which set forth its responsibilities in the administration and enforcement of a system wide affirmative action policy and program. 610 CMR 6.

Under federal law, all public and private higher education institutions that receive Federal Title IV funding are required to comply with Title IX. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity. All forms of sexual violence, including rape, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, are prohibited forms of sex based discrimination under Title IX.

Dating back to at least 1986, the BHE has historically approved segmental affirmative action plans for the State Universities and the Community Colleges. These segmental affirmative action plans include policy statements and procedures which address an institution’s Title IX legal responsibilities. Among other things, the segmental affirmative action plans: 1) prohibit all forms of discrimination, discriminatory harassment, sexual violence, domestic and dating violence, stalking and retaliation; 2) delineate institutions’ efforts to prevent such behaviors; and 3) describe the procedures institutions will use in respond to such behaviors, including the investigation and resolution of complaints.

Although Title IX has always prohibited all forms of sex discrimination in the higher education setting, the following recent federal guidance documents have provided institutions with additional mandates and recommendations regarding their legal obligations in addressing student sexual violence:

- an April 2011 “Dear Colleague Letter” from the United States Department of Education (US DOE) reinforcing the principle that sexual violence is a form of sexual harassment which interferes with students’ rights to receive an education free from discrimination and is prohibited under Title IX;
- the March 2013 reauthorized Violence Against Women Act (VAWA), which included the Campus Sexual Violence Elimination Act (SaVE), and called for, among other things, increased transparency, prevention efforts and staff training on campus sexual violence;
- October 2014 Clery Act regulatory amendments at 34 CFR part 668 (effective July 1, 2015) which implements the SaVE Act and imposes increased reporting and response requirements on all institutions of higher education that participate in federal Title IV aid programs;
- An April 20, 2014 “significant guidance document” issued by the US DOE’s Office for Civil Rights and entitled “Questions and Answers on Title IX and Sexual Violence;” and

- An April 2014 White House Task Force Report entitled, *Not Alone*, recommending, among other things, campus climate surveys, increased dissemination of information, effective response training and increased prevention efforts to protect students from sexual assault.

As a result, institutions across the country have revised their policies, procedures and practices for addressing sexual violence.

The state universities have updated their segmental Affirmative Action plan in conformance with these new federal mandates and recommendations; a compliance checklist is attached. (Attachment B). A summary of the edits is also attached (Attachment C).

ATTACHMENT A

**EQUAL OPPORTUNITY,  
DIVERSITY AND AFFIRMATIVE ACTION PLAN**

BRIDGEWATER STATE UNIVERSITY

FITCHBURG STATE UNIVERSITY

FRAMINGHAM STATE UNIVERSITY

MASSACHUSETTS COLLEGE OF ART AND DESIGN

MASSACHUSETTS COLLEGE OF LIBERAL ARTS

MASSACHUSETTS MARITIME ACADEMY

SALEM STATE UNIVERSITY

WESTFIELD STATE UNIVERSITY

WORCESTER STATE UNIVERSITY

EFFECTIVE: \_\_\_\_\_ 2014

## TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	POLICY STATEMENT OF NON-DISCRIMINATION AND DIVERSITY	3
III.	PLAN DEFINITIONS AND TERMS	4
IV.	POLICY AGAINST DISCRIMINATION, DISCRIMINATORY HARASSMENT AND RETALIATION	9
V.	SEXUAL VIOLENCE POLICY (INCLUDING SEXUAL HARASSMENT, GENDER-BASED HARASSMENT, DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING)	14
VI.	POLICIES FOR REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES	47
VII.	MANDATORY CHILD ABUSE REPORTING POLICY	48
VIII.	CONTRACTING AND PURCHASING	48
IX.	MONITORING AND GOALS	50
X.	AFFIRMATIVE ACTION HIRING PROCEDURES	50
XI.	RESPONSIBILITY FOR PLAN IMPLEMENTATION	51
XII.	POLICY AWARENESS PROCEDURES	53
XIII.	CONCLUSION	
APPENDICES		
1.	POSITION DESCRIPTION: EO OFFICER	54
2.	POSITION DESCRIPTION: TITLE IX COORDINATOR	55
3.	COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES (FOR COMPLAINTS OF DISCRIMINATION, DISCRIMINATORY HARASSMENT, SEXUAL VIOLENCE, SEXUAL AND GENDER-BASED HARASSMENT, DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING AND RETALIATION)	56
4.	GUIDELINES FOR CAMPUS POLICIES AGAINST DISCRIMINATION, DISCRIMINATORY HARASSMENT AND RETALIATION	69
5.	ADVISORY COMMITTEE FOR EQUAL OPPORTUNITY, DIVERSITY AND AFFIRMATIVE ACTION	71

## I. INTRODUCTION

Together, Bridgewater State University, Fitchburg State University, Framingham State University, Massachusetts College of Art and Design, Massachusetts College of Liberal Arts, Massachusetts Maritime Academy, Salem State University, Westfield State University and Worcester State University (collectively, “the Universities”) have carefully developed the major elements of this Equal Opportunity, Diversity and Affirmative Action Plan with the understanding that a successful plan requires more than knowledge of the laws, regulations and current government requirements.

This Equal Opportunity, Diversity and Affirmative Action Plan (“the Plan”) demands vision to fully comprehend what challenges the Universities face in preparing our students for their post-commencement lives. With this Plan, the Universities continue to take a step beyond and, both collectively and individually, commit themselves to the valuing of human dignity, and to the appreciation of the necessity of providing all members of the University community an experience that equips them to relate to all persons and groups in the increasingly global and diverse world in which we all live and work.

### PURPOSES

Pursuant to Mass. Gen. Laws Chapter 15A, the Commonwealth of Massachusetts’ Board of Higher Education (“BHE”) is responsible for the overall governance of the Universities. Together with the BHE, the Universities’ Boards of Trustees maintain and promote a policy of non-discrimination on the basis of race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status. A primary purpose of this Plan is to inform the campuses of: (1) the Universities’ prohibition of all forms of discrimination, discriminatory harassment, sexual violence, sexual and gender-based harassment, domestic violence, dating violence, stalking and retaliation; (2) the Universities’ efforts to prevent such behaviors; and (3) the manner in which the Universities will respond to such behaviors, including the prompt, impartial, fair and thorough investigation and resolution of complaints.

Through this Plan, the Universities also seek to responsibly recognize and, when possible, resolve the effects of past societal discrimination and the impact which that discrimination has had. To those ends, the State Universities commit to an ongoing examination of all policies and procedures to ensure that they do not operate to the detriment of any person on any discriminatory basis. Finally, the Universities commit to a pro-active affirmative action posture with respect to the recruitment, selection and promotion of students and employees.

### SCOPE AND DURATION

Equal opportunity, diversity and affirmative action programs are an integral part of the mission of the Universities. This Plan, by its very nature, shall affect and impact not only personnel and admissions policies, but also the procedures and practices that contribute to the academic and educational experiences of our students, and the employment opportunities throughout the Universities.

The provisions of this Plan, in compliance with applicable laws<sup>i,ii</sup> and collective bargaining agreements, apply to every educational, employment and co-curricular activity at the Universities. All benefits, services and opportunities pertaining to the Universities’ educational programs, employment and services are available to all applicants, students, employees and

others having dealings with the Universities regardless of race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status. No provision of this Plan is intended, and should not be used, to discriminate against any applicant, employee or student on any prohibited basis.

Pursuant to this Plan, the actions of persons responsible in matters of employment and education, including all supervisors and faculty, must be non-discriminatory. Should one of the Universities discover discrimination in any employment, educational or service decision, action, inaction or practice, all appropriate corrective and/or disciplinary actions shall be taken under the direction of the President of the University, subject to any applicable collective bargaining agreement or other policy or procedure of the University.

This Plan shall take effect as soon as it is approved by the BHE and the Universities' Boards of Trustees, and shall remain in effect for the period determined by those Boards.

#### CONTINUING REVIEW

The Universities will continually review this Policy and the Complaint Investigation and Resolution Procedures at Appendix 3 to ensure compliance with the requirements of federal and state law and regulations.

#### APPLICATION

The Plan applies to all members of the campus communities, including, but not limited to, students, faculty, librarians, staff, visitors, contractors and applicants for employment or admission. The Plan also applies to off-campus conduct that negatively affects a community member's experience in the University environment.

## **II. POLICY STATEMENT OF NON-DISCRIMINATION AND DIVERSITY**

The Universities are committed to a policy of non-discrimination, equal opportunity, diversity and affirmative action. The Universities are dedicated to providing educational, working and living environments that value the diverse backgrounds of all people.

The Universities do not unlawfully discriminate in admission or access to, or treatment or employment in, its educational programs and activities on the basis of race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status. The Universities prohibit unlawful discrimination or discriminatory harassment on all of those bases. Such behaviors violate the Universities' Non-Discrimination, Harassment and Retaliation Policy, will not be tolerated, and may result in disciplinary action up to and including termination or expulsion.

It is also the policy of the Universities to provide each student, employee, and other person having dealings with the institutions an environment free from unlawful sexual violence and all forms of misconduct on the basis of gender. The Universities prohibit rape, statutory rape, sexual assault, sexual exploitation, incest, sexual harassment, gender-based harassment, domestic violence, dating violence and stalking, and retaliation. These behaviors violate the Universities' Sexual Violence Policy, will not be tolerated, and may result in disciplinary action up to and including termination or expulsion.

The Universities' Non-Discrimination, Discriminatory Harassment and Retaliation Policy and Sexual Violence Policy apply in all University programs and activities, including, but not limited to, athletics, instruction, grading, housing, and employment. They apply to all members of the campus communities, including, but not limited to, students, faculty, librarians, staff, visitors, contractors and applicants for employment or admission. They also apply to off-campus conduct that negatively affects a community member's experience in the University environment.

Each University has appointed an Equal Opportunity Officer ("EO Officer") to oversee its compliance with this Plan, as well as the state and federal non-discrimination and equal opportunity laws. Details regarding the EO Officer's specific duties and responsibilities can be found at Appendix 1. Anyone with questions, concerns or complaints regarding discrimination, discriminatory harassment or retaliation may contact the EO Officer.

Any person with questions or concerns about any form of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence and stalking and/or retaliation may also contact:

The U.S. Department of Education  
Office for Civil Rights  
33 Arch Street, 9<sup>th</sup> Floor  
Boston, MA 02119-1424  
(617) 289-0111

or the University's Title IX Coordinator.

Fax (617) 289-0150; TDD (877) 521-2172

[OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

The Title IX Coordinator at each University is responsible for the University's compliance with Title IX and the administration of the Universities' Sexual Violence Policy. Details regarding the Title IX Coordinator's specific duties and responsibilities can be found at Appendix 2.

### **III. PLAN DEFINITIONS AND TERMS**

For the purposes of this Plan, the following terms are defined as follows:

Equal Opportunity. The Universities' effort to ensure that all employment and academic decisions, programs and policies are formulated and conducted in a manner to ensure equal access for all people and to prevent discrimination. As part of this effort, the Universities will ensure that employment and academic decisions, programs and policies will be based solely on the individual eligibility, merit or fitness of applicants, employees and students without regard to race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status.

Equal Opportunity Officer or "EO Officer". A University official charged with the responsibility for the University's administration of this Plan, and the state and federal non-discrimination and equal opportunity laws. The EO Officer may also serve as the University's Title IX Coordinator. If the positions are held by different individuals, the EO Officer and Title IX Coordinator may collaborate on the enforcement of any part of this Plan. The identity and contact information for the EO Officer shall be published and widely distributed on each campus, including on the website of each campus. See also Appendix 1.

Protected Classes. Characteristics or groups of persons protected from discrimination by law, including:

1. Race. Discrimination laws do not contain a definition of “race,” but are interpreted to prohibit discrimination on the basis of ancestry or physical or cultural characteristics associated with a certain race, such as skin color, hair texture or styles, or certain facial features, and on the basis of stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. All individuals, including persons of more than one race and the following racial classifications, are protected from discrimination:

*Black*: All persons having origins in any of the Black racial groups of Africa including, but not limited to, African-Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.

*White* (not of Hispanic origin): Persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

*Hispanic/Latino*: All persons of Mexican, Puerto Rican, Cuban, Central, Latin or South American or other Spanish culture or origin, regardless of race.

*Asian or Pacific Islander*: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands, including, for example, the areas of China, India, Japan, Korea, the Philippine Islands and Samoa.

*American Indian or Alaskan Native*: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

2. Color. Variations in skin tone among persons of the same race.
3. Religion. “Religion” and “creed” have the same or equivalent meaning: all religious and spiritual observances, practices, and sincerely held beliefs.
4. National Origin. A “national origin group” or “ethnic group” is a group sharing a common language, culture, ancestry, and/or other similar social characteristics.
5. Persons of Color. Members of the following racial classifications: Black, American Indian/Native Alaskan, Asian/Pacific Islander, and Hispanic/Latino.
6. Age. For employment purposes, persons 40 years of age or older. For the purposes of access to and participation in University programs and services, all persons of all ages are protected on the basis of age.
7. Disability. A person with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.
8. Gender. A person’s sex (female or male). “Gender” and “sex” may be used interchangeably for the purposes of the EO Plan.
9. Gender Identity. Gender identity is a person’s internal view of the individual’s gender. “Gender identity” covers a multitude of sexual identities including, but not limited to, male, female, and transgender or gender-nonconforming individuals, who are persons whose gender identity or gender presentation falls outside of stereotypical gender norms.

10. Gender Expression. Gender expression is a term that refers to the ways in which individuals manifest or express masculinity or femininity. It refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions.
11. Sexual Orientation. Actual or perceived heterosexuality, homosexuality or bisexuality, either by orientation or by practice.
12. Genetic Information. Any written, recorded individually identifiable result of a genetic test or explanation of such a result or family history pertaining to the presence, absence, variation, alteration, or modification of a human gene or genes.
13. Marital/Parental Status. A person's status as single, married, parent or non-parent, where discrimination on these bases has disparately impacted against those of different protected classes, including gender and sexual orientation.
14. Veteran Status. Any person who is a member of, applies to perform, or has an obligation to perform, service in a uniformed military service of the United States, including the National Guard.

Discrimination. An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's membership in a protected class or association with a member(s) of a protected class. Discrimination may be classified as either disparate impact (facially neutral practices that fall more harshly on one group than another and cannot be justified by business necessity) or disparate treatment (treatment of an individual that is less favorable than treatment of others based on discriminatory reasons). A single act of discrimination may be based on more than one protected class status. For example, discrimination based on anti-Semitism may relate to religion, national origin, or both; discrimination against a pregnant woman might be based on sex, marital or parental status, or both; discrimination against a transgender individual might be based on sex or sexual orientation.

Discriminatory harassment. A form of unlawful discrimination including verbal and/or physical conduct based on legally protected characteristics and/or membership in a protected class that:

1. has the purpose or effect of creating an objectively intimidating, hostile or offensive work or educational environment;
2. has the purpose or effect of unreasonably interfering with an individual's work or educational opportunities; or
3. otherwise unreasonably adversely affects an individual's employment or educational opportunities.

Reasonable directions or warnings by authorized University personnel as to the time, place and manner in which employees perform their assigned responsibilities, students carry out their educational assignments or program participants engage in sponsored activities do not constitute evidence of discriminatory harassment under this Policy.

For purposes of this Plan, unwelcome conduct constitutes hostile environment harassment when:

- it is targeted against a person on the basis of his/her membership in a protected class;

**AND**

- it is sufficiently severe or pervasive that it alters the conditions of education or employment and creates an environment that a reasonable person would find intimidating, hostile or offensive; **OR**

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; **OR**
- submission to, or rejection of, such conduct by an individual is used as a basis for academic or employment decisions affecting that individual.

The determination of whether an environment is “hostile” is based on the totality of the circumstances. These circumstances could include the frequency of the conduct, its severity, and whether it is threatening or humiliating. Simple teasing, offhand comments and isolated incidents (unless extremely serious) will not amount to hostile environment harassment under this Plan.

For emphasis, conduct that is not based on a person's membership in a protected class is not considered hostile under this Plan.

Retaliation. Taking adverse employment or educational action against a person who: (a) files claims, complaints or charges under this Plan, or under applicable local, state or federal statute; (2) is suspected of having filed such claims, complaints or charges; (3) has assisted or participated in an investigation or resolution of such claims, complaints or charges; or, (4) has protested practices alleged to be violative of the non-discrimination policies of the University, the BHE, or local, state or federal regulation or statute. Retaliation, even in the absence of provable discrimination in the original complaint or charge, constitutes as serious a violation of this Plan as proved discrimination under the original claim, complaint or charge.

Title IX Coordinator. A University official charged with the University's overall compliance with Title IX of the Education Amendments of 1972. Among other duties, the Title IX Coordinator is responsible for the enforcement of this Plan regarding all issues pertaining to sexual violence, sexual and gender-based harassment, domestic violence, dating violence, stalking and retaliation. A campus may have Deputy Title IX Coordinators. The Title IX Coordinator may also serve as the University's EO Officer. If the positions are held by different individuals, the Title IX Coordinator and the EO Officer may collaborate on the enforcement of any part of this Plan. The identities and contact information for all Title IX Coordinators and Deputy Title IX Coordinators shall be published and widely distributed on each campus, including on the website of each campus. See also Appendix 2.

Sexual Violence. As defined by the U.S. Department of Education's Office for Civil Rights and this Plan, sexual violence “refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the [person's] age or use of drugs or alcohol, or because an intellectual or other disability prevents the [person] from having the capacity to give consent).” All forms of sexual violence are prohibited by the Universities and Title IX.

No Informal Resolution or Mediation in Sexual Violence, Domestic Violence, Dating Violence or Stalking Cases. Complaints alleging sexual violence, sexual misconduct, domestic violence, dating violence or stalking are not subject to informal resolution or mediation under the Complaint Investigation and Resolution Procedures at Appendix 3. The informal resolution process and/or mediation will only be offered for resolving other types of complaints when appropriate and on a voluntary basis. If the parties agree to an informal process or mediation, either party or the University may choose to end the informal process or mediation at any time and begin or resume the formal complaint process.

Title II/504 Coordinator. A University official charged with the responsibility for the University's compliance with Title II of the Americans with Disabilities Act of 1990, as amended, Section 504 of the Rehabilitation Act of 1973, the University's Policies for Reasonable Accommodations for Persons with Disabilities, and this Plan with regard to issues of disability discrimination. The Title II/504 Coordinator may also serve as the University's EO Officer. If the positions are held by different individuals, the Title II/504 Coordinator and the EO Officer may collaborate on the enforcement of any part of this Plan. The identity and contact information for the Title II/504 Coordinator shall be published and widely distributed on each campus, including on the website of each campus.

Individual with a Disability. A person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or is regarded as having an impairment. Examples of disabilities include, but are not limited to: alcoholism; asthma; blindness or other visual impairments; cancer; cerebral palsy; depression; diabetes; epilepsy; hearing or speech impairments; heart disease; migraine headaches; multiple sclerosis; muscular dystrophy; orthopedic impairments; paralysis; thyroid gland disorders; tuberculosis; loss of body parts.

Qualified Individual with a Disability. An employee or applicant who satisfies the skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position; a student who meets the academic and technical standards requisite for admission or participation in the institution's educational program or activity.

Reasonable Accommodation. Modifications or adjustments to an application process, job, work environment, academic program or activity, or a course of study, that permit a qualified individual with a disability to perform the essential functions of a position or to enjoy the benefits and privileges of employment or education equally with persons without disabilities.

Undue Hardship. The Universities are required to make reasonable accommodations to qualified individuals with disabilities unless doing so would impose an undue hardship on the operation of the Universities' business. Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as the University's overall size, financial resources, and the nature and structure of its operation.

Interactive Process. An on-going communication between the University and an individual with a documented disability in an effort to provide reasonable accommodation, auxiliary aids, or academic adjustments.

Complainant. An individual who makes a complaint under the Complaint Investigation and Resolution Procedures at Appendix 3 of the EO Plan. The Complainant may also be the University under certain circumstances.

Respondent. An individual who is accused of violating the EO Plan.

Day. As used in Complaint Investigation and Resolution Procedures at Appendix 3 of the EO Plan, a day shall mean a calendar day.

Timeframes. While the Universities encourage prompt reporting of incidents of discrimination, discriminatory harassment, sexual violence, sexual or gender-based harassment, domestic violence, dating violence, stalking and retaliation, they do not limit the timeframe for filing a complaint under this Plan.

Complaints may be filed at any time, but the University's ability to take action may be limited by the matriculation or employment status of respondents or witnesses. A prompt report will enable the University to most effectively respond to a complaint.

Every effort will be made to reach a resolution within sixty (60) calendar days after the receipt of the complaint. Extenuating circumstances, including the complexity or severity of a complaint, breaks in the academic calendar or exam periods, may require that the investigation process be extended beyond 60 days. In the event that good cause prevents the investigation and resolution process from being concluded in this time frame, the University will notify in writing all parties of the need for additional time and best efforts will be made to complete the process as expeditiously as possible. As a matter of course, parties can expect to receive status updates at reasonable intervals until the matter is resolved.

Standard of Review. All complaints pursued under the Complaint Investigation and Resolution Procedures will be evaluated under a "preponderance of the evidence" standard. Under this standard, conclusions must be "more likely than not." Accordingly, the fact-finder must find that it is more likely than not that the respondent violated the University's EO Plan, Student Code of Conduct or other relevant University policy.

Advisors. Each victim, complainant or respondent to an investigation initiated under the Complaint Investigation and Resolution Procedures are entitled to have an advisor present during any meetings regarding the process (other than meetings between victims and University officials regarding accommodations or protective interim measures) and disciplinary proceedings. Except as otherwise required by law, the advisor may observe, but may not participate in any way whatsoever, including, without limitation, by asking questions or speaking during the meeting or proceeding. The advisor's role is to provide support and/or advice to the party. During meetings and proceedings, the advisor may speak with the party or pass notes in a non-disruptive manner. The Universities reserve the right to remove from the meeting or proceeding any advisor who disrupts process, or who does not abide by the restrictions on their participation. In addition, please note that the University does not need to cancel or delay a meeting or proceeding simply because an advisor cannot be present. Further, the advisor is not permitted to attend a meeting or proceeding without the advisee.

The personal advisor for a complainant, a student respondent or a non-unit employee respondent can be any person, including an attorney. For respondents who are unit members, the personal advisor shall be a union representative or other University employee pursuant to the respondent's Weingarten rights. A respondent who is a unit member may choose as an advisor a person who is not a union representative or other University employee, but the unit member will not be allowed two advisors. If the advisor is an attorney, the University's legal counsel may also attend the meeting or proceeding.

Discipline or Sanctions. For the purposes of the investigation and resolution procedures, the terms may be used interchangeably.

## **V. POLICY AGAINST DISCRIMINATION, DISCRIMINATORY HARASSMENT AND RETALIATION**

### **PROHIBITED CONDUCT**

The Policy prohibits all conditions and all actions or omissions, including all acts of

discrimination, discriminatory harassment and retaliation, which deny or have the effect of denying to any person their rights to equity and security on the basis of their membership in or association with a member(s) of any protected class. This Policy reaffirms the values of civility, pluralism and pre-eminence of individual human dignity as preconditions to the achievement of an academic community, which recognizes and utilizes the resources of all people.

The prohibited conduct contained in this Policy shall apply to and be enforced against all members of the University community, including, but not limited to, faculty, librarians, administrators, staff, students, vendors, contractors and all others having dealings with the institution.

Examples of discrimination, all of which are prohibited by this Policy, include, but are not limited to:

- Differences in terms, conditions and privileges of employment (including, but not limited to hiring, promotion, reassignment, termination, salary, salary increases, discipline, granting of tenure, selection for awards, etc.) on a prohibited basis.
- Unlawful disparity of treatment in educational programs and related support services on the basis of membership in a protected class.
- Differences in salaries or other benefits that are paid to one or more men or women if the differences are not based on a bona fide occupational qualification.
- Developing position descriptions or qualifications, which, without lawful justification, are so specific as to have a disparate exclusionary impact on a group of individuals because of their membership in a protected class.
- Limiting access to housing, or participation in athletic, social, cultural or other activities to students because of membership in a protected class not based on a bona fide requirement or distinction.
- Failing or refusing to hire or promote a person because of their age.
- Classifying a position or positions as unsuitable for persons of certain religions.
- Excluding members of a certain race or national origin from a category of positions or from a department or division.
- Restricting the number of veterans or qualified persons with disabilities in a category of positions or in a department or division.
- Using information on marital or parental status for employment decisions where the use of such information has a disparate impact on persons of one gender or sexual orientation.
- Advising students of similar interests and backgrounds differently because of their gender or gender identity.
- Forcing female students to sit in the back of the class on the stereotyped assumption that each of them has a lower aptitude for learning that particular subject than male students.
- Placing unreasonable expectations upon students of particular races or national origins on the basis of stereotyped assumptions that members of those protected

classes have a better aptitude for certain academic subjects than students not of those races or national origins.

Examples of discriminatory harassment, all of which are prohibited by this Policy, include, but are not limited to:

- Physically harassing another individual or group because of that person's or persons' membership in a protected class by assaulting, touching, patting, pinching, grabbing, staring, leering at them, making lewd gestures, invading their personal space, blocking their normal movement, or other physical interference.
- Encouraging others to physically or verbally abuse an individual (or group of individuals) because of that person or persons' membership in a protected class.
- Threatening to harm an individual or group because of that person or persons' membership in a protected class.
- Directing epithets, slurs, derogatory comments, unwelcome jokes or stories at an individual or group because of that person or persons' membership in a protected class.
- Displaying hostile, derogatory and/or intimidating symbols/objects, such as offensive posters, cartoons, bulletins, drawings, photographs, magazines, written articles or stories, screen savers, or electronic communications, to an individual or group because of that person or persons' membership in a protected class.

Examples of retaliation, all of which are prohibited by this Policy, include, but are not limited to:

- Terminating an employee for stating an intention to file a complaint of discrimination or for assisting another employee in filing a discrimination complaint.
- Refusing to hire an employee because employee pursued an age discrimination charge against a former employer.
- Denying a promotion to an employee for complaining about alleged sexual orientation harassment.
- Refusing tenure to a faculty member for filing a complaint of sexual harassment pursuant to the Complaint Investigation and Resolution Procedures.
- Issuing an unjustified negative evaluation to an employee for testifying in a legal proceeding concerning a complaint of discrimination or harassment.
- Assigning a student an unearned poor grade for requesting a reasonable academic accommodation based on religion.
- Assigning a student an unearned failing grade for cooperating with an internal investigation of alleged discriminatory practices or a complaint of discrimination or harassment.
- Refusing to admit a student for requesting a reasonable accommodation based on disability in the admission process.

Members of the academic community should not assume that any of the forms of speech described above are protected by the principles of academic freedom or the First Amendment to the United States Constitution.

## CONDUCT THAT IS NOT PROHIBITED

The Universities are committed to protecting, maintaining and encouraging both freedom of expression and full academic freedom of inquiry, teaching, service, and research. Nothing in this Policy shall be construed to penalize a member of the University community for expressing an opinion, theory, or idea in the process of responsible teaching and learning. Accordingly, any form of speech or conduct that is protected by the principles of academic freedom or the First Amendment to the United States Constitution is not subject to this Policy.

## COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

The Universities have established specific Complaint Investigation and Resolution Procedures to review and resolve allegations of discrimination, discriminatory harassment and retaliation on their campuses. Any member of the University community or any applicant for admission or employment who believes that he or she has been a victim of such conduct in violation of this Plan may initiate a complaint as outlined in these procedures, which are set forth at Appendix 3.

Further advice or information about Universities' Complaint Investigation and Resolution Procedures may be obtained by contacting the EO Officer on each campus.

## DUTY TO COOPERATE

Every faculty member, librarian, administrator, staff member and University employee has a duty to cooperate fully and unconditionally in an investigation conducted pursuant to the Complaint Investigation and Resolution Procedures, subject to the provisions of any relevant collective bargaining agreements. This duty includes, among other things, speaking with the EO Officer, Administrative Investigator, reviewing or appellate body, and voluntarily providing all documentation that relates to the claim being investigated. The failure and/or refusal of any employee to cooperate in an investigation may result in a separate disciplinary action up to and including termination.

## DUTY TO REPORT DISCRIMINATION, DISCRIMINATORY HARASSMENT OR RETALIATION

No member of the University community, including a faculty member, can ignore a report of discrimination, discriminatory harassment or retaliation.<sup>1</sup> He or she should provide the reporter as much assistance in bringing it to the attention of the EO Officer as is reasonably appropriate given his or her position at the University and relationship with the reporter.

In terms of reports of discrimination, discriminatory harassment or retaliation, any trustee, administrator, department chair, program coordinator, manager or supervisor who receives such a complaint from a student or other member of the University community is obligated to report the complaint to the EO Officer as soon as he or she becomes aware of it. Likewise, any member of the campus community is encouraged to report to the EO Officer any conduct of

---

<sup>1</sup> In terms of reports of complaints of sexual violence, sexual or gender-based harassment, domestic or dating violence, or stalking, those community members designated as Responsible Employees for the purposes of Title IX or Campus Security Authorities for the purposes of the Clery Act must act in accordance with their specific reporting obligations. All other community members are encouraged, in accordance with the level of confidentiality requested by the victim, to report reliable knowledge of an incident(s) of sexual violence and/or gender-based misconduct to the Title IX Coordinator. See the Sexual Violence Policy at Section E for more information on employees' duty report conduct prohibited by that Policy.

which they have direct knowledge and which they in good faith believe constitutes discrimination, discriminatory harassment or retaliation in violation of this Policy.

Any member of the University community who has a question about his or her responsibilities under this Policy Against Discrimination, Discriminatory Harassment and Retaliation should contact the EO Officer.

#### FALSE CHARGES

Filing a false charge of discrimination, discriminatory harassment or retaliation is a serious offense. If an investigation reveals that a person knowingly filed false charges, the University may take appropriate actions and issue sanctions, up to and including termination or expulsion, pursuant to other applicable University policies, including any applicable collective bargaining agreement. The imposition of such sanctions does not constitute retaliation under this Plan.

## V. SEXUAL VIOLENCE POLICY

INCLUDING SEXUAL HARASSMENT, GENDER-BASED HARASSMENT, DOMESTIC VIOLENCE,  
DATING VIOLENCE AND STALKING

A.	POLICY INTRODUCTION .....	15
1.	Policy Purposes .....	15
2.	Prohibition Against Sexual Violence, Sexual Harassment, Gender-Based Harassment, Domestic Violence, Dating Violence, Stalking and Retaliation .....	15
3.	Policy Application.....	16
4.	Title IX Coordinator.....	16
5.	Coordination with the Non-Discrimination and Harassment Policy .....	17
B.	DEFINITIONS AND EXAMPLES OF POLICY VIOLATIONS .....	18
1.	Sexual Violence or Misconduct .....	18
2.	Sexual Harassment .....	20
3.	Gender-Based Harassment .....	21
4.	Domestic and Dating Violence.....	22
5.	Stalking .....	23
6.	Retaliation .....	23
C.	CONDUCT THAT IS NOT PROHIBITED.....	23
D.	CONSENSUAL RELATIONSHIPS.....	24
1.	Faculty/Administrator/Staff Member Relationships with Students.....	24
2.	Relationships Between Supervisors and Subordinates or Between Co-Workers .....	24
E.	RESOURCES.....	24
1.	Immediate Needs: Assuring One’s Safety and Preserving Evidence .....	25
2.	Confidential Medical Attention.....	25
3.	Confidential Counseling and Support .....	26
4.	Non-Confidential Campus Resources .....	27
F.	REPORTING OPTIONS.....	27
1.	Confidential Reporting Options .....	28
2.	Non-Confidential Reporting Options .....	29
3.	Making No Report.....	32
4.	Amnesty .....	32
5.	Timeframe for Reporting.....	32
6.	False Charges .....	32
7.	Employees’ Duty to Report.....	33
8.	Employees’ Duty to Cooperate .....	33
G.	PRIVACY AND CONFIDENTIALITY: ADDITIONAL CONSIDERATIONS.....	33
1.	Requests for Confidentiality or for No Investigation .....	33
2.	Privacy for Respondents who are Students .....	34
3.	Disclosures Made at Public Awareness Events .....	34
4.	Statistical Reporting and Timely Warnings Under the Clery Act .....	34
H.	PROTECTIVE INTERIM MEASURES.....	35
I.	WRITTEN NOTIFICATION OF RIGHTS, OPTIONS, RESOURCES, SERVICES AND INFORMATION.....	36
J.	EDUCATION AND PREVENTION PROGRAMS .....	38
K.	INDEPENDENT INVESTIGATIONS .....	40
L.	COMPLIANCE CONCERNS.....	40
M.	MASSACHUSETTS LEGAL DEFINITIONS .....	40
	APPENDIX A: CONFIDENTIALITY AND REPORTING .....	43

## A. POLICY INTRODUCTION

The Massachusetts State Universities are committed to maintaining safe and healthy learning, living and working environments that are free from all forms of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation. Consistent with this commitment, the Universities comply with Title IX of the Higher Education Amendment of 1972, which prohibits discrimination and harassment on the basis of sex in education programs and activities, as well as retaliation for the purpose of interfering with any right or privilege secured by Title IX. The Universities do not discriminate on the basis of sex in admission to or employment in its education programs and activities.

This Policy prohibits all forms of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation. These behaviors are antithetical to the Universities' educational mission and are prohibited forms of harassment under Title IX. The Universities provide educational and prevention programs, services for individuals who have been impacted by discrimination and harassment on the basis of sex, and accessible, timely and equitable methods of investigation and resolution of complaints.

This Policy and the Complaint Investigation and Resolution Procedures are intended to comply with Title IX, the reauthorized Violence Against Women Act, including the Campus SaVE Act, the Clery Act, and the guidance documents on Title IX issued by the Department of Education's Office for Civil Rights and the White House Task Force to Protect Students from Sexual Assault.

### 1. Policy Purposes

The purpose of this Policy is for the Universities to educate their campuses about sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, as well as their efforts to prevent, address and remedy all forms of such prohibited conduct. Accordingly, this Policy:

- states that sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation are prohibited and will not be tolerated;
- defines and describes the conduct that is prohibited;
- explains what to do if one experiences sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation;
- identifies available on- and off-campus resources;
- identifies the persons with whom one may speak confidentially;
- describes all reporting options, including how to file a complaint with the University;
- specifies the rights of both complainants and respondents; and
- explains the Universities' response to alleged incidents, including how reports of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation are evaluated, investigated and resolved.

### 2. Prohibition Against Sexual Violence, Sexual Harassment, Gender-Based Harassment, Domestic Violence, Dating Violence, Stalking and Retaliation

The Universities prohibit and will not tolerate sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation. These behaviors violate this Policy, state and federal civil rights laws, and possibly the criminal laws of Massachusetts.<sup>2</sup>

---

<sup>2</sup> Incidents of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence,

These behaviors can occur between strangers or acquaintances, including between people involved in an intimate or sexual relationship. Victims<sup>3</sup> can be any gender. Any person, regardless of gender identity, can commit sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, and these behaviors can occur between people of the same or different gender.

The Universities prohibit any student, faculty or staff member, visitor or contractor, regardless of gender, from sexually harassing, stalking, engaging in sexual violence toward or committing domestic or dating violence against another community member or anyone having dealings with the Universities. Any member of the University community who believes that s/he has been subjected to such misconduct is encouraged to report it as described in this Policy. Upon receiving a report, the University will respond quickly and seriously, and, where appropriate, will take steps to prevent the recurrence of the behavior, remedy its effects, and discipline individuals who violate this Policy.

The Universities prohibit retaliation against anyone who reports sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, who assists another in making a report, or who participates in an investigation of a report. All persons should feel free to report their concerns without fear of retribution or reprisal.

### 3. Policy Application

This Policy applies to all University community members, including students, faculty, staff, visitors, contractors and applicants for employment or admission, and without regard to a person's race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status. This Policy applies to all University programs and activities, both on and off campus.

Acts of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation that take place off campus may be subject to investigation and disciplinary action under this Policy when the conduct involves behavior by or toward a community member, which (1) occurs during University-sponsored events or the events of organizations affiliated with the University, including study abroad and outside internships; (2) negatively impacts a person's access to education programs and activities; (3) adversely affects or disrupts the campus community; and/or (4) poses a threat of harm to the campus community.

### 4. Title IX Coordinator

Pursuant to Title IX and its implementing regulations at 34 C.F.R. Part 106, each University has appointed a Title IX Coordinator, who has the primary responsibility for coordinating the University's efforts to comply with and carry out its responsibilities under Title IX.

In this role, the Title IX Coordinator: administers this Policy; monitors the University's responsive actions to ensure that the learning, living and working environments are free of sexual

---

stalking or retaliation as described in this Policy may also constitute criminal acts when they meet the standards set forth in Massachusetts' criminal laws, which are listed in Section M of this Policy. An individual can be prosecuted by the Commonwealth for violating a criminal law and simultaneously subject to discipline for Policy violations by the University.

<sup>3</sup> Although some prefer to use the term "survivor" to describe an individual who has been subjected to sexual violence, the term "victim" is also widely used. This Policy uses the term "victim" or "complainant," and does so with respect for those who have been subjected to sexual violence.

violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation; and monitors the steps taken to remedy the effects of the misconduct on the complainant(s), including any investigation, resolution or disciplinary proceedings. The Title IX Coordinator also: provides information about reporting options and support resources; initiates interim protective measures; evaluates requests for confidentiality; coordinates appropriate accommodations; assists persons in filing complaints with law enforcement (when requested); provides or facilitates training for faculty, staff and students; and may investigate complaints.

The Title IX Coordinator may also serve as the University's Equal Opportunity Officer ("EO Officer"). If these positions are held by different persons, the Title IX Coordinator and EO Officer may collaborate on the enforcement of any aspect of this Policy. There may also be a Deputy Title IX Coordinator(s) designated to assist the Title IX Coordinator in the performance of the Coordinator's duties and to whom specific responsibilities may be delegated.

Anyone with questions, concerns or complaints related to Title IX, sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, and/or this Policy may contact the Title IX Coordinator on the relevant campus. The names and contact information for the Universities' Title IX Coordinators and any Deputy Coordinators are identified on each University's website.

**Bridgewater State University**

<http://www.bridgew.edu/>

<http://www.handbook.bridgew.edu/PoliciesProcedures/SexualMisconductandRelationshipViolence.cfm>

**Fitchburg State University**

<http://www.fitchburgstate.edu/>

<http://www.fitchburgstate.edu/campus-life/student-services/counseling-services/sexual-assault-awareness/>

**Framingham State University**

<http://www.framingham.edu/>

<http://www.framingham.edu/shape>

**Massachusetts College of Art and Design**

[www.massart.edu](http://www.massart.edu)

**Massachusetts College of Liberal Arts**

[www.mcla.edu](http://www.mcla.edu)

<http://www.mcla.edu/handbook/yourrights/sexualviolencepolicy/>

**Massachusetts Maritime Academy**

[www.maritime.edu](http://www.maritime.edu)

**Salem State University**

[www.salemstate.edu](http://www.salemstate.edu)

<http://www.salemstate.edu/chs/27875.php>

**Worcester State University**

[www.worcester.edu](http://www.worcester.edu)

**Westfield State University**

<http://www.westfield.ma.edu/>

[http://catalog.westfield.ma.edu/content.php?catoid=8&navoid=329#Sexual\\_Misconduct\\_Policy](http://catalog.westfield.ma.edu/content.php?catoid=8&navoid=329#Sexual_Misconduct_Policy)

5. Coordination with the Non-Discrimination, Harassment and Retaliation Policy

Harassment, misconduct or violence related to a person's sex, sexual orientation, gender identity

or expression is sometimes also related to a person's race, age, disability, or membership in another protected class. Discriminating against or harassing any person on such bases is prohibited by the Universities' Non-Discrimination, Harassment and Retaliation Policy. In cases where the alleged conduct implicates both Policies, the University will coordinate its evaluation, investigation and resolution efforts to address the alleged conduct on all prohibited bases.

*Note:* While this Policy and the Complaint Investigation and Resolution Procedures identify certain University officers and employees who have particular roles and duties, the Universities may designate other officers or employees to perform specific roles and/or duties set forth in this Policy or the Complaint Investigation and Resolution Procedures.

## **B. DEFINITIONS AND EXAMPLES OF POLICY VIOLATIONS**

For the purposes of this Policy, the following definitions and terms apply:

### **1. Sexual Violence**

As defined by the U.S. Department of Education's Office for Civil Rights, sexual violence "refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the [person's] age or use of drugs or alcohol, or because an intellectual or other disability prevents the [person] from having the capacity to give consent)." All forms of sexual violence are prohibited by the Universities and Title IX.

#### **a. Rape**

Rape is the penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent. Rape is also the performance of oral sex or anal sex on another person without that person's consent.

#### **b. Sexual Assault**

Sexual assault is any kind of sexual physical contact that involves any form of coercion, force or lack of consent. Sexual physical contact includes the intentional touching of another person on an area of the body generally recognized as a private part of the body, or touching any part of another person's body with a private part of one's own body or object, no matter how slight. Sexual intercourse means penetration, no matter how slight, of a bodily orifice (vagina, anus, or mouth) by an object or by a body part, and/or non-consensual oral sex or anal sex.

*Examples* of sexual assault include, but are not limited to:

- kissing or fondling without consent;
- rape;
- advancing sexual activity without consent;
- ignoring a partner's objections to sexual activity on one occasion even when consent has been given in the past; and
- engaging in manipulative, threatening and coercive behavior to obtain consent.

#### **c. Sexual Exploitation**

Sexual exploitation is taking sexual advantage of another person for one's own benefit or the benefit of anyone other than that person without that person's consent.

*Examples* of behavior that could rise to the level of sexual exploitation include, but are not limited to:

- prostituting another person;
- recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent;
- distributing through social media, texting, email or other media images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and
- viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent.

d. Incest

Incest is sexual intercourse between persons who are related to each other and whose marriage would be prohibited by law. Attempts to commit incest are also prohibited.

e. Statutory Rape

Statutory rape is sexual intercourse with a person who is under the statutory age of consent, which is 16 in Massachusetts. Attempts to commit statutory rape are also prohibited.

f. Aiding in the Commission of Sexual Violence

The aiding or assisting in the commission of an act(s) of sexual violence is prohibited.

Examples of aiding in the commission of violence include, but are not limited to:

- videotaping a friend having sex with a person who has passed out drunk at a party;
- helping a friend to drug the friend's date's drink; and
- encouraging students to engage in sexual activity when one knows those students to be incapacitated by drugs or alcohol.

g. Consent

Consent is an understandable exchange of affirmative words or actions, which indicate a willingness by all parties to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

Silence, previous sexual relationships or experiences, and/or a current relationship may not, in themselves, be taken to imply consent. While nonverbal consent is possible (through active participation), it is best to obtain verbal consent. Similarly, consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.

h. Incapacitation

An individual who is incapacitated by alcohol and/or drugs both voluntarily or involuntarily consumed may not give consent. Alcohol or drug related incapacitation is more severe than impairment, being under the influence, or intoxication. Evidence of incapacity may be detected

from context clues, such as slurred speech, bloodshot eyes, the smell of alcohol on the breath, shaky equilibrium, vomiting, unusual behavior or unconsciousness. While context clues are important in determining incapacitation, they alone do not necessarily indicate incapacitation.

Persons unable to consent due to incapacitation also include, but are not limited to: persons under age 16; persons who are intellectually incapable of understanding the implications and consequences of the act or actions in question; and persons who are physically helpless. A physically helpless person is one who is asleep, blacked out, involuntarily physically restrained, unconscious, or, for any other reason, unable to communicate unwillingness to engage in any act.

The use of alcohol or drugs to render another person mentally or physically incapacitated as a precursor to or part of a sexual assault is prohibited. The use of alcohol, medications or other drugs by the respondent or accused does not excuse a violation of this Policy.

i. Force

Force is the use of physical strength or action (no matter how slight), violence, threats of violence or intimidation (implied threats of violence) as a means to engage in sexual activity. A person who is the object of actual or threatened force is not required to physically, verbally or otherwise resist the aggressor.

j. Coercion

Coercion is unreasonable pressure or emotional manipulation to persuade another to engage in sexual activity. When someone makes it clear that s/he does not want to engage in sexual behavior, or s/he does not want to go beyond a certain point of sexual activity, continued pressure beyond that point can be considered coercive. Being coerced into sexual activity is not consent to that activity.

2. Sexual Harassment

Unwelcome conduct of a sexual nature is prohibited when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; and/or
- submission to, or rejection of, such conduct by an individual is used as a basis for academic or employment decisions affecting that individual; and/or
- such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating a sexually intimidating, hostile, or offensive employment, educational, or living environment.

Examples of sexual harassment may include, but are not limited to:

- repeatedly pressuring another person for sexual activity;
- making sexist remarks about an individual's clothing, body or sexual activities;
- unnecessary touching, patting or pinching another person;
- demanding sex from a subordinate while making threats concerning the subordinate's job;
- demanding sex from a student while making implied threats concerning the student's grade;
- electronically transmitting derogatory, demeaning or pornographic materials;
- posting explicit sexual pictures on an exterior office door or on a computer monitor; and

- sexually assaulting another person.

Sexual harassment can occur between people of any gender. It can occur between equals (e.g., student to student, staff to staff, faculty to faculty) or between persons of differing power status (e.g., supervisor to subordinate, faculty to student, coach to athlete). It is possible for a person who appears to have the lesser power to commit sexual harassment (e.g., a student harassing a faculty member).

In order for conduct to constitute sexual harassment under this Policy, a reasonable person under similar circumstance would have to conclude that the behavior was harassing or discriminatory.

Reasonable directions or warnings by authorized University personnel as to the time, place and manner in which employees perform their assigned responsibilities, students carry out their educational assignments or program participants engage in sponsored activities do not constitute evidence of sexual harassment under this Policy.

### Hostile Environment

A hostile environment exists when sexual harassment is sufficiently serious to deny or limit a person's ability to participate in or benefit from the University's programs or activities. A hostile environment can be created by anyone involved in the University's programs or activities (e.g., administrators, faculty members, students, and campus visitors).

To make the ultimate determination of whether a hostile environment exists for campus community member(s), the University considers a variety of factors related to the severity, persistence, or pervasiveness of the sexual harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and, (5) the degree to which the conduct affected one or more person's education or employment.

A single or isolated incident may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to show evidence of a hostile environment, particularly if the harassment is physical.

### 3. Gender-Based Harassment

Unwelcome conduct of a nonsexual nature based on a person's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes, is prohibited when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; and/or
- submission to, or rejection of, such conduct by an individual is used as a basis for academic or employment decisions affecting that individual; and/or
- such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating, hostile, or offensive employment, educational, or living environment based on gender.

Examples of gender-based harassment include, but are not limited to:

- using derogatory comments and terms toward a male or female who do not act in ways

- that align with their gender stereotype, such as a male being called names for being interested in the arts or a female being called names for being interested in construction;
- telling someone to use a restroom that does not align with that person's gender identity; and
- making generalized derogatory comments about one gender, such as "all females" are \_\_\_\_\_ or "all males" are \_\_\_\_\_.

While harassment based on non-sexual factors may be distinguished from sexual harassment, these types of behaviors may contribute to the creation of a hostile environment. Thus, in determining whether a sexually hostile environment exists, the University may consider acts of gender-based harassment. In order for conduct to constitute gender-based harassment under this Policy, a reasonable person under similar circumstance would have to conclude that the behavior was harassing or discriminatory.

Reasonable directions or warnings by authorized University personnel as to the time, place and manner in which employees perform their assigned responsibilities, students carry out their educational assignments or program participants engage in sponsored activities do not constitute evidence of gender-based harassment under this Policy.

The definition of *hostile environment* provided under the Sexual Harassment section above also applies in the context of gender-based harassment.

#### 4. Domestic and Dating Violence

Domestic and dating violence are acts of abusive or coercive behavior (physical, sexual, financial, verbal and/or emotional) used by a perpetrator to gain or exercise control over another, including any behaviors that intimidate, manipulate, humiliate, isolate, frighten, threaten, blame, hurt, injure, or wound someone. Domestic and dating violence can occur in relationships between persons of any gender.

Domestic violence is such behavior directed against a current or former spouse, family member (blood, step, adoptive or foster), person with whom a child is shared, or cohabitant (possibly a roommate).

Dating violence is such behavior directed against another person in a social relationship of a romantic or intimate nature, and where the existence of such a relationship is determined based on a consideration of the length and type of relationship and frequency of interaction between the persons involved.

Examples of domestic and dating violence include, but are not limited to:

- hitting, slapping, punching, kicking, pulling hair or other physical misconduct;
- isolating a partner from family and friends;
- destroying a roommate's personal items;
- physically assaulting the child of a partner;
- pursuing sexual activity when a partner is not fully conscious, is not asked, or is afraid to say no, or coercing a partner to have sex without protection;
- threatening to reveal a person's sexual orientation without the person's permission;
- exhibiting excessive possessiveness and jealousy;
- constantly belittling or insulting a partner;
- checking a roommate's cell phone or email account without permission;

- demanding that a partner dress or act in a certain way; and/or
- threatening violence against the victim's acquaintances, friends, or family members.

## 5. Stalking

Engaging in a course of harassing, threatening, or unwanted behavior that would cause a reasonable person to suffer substantial emotional distress or fear for their safety or the safety of others. Stalking may occur in a range of formats including, but not limited to, in-person conduct, writings, texting, voicemail, email, social media, following someone with a global position system (GPS), and video/audio recording.

Examples of stalking behaviors include, but are not limited to:

- repeated unwanted or unsolicited contact or leaving unwanted gifts or items;
- posting disturbing messages or threats online;
- creating, attempting to create, or disseminating unauthorized recordings of another;
- gathering information about an individual from family, friends, co-workers, and/or classmates, or by electronic means by installing spy-ware on a computer or using GPS;
- threats in any form about an individual or their loved ones or threats to harm oneself;
- damaging, stealing, borrowing, or relocating property, trespassing and vandalism;
- pursuing, waiting, or showing up uninvited at a workplace, residence, classroom, or other locations frequented by an individual; and
- directing a third party to take any of the above acts.

## 6. Retaliation

The Universities prohibit retaliation against any person for making a complaint of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, for assisting in making a complaint, for resisting or openly opposing such conduct, or for otherwise using or participating in the complaint investigation process under the Policy. Persons who file, or participate in the investigation or resolution of, claims or complaints of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation with outside agencies, law enforcement or otherwise pursuant to any applicable state or federal law, are also protected from retaliation by this Policy.

Prohibited retaliation includes, but is not limited to: threats; intimidation; reprisals; continued harassment or misconduct; other forms of harassment; slander and libel; and adverse actions related to employment or education. Retaliation can be committed by individuals or groups, including friends, relatives or other associates of the person against whom a complaint is filed. Retaliation, even in the absence of proven sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence or stalking in an underlying complaint, constitutes a violation of this Policy that is just as serious as the main offense itself.

Any person who believes that he or she is the object of retaliation, or any person with questions or concerns about retaliation should contact the University's EO Officer.

## C. CONDUCT THAT IS NOT PROHIBITED

The Universities are committed to protecting, maintaining and encouraging both freedom of expression and full academic freedom of inquiry, teaching, service and research. Nothing in this Policy shall be construed to penalize a member of the University community for expressing an opinion, theory, or idea in the process of responsible teaching and learning. Any form of speech

or conduct, no matter how offensive, unpleasant or even hateful, which is protected by the principles of academic freedom or the U.S. Constitution, is not subject to this policy.

#### **D. CONSENSUAL RELATIONSHIPS**

Consensual romantic and/or sexual relationships in which one party retains a direct supervisory or evaluative role over the other party are unethical and create a risk for real or perceived coercion. The Universities do not intrude upon private choices regarding personal relationships when these relationships do not violate the Universities' policies, or cause harm or increase the risk of harm to the safety and wellbeing of members of the campus community.

##### **1. Faculty/Administrator/Staff Member Relationships with Students**

No faculty member shall have a romantic and/or sexual relationship, consensual or otherwise, with a student who is being taught or advised by the faculty member or whose academic work is being supervised or evaluated, directly or indirectly, by the faculty member. No administrator or staff member shall have a romantic and/or sexual relationship, consensual or otherwise, with a student who the administrator or staff member supervises, evaluates, advises, or provides other professional advice or services as part of a University program or activity. A romantic and/or sexual relationship, consensual or otherwise, between a faculty member, administrator or staff member and a student is looked upon with disfavor and is strongly discouraged.

##### **2. Relationships Between Supervisors and Subordinates or Between Co-Workers**

A consenting romantic and/or sexual relationship between a supervisor and subordinate or co-workers may interfere with or impair the performance of professional duties and responsibilities and/or create an appearance of bias or favoritism. Further, such relationships could implicate state ethics laws and/or result in claims of discrimination, sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation. Therefore, such workplace relationships are strongly discouraged.

#### **E. RESOURCES**

The safety, health and well-being of the campus communities are of paramount importance to the Universities. All who experience any form of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation are strongly urged to talk to someone to get the support they need, no matter when or where the incident occurred.

For information on the location, phone numbers, hours and services provided for the campus and community resources listed below, please contact the Title IX Coordinator or Deputy Title IX Coordinator, the EO Officer, Human Resources, Student Life or Student Conduct, Residence Life, Health Services, the Counseling Center and/or Campus Police. The information is also listed on each University's website.

##### **Bridgewater State University**

<http://www.bridgew.edu/>

<http://www.handbook.bridgew.edu/PoliciesProcedures/SexualMisconductandRelationshipViolence.cfm>

##### **Fitchburg State University**

<http://www.fitchburgstate.edu/>

<http://www.fitchburgstate.edu/campus-life/student-services/counseling-services/sexual-assault-awareness/>

##### **Framingham State University**

<http://www.framingham.edu/>

<http://www.framingham.edu/shape/sexual-assault-information/index.html>

**Massachusetts College of Art and Design**  
[www.massart.edu](http://www.massart.edu)

**Massachusetts College of Liberal Arts**  
[www.mcla.edu](http://www.mcla.edu)  
<http://www.mcla.edu/handbook/yourrights/sexualviolencepolicy/>

**Massachusetts Maritime Academy**  
[www.maritime.edu](http://www.maritime.edu)

**Salem State University**  
[www.salemstate.edu](http://www.salemstate.edu)  
<http://www.salemstate.edu/chs/27875.php>

**Worcester State University**  
[www.worcester.edu](http://www.worcester.edu)

**Westfield State University**  
<http://www.westfield.ma.edu/>  
[http://catalog.westfield.ma.edu/content.php?catoid=8&navoid=329#Sexual Misconduct Policy](http://catalog.westfield.ma.edu/content.php?catoid=8&navoid=329#Sexual_Misconduct_Policy)

#### 1. Immediate Needs: Assuring One's Safety and Preserving Evidence

If an incident occurs, the Universities encourage victims to report the incident and seek both police and medical assistance. Seeking police or medical assistance does not obligate a victim to make a complaint or take any further action, but the decision to seek medical help and gather evidence allows victims to preserve the full range of available options. The Universities will assist any community member to get to a safe place, provide transportation for medical help and, if requested, contact law enforcement. For 24/7 help, contact Campus Police, or contact the Title IX Coordinator during normal University hours.

Any person who has experienced sexual violence is encouraged to take steps to preserve evidence of the incident, as doing so may be necessary to the proof of a crime or to obtain a protection order from the court. After an incident occurs, one should try to refrain from bathing, showering, brushing teeth, drinking, eating, douching or changing clothes until the evidence can be collected. If one changes clothes, one should place each garment in a separate paper (not plastic) bag. If the incident involves any written or electronic communications (e.g., pictures/videos, texts, social media posts, etc.), take care to preserve copies and not delete the originals.

#### 2. Confidential Medical Attention

Medical attention is strongly encouraged to treat any possible injuries, including internal injuries, or infections. Please note that there are some medical actions that are more effective if taken within a few days after an offense, such as preventative treatment for pregnancy and sexually transmitted infections, evidence collection, and toxicology testing if there are signs that drugs or alcohol facilitated the offense. Generally one may discuss the incident with licensed medical personnel on a confidential basis.

##### a. Confidential Medical Resources On Campus

Students may access the services of the Student Health Center on a confidential basis. Employees may seek the confidential services of the Employee Assistance Program ("EAP").

##### b. Confidential Community Medical Resources

Sexual Assault Nurse Examiners (SANEs) are specially trained, certified professionals skilled in performing quality forensic medical-legal exams. Here one may find more information about SANE services and where to obtain them:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/community-health/dvip/violence/>

### 3. Confidential Counseling and Support

Generally, one may discuss the incident with a licensed mental health counselor or a counselor recognized by a religious order or denomination on a confidential basis. These counselors are good options if one wishes to discuss one's situation with someone who can keep one's information as confidential as possible while assisting one to determine what additional steps to take, such as obtaining further counseling, seeking medical attention, preserving evidence, and/or reporting to University or law enforcement authorities then or at a later time.

#### a. Confidential Counseling and Support Resources On Campus

Students may access the services of Counseling Services on a confidential basis. Employees may seek the confidential services of the EAP. All community members may access the confidential services of any religious/pastoral counselors on campus.

#### b. Confidential Community Counseling and Support Resources

Many off-campus counseling resources are available. These service providers are not required to report any information to the University and will generally maintain one's confidentiality.

White House Initiative to Combat Sexual Assault on College Campuses  
[www.notalone.gov](http://www.notalone.gov) (searchable listing of local resources & hotlines)

National Sexual Assault Hotline  
(800) 656-4673 (24 hour)

National Domestic Violence Hotline  
(800) 799-7233 (24 hour)

National Suicide Prevention Lifeline  
(800) 273-8255 (Hotline)

The National Stalking Resource Center  
<http://www.victimsofcrime.org/our-programs/stalking-resource-center>

RAINN [Rape Abuse & Incest National Network]  
(800) 656-4673 (Hotline)  
[www.rainn.org](http://www.rainn.org) (On-Line Chat Live)

MA Spanish Language Rape Crisis Center Hotline  
(Llamanos)  
(800) 223-5001(Hotline)

Victim Rights Law Center  
115 Broad Street, 3rd Floor Boston, MA 02110  
Phone: 617-399-6720  
(legal services for victims of sexual assault)

Additionally, the Rape Crisis Centers listed below offer FREE services, including:

- 24/7 hotline counseling, information, and referral;
- will go with survivors to hospitals and/or police stations 24/7;
- will go with a survivor to court;
- provide one-to-one counseling and support group counseling; and
- provide primary prevention education; professional training; outreach.

#### Greater Boston Area

Boston Area Rape Crisis Center, Cambridge  
(800) 841-8371 (24 hour hotline), (617) 492-6434 TTY

BARCC ha ayudado a miles de mujeres y hombres. Por favor llámanos si necesita ayuda.

Estamos aquí para usted. Usted puede llamar nuestra oficina al número 617.649.1297 o llamar la

línea de ayuda de Llámanos y Hablemos al numero 1.800.223.5001

Francais et Kreyol: <http://www.barcc.org/francais>; <http://www.barcc.org/francais/kreyol>

#### Northeastern Massachusetts

North Shore Rape Crisis Center, Beverly, 800-922-8772 Hotline, 978-921-8729 TTY

Rape Crisis Services of Greater Lowell, 800-542-5212 Hotline, 978-452-8723 TTY

YWCA of Greater Lawrence, 877-509-9922 SA Hotline, 978-686-8840 TTY

#### Central Massachusetts

Rape Crisis Center of Central Mass., Worcester, 800-870-5905 Hotline, 508-852-7600 TTY

Rape Crisis Center of Central Mass., Fitchburg, 800-870-5905

Wayside Victim Services, Milford, 800-511-5070 Hotline, 508-478-4205 TTY

Voices Against Violence, Framingham, 800-593-1125 Hotline, 508-626-8686 TTY

#### Southeastern Massachusetts

A Safe Place, Nantucket, 508-228-2111 Hotline, 508-228-0561 TTY

Independence House, Hyannis, 800-439-6507 Hotline, 508-778-6782 TTY

Women Support Services, Vineyard Haven, 508-696-7233

Greater New Bedford Women Center, New Bedford, 888-839-6636 Hotline, 508-996-1177 TTY

New Hope, Attleboro, 800-323-4673 Hotline/TTY

Stanley Street Women Center, Fall River, 508-675-0087 Hotline, 508-673-3328 TTY

Womansplace Crisis Center, Brockton, 508-588-8255 SA Hotline, 508-894-2869 TTY

#### Western Massachusetts

Elizabeth Freeman Center, Pittsfield, 413-443-0089 Hotline, 413-499-2425 TTY

Everywoman Center, Amherst, 413-545-0800 Hotline, 888-337-0800 TTY

NELCWIT, Greenfield, 413-772-0806 Hotline/TTY

YWCA, Springfield, 800-796-8711

YWCA of Western Mass, Westfield, 800-479-6245 Hotline/TTY

As the above contact information may be subject to change, current contact information on rape crisis centers in Massachusetts can be found at:

<http://www.mass.gov/eohhs/consumer/physical-health-treatment/health-care-facilities/rape-crisis-centers.html>. For more information about programs and services offered by the

Commonwealth regarding sexual and domestic violence see:

<http://www.mass.gov/eohhs/gov/departments/dph/programs/community-health/dvip/violence/sapss/>

#### 4. Non-Confidential Campus Resources

The Universities offer a variety of resources to those community members who have experienced or been affected by sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation. While the following resources are not bound by confidentiality, they will maintain one's privacy within the limited group of University personnel necessary to address the issues of prohibited conduct presented.

- Title IX Coordinator (and any Deputies)
- EO Officer
- Campus Police
- Human Resources
- Housing/ Residence Life
- Student Life/Student Affairs
- Student Conduct
- Disability Services

#### F. REPORTING OPTIONS

The Universities strongly encourage all who have experienced sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation to report the incident so that the University can provide support and pursue an appropriate resolution. The Universities prohibit and will not tolerate retaliation against anyone who makes a report.

Victims have several options for reporting: **Confidential Reports, Non-Confidential Reports and Making No Report.** While each option will be described in detail below and summarized at Appendix A, as a general rule, if a University receives a report of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation, it must investigate the report. If one is unsure of someone's duty to report or ability to maintain one's privacy, one should ask them before one talks to them about an incident. They will be able to explain if they are required to make a report, and they can identify others who can help.

All parties and witnesses to incidents of such prohibited conduct have reasonable expectations of privacy in matters reported and investigated under this Policy. The Universities want all community members to seek the assistance they need without fear that their private information will be shared more broadly than they would like. Federal and state laws, however, impose reporting obligations on certain University employees that, under some circumstances, require those employees to share information about an incident of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation with others at the University. Even when these employees have an obligation to report, they will protect the privacy of the reporter to the greatest extent possible and share information on only a need-to-know basis.

When a person makes a report, a University employee or official will try to ensure that the person is informed of their reporting obligations, and they will direct the person to Confidential Resources to whom one may make a private report. So that one fully understands the ability to make reports and the ability to keep one's information confidential, please review the following reporting options. If one needs assistance in making a report, please contact the Title IX Coordinator.

## 1. Confidential Reporting Options

### a. Clergy, Pastoral Counselors, Licensed Medical and Mental Health Providers

One may report sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation in confidence to licensed mental health counselors, licensed health care personnel, pastoral counselors or clergy who work for the Universities. Employees may also report such misconduct in strict confidence through the EAP. Except in rare, extreme circumstances, these individuals will share nothing without one's permission. For example, a University official who works as a clinical provider is legally required to break confidentiality when there appears to be a risk of immediate harm. Also, the University may be required to notify the Massachusetts Department of Children and Families if it receives a report regarding the abuse (including sexual assault) of a child.

Even if one does not wish to make a complaint, these individuals can help one to obtain support services and provide information about one's options. Please bear in mind, however, that if one requests certain protective interim measures from the University, *e.g.*, extension for academic work or changing classes, residence halls or work locations (see Section H), the Dean of Students and/or other University officials as necessary may be contacted only for the purpose of

providing the requested measures. In such cases, one's privacy will be maintained to the extent that maintaining confidentiality will not impair the University's ability to provide the requested measures.

One may also confidentially report sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation to community support resources, which are not required to share information with the Universities.

b. Anonymous Reporting

One may file an anonymous report (without including one's personal identification) with the Title IX Coordinator. Anonymous reports will typically be used only for statistical data collection under the Clery Act, will be kept confidential, and will not be used to initiate an investigation or a complaint except: (1) when necessary to comply with applicable law; or (2) to protect the health and safety of the campus community.

2. Non-Confidential Reporting Options

a. Campus Reporting Options

If one wishes to report sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation to the University, one may notify the Title IX Coordinator or a Deputy Title IX Coordinator, the EO Officer, Campus Police, the Human Resources Director, the Dean of Students or Student Conduct. Upon receipt of a report, the University will conduct appropriate follow-up to ensure that one has access to support, services, safety measures, and accommodations. One may also request a criminal investigation through Campus Police, who will assist in contacting the appropriate law enforcement agency that has jurisdiction (see below for more information on Criminal Reporting Options).

The Universities recognize that one may feel most comfortable disclosing an incident to a University employee that one knows well, such as a resident advisor, coach or faculty member. Pursuant to Title IX, however, certain employees are required, under nearly all circumstances, to report incidents to the Title IX Coordinator. These employees, known as "Responsible Employees" or "REs" are those with supervisory responsibilities or the authority to address or remediate sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, or whom a student might reasonably believe has such supervisory responsibility or authority.

The Universities encourage victims to speak with an RE so that the incident can be investigated and properly resolved. When one makes a report to an RE, one has the right - and should expect - the University to take the report seriously, to undertake a prompt, thorough and fair investigation, and to resolve the matter in accordance with the procedures in this Policy.

The REs at the Universities include persons holding the following positions:

- Members of the Boards of Trustees;
- The President and Vice Presidents;
- Assist./Assoc. Vice Presidents;
- Title IX Coordinator/ Deputy Coordinators;
- EO Officer;
- Campus Police;
- Institutional Security Officers;
- Director and Assist./Assoc. Director of Human Resources;
- Departmental Directors and Assist./Assoc. Directors<sup>4</sup>;
- Residence Life Staff (including RDs and RAs);
- Athletic Coaches, Assistant Coaches and Athletics Administrators;
- Studio Managers;
- Lab Managers;
- Deans and Assistant/Associate Deans
- Academic Department Chairs;
- Academic and Non-Academic Program Directors/ Coordinators;
- Faculty/Staff Leading or Chaperoning Travel or Overnight Trips; and
- Faculty/Staff Advisors to Student Organizations.

The complete listing of the REs for each University can be found on each University's website.

Once an RE receives the report, the University is "on notice" of the incident and the University is then required, under most circumstances, to investigate. If one makes a report to an RE, however, only the people who need to know about the report will be told. Personal information will be shared only as necessary, and consistently with state and federal law: (1) with Administrative Investigators, witnesses, and the accused; (2) with other University officials to provide interim measures or accommodations; or (3) when required to be disclosed by law.

Whenever possible, REs will disclose their duty to report incidents before someone reveals information about an incident. REs will also inform a person making a report of their option to make a confidential report on campus, and where to obtain support services.

Additionally, University employees who are designated as Campus Security Authorities ("CSAs") for the purposes of the Clery Act must provide Campus Police with non-identifying statistical victim information regarding all reported incidents of sexual assault, dating violence, domestic violence and stalking. This statistical information is used by the Universities to compile their Annual Security Report, and by Campus Police for purposes of advising the campus of any potential safety risks or concerns.

Accordingly, unless a University employee or official is identified as a Confidential Resource in Appendix A, most other University employees and officials who receive reports of incidents of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation are required to report them to the Title IX Coordinator.

b. Criminal Reporting Options

Victims may file a criminal complaint with Campus Police and/or the local police department where the incident occurred. Victims can make a criminal report and a report to the University; one does not have to choose one or the other.

The Universities encourage victims to report incidents to the police so that the police can take appropriate measures to help victims and prevent future crimes. If one would like assistance in

---

<sup>4</sup> Those Departmental Directors, Assistant Directors and Associate Directors who serve in professional roles in which communications are afforded confidential status under the law (e.g., licensed mental health care providers, medical providers, pastoral counselors and clergy) are not REs under this Policy.

filing a report with local law enforcement, Campus Police will help.

Victims are never required, however, to report an incident to Campus Police or local law enforcement. If a victim elects not to make a criminal report, the Universities will respect that decision to not report the incident to the police.

If a victim chooses to make a report to Campus Police, the Department will conduct an investigation and, if wished, assist the victim in filing criminal charges against the alleged offender. Campus Police can also assist a victim in the process of obtaining protective restraining orders and abuse prevention orders for relationship/domestic violence. The Department has specially trained officers to respond to complaints of sexual assault and domestic violence, and, whenever possible, Campus Police will make every effort to offer female victims/survivors an opportunity to have a female officer present during all interviews. Campus Police also helps the University to evaluate, investigate and resolve complaints under this Policy, and Campus Police assists in protecting the safety of complainants.

c. Governmental Reporting Options

If one wishes to file a complaint of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation outside of the University or in addition to a complaint filed under the University's Complaint Investigation and Resolution Procedures, the following agencies may provide additional resources:

U.S. Department of Education,  
Office for Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/index.html>

U.S. Department of Education  
Office for Civil Rights  
33 Arch Street, 9th Floor  
Boston, MA 02119-1424  
(617) 289-01111, TDD (877) 521-2172  
Email: [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

U.S. Department of Justice, Office on  
Violence Against Women

<http://www.ovw.usdoj.gov/>

Office on Violence Against Women  
145 N St., NE, Suite 10W.121  
Washington, D.C. 20530  
(202) 307-6026  
Fax: (202) 305-2589  
Email: [ovw.info@usdoj.gov](mailto:ovw.info@usdoj.gov)

Persons who have questions or who wish to file a complaint of gender discrimination or sexual harassment under state law may contact the Massachusetts Commission Against Discrimination:

Boston Office:  
One Ashburton Place,  
Rm. 601  
Boston, MA 02108  
(617) 727-3990

Springfield Office:  
424 Dwight Street, Rm. 220  
Springfield, MA 01103  
(413) 739-2145

Worcester Office:  
Worcester City Hall  
455 Main Street, Rm. 101  
Worcester, MA 01608  
(508) 799-8010

New Bedford Office:  
800 Purchase Street, Rm. 501  
New Bedford, MA 02740  
(508) 990-2390

Employees with complaints, questions or concerns about gender discrimination, sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation may also contact the Equal Employment Opportunity Commission, John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203, (800) 669-4000, TTY (800) 669-6820.

#### d. Third Party Reporting

Anyone may make a report of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation against another member of the campus community or a person affiliated with the University by contacting the Title IX Coordinator, Campus Police or another Responsible Employee.

#### e. Unknown/Non-University Offenders

If one does not know the identity of an alleged offender, or if the alleged offender is not a member of the campus community, the University will assist a victim in identifying appropriate resources or local authorities if the victim wishes to file a report. In addition, the University may investigate to the fullest extent possible and take other actions to protect the University community.

### 3. Making No Report

*Victims have the right not to make a report to anyone.* The Universities, however, strongly encourage victims to seek medical attention, counseling and support. Victims are always welcome to file a report at a later date, but please note that a delay in reporting could weaken the evidence necessary to determine whether the accused is found responsible for committing an act of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation.

### 4. Amnesty

Students may be hesitant to report sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation out of concern that they, or witnesses, might be charged with violations of the Universities' drug/alcohol policies. While the Universities do not condone such behavior, they place a priority on the need to address sexual violence and misconduct. Accordingly, a University may elect not to pursue discipline against a student who, in good faith, reports, witnesses or possesses personal knowledge of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation.

### 5. Timeframe for Reporting

The Universities do not limit the timeframe for filing a complaint under this Policy. While reports may be made at any time, complainants are reminded that the more time that passes from the time of the incident, the more difficult it is for the University to obtain information and contact witnesses, and the alleged respondent may no longer be affiliated with the University.

### 6. False Charges

The filing of a knowingly false report of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation is a serious offense prohibited by this Policy. A report made in good faith, however, is not considered false merely because the evidence does not ultimately support the allegation of prohibited conduct. If an investigation reveals that a complainant knowingly filed false charges, the University shall take appropriate actions and issue sanctions pursuant to other applicable University policies, including any applicable collective bargaining agreement. The imposition of such sanctions does not constitute retaliation under this Policy.

## 7. Employees' Duty to Report

All members of the Universities' campus communities are encouraged to promptly report incidents of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation to the Title IX Coordinator.

As set forth above in Subsection 2, each University employee designated as a Title IX Responsible Employee who is informed about an allegation of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation involving any member of the campus community is required to notify the Title IX Coordinator either directly or through their relevant reporting structure.

Additionally, as set forth above in Subsection 2, University employees who are designated as CSAs for the purposes of the Clery Act must provide Campus Police with non-identifying statistical information regarding all reported incidents of sexual assault, dating violence, domestic violence and stalking.

University employees who serve in professional roles in which communications are afforded confidential status under the law (e.g., licensed mental health care providers, medical providers, pastoral counselors and clergy) may, consistent with their ethical and legal obligations, be required to report limited information about incidents without revealing the identities of the individuals involved, to the Title IX Coordinator. Such employees who receive reports of violence or misconduct when not functioning in their licensed capacity (e.g., teaching a course) are not prohibited by their ethical codes or legal obligations from making a full report to the University.

## 8. Employees' Duty to Cooperate

Every faculty member, librarian, administrator, staff member and University employee has a duty to cooperate fully and unconditionally in an investigation conducted pursuant to the Complaint Investigation and Resolution Procedures at Appendix 3 of the EO Plan, subject to the provisions of any relevant collective bargaining agreements. This duty includes, among other things, speaking with the EO Officer, Title IX Coordinator, Administrative Investigator, reviewing or appellate body, and voluntarily providing all documentation that relates to the claim being investigated. The failure and/or refusal of any employee to cooperate in an investigation may result in a separate disciplinary action up to and including termination.

## **G. PRIVACY AND CONFIDENTIALITY: ADDITIONAL CONSIDERATIONS**

### 1. Requests for Confidentiality or for No Investigation

If a victim discloses an incident of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation, but requests that the University maintain confidentiality or that no investigation or disciplinary action occur, the University will weigh the request against its obligation to provide a safe, non-discriminatory environment for its entire community, including the victim, and its obligation to comply with applicable laws. It is important to understand that the University's ability to meaningfully investigate an incident and pursue disciplinary action against the alleged perpetrator(s) may be limited if the University honors a confidentiality or no investigation request.

In consultation with Campus Police and other University personnel as necessary, the Title IX Coordinator will evaluate a request for confidentiality or that investigation/discipline occur by considering a range of factors including, but not limited to, whether:

- there have been other similar complaints about the same alleged perpetrator;
- the alleged perpetrator has a history of arrests or records indicating a history of violence;
- the alleged perpetrator threatened any further violence against the victim or others;
- the misconduct was committed by multiple perpetrators;
- the act was perpetrated with a weapon;
- the alleged perpetrator holds a position of power over the victim;
- the victim is a minor;
- the University possesses no other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence);
- there appears to be a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group; and/or
- other circumstances indicating an increased risk of violence or harm.

The presence of one or more of these factors could lead the University to investigate and/or pursue discipline. The University will inform the victim prior to starting an investigation and will, to the extent possible, share information with only the people responsible for handling the University's response.

The Universities may not require a victim to participate in any investigation or disciplinary proceeding. If none of the factors listed above are present, the University will likely honor the victim's request for confidentiality. It will also take interim measures as necessary to protect and assist the victim. In this circumstance, the University will consider broader remedial action, such as increased monitoring, supervision or security, increased or targeted education or prevention measures, conducting climate assessments/victimization surveys, and/or revisiting its policies and practices.

In the event that the victim requests that the University inform the alleged perpetrator that the victim asked the University not to investigate or seek discipline, the University will honor this request and inform the alleged perpetrator that the University made the decision to go forward.

## 2. Privacy for Respondents Who Are Students

A student's right to privacy is primarily governed by the Family Educational Rights and Privacy Act ("FERPA"), which provides that personally identifiable information maintained by the Universities in students' educational records may not be disclosed except with the consent of the student or as otherwise specified by law. For more information, see each University's website for its Annual Notice on FERPA.

## 3. Disclosures Made At Public Awareness Events

Public awareness events such as "Take Back the Night," the Clothesline Project, candlelight vigils, protests, "survivor speak outs" or other forums in which individuals disclose incidents of sexual violence or relationship violence are not considered notice to the Universities and do not trigger an obligation to investigate any particular incident(s). Such events may, however, inform the Universities' education and prevention efforts.

## 4. Statistical Reporting and Timely Warnings Under The Clery Act

The Clery Act requires the Universities to maintain a daily log of reports of crimes that occurred on campus, University-controlled property or public property immediately adjacent to campus, including reports of sexual assault, domestic or dating violence and stalking. The Universities must also publish an Annual Campus Crime Report concerning reported incidents. The

Universities do not include names or other personally identifying information in the daily logs or the Annual Security Reports.

Additionally, when the University becomes aware that an incident of sexual misconduct or violence occurred, and there is a potential for bodily harm or danger to members of the campus community, the University will issue a timely warning to the campus. While the University will provide enough information to safeguard the campus community, a victim's name or other personally identifying information will not be disclosed in the timely warning.

## **H. PROTECTIVE INTERIM MEASURES**

The Universities are committed to supporting victims by providing the necessary crisis intervention, safety and support services, and academic accommodations throughout the investigation and resolution process. The Universities want all community members to be safe, to receive appropriate medical attention, and to get the help they need to heal and to continue to access their educational or employment opportunities. The Universities also want victims to understand their reporting options and how to access available interim measures. The Universities encourage victims of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation to report incidents to the Title IX Coordinator or any Responsible Employee with whom the victim feels comfortable.

Victims may obtain protective interim measures by either (1) reporting the incident to the Title IX Coordinator or other Responsible Employee and requesting interim measures, or (2) disclosing the incident to a counselor, who in turn can request interim measures on the victim's behalf from the University.

If a victim elects to confidentially disclose an incident to a counselor and also seeks protective interim measures from the University, the counselor may ask the victim to sign a release specifying the information that may be shared with the University. In accordance with the University's practice of allowing counselors to seek such measures for victims of trauma without requiring that the nature of the trauma be disclosed, the University will not require a counselor to disclose that sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation is the basis for the request. Additionally, if a victim does not wish for the University to investigate or otherwise notify the alleged respondent of the reported incident, a counselor may still request protective interim measures on behalf of the victim. In such cases, the Title IX Coordinator will consider whether the University can honor the request for confidentiality or no investigation while still providing a safe and nondiscriminatory environment for the campus.

Upon receipt of a report or request for protective interim measures, the University will provide the victim, or the victim's counselor, with a written explanation of the interim measures available, and shall ask victims, or their counselors, which measures are sought. Some possible interim measures are listed below, and the University determines which measures are appropriate for each victim on a case-by-case basis. Not all of the measures listed below will be necessary to keep every victim safe and ensure their equal access to University programs and activities. If the victim or counselor requests an interim measure that is not already provided by the University, it will consider whether the request can be granted. In cases where interim measures affect both the victim and the alleged respondent, the University will minimize the burden on the victim wherever appropriate.

The Universities will maintain as confidential any accommodations or protective interim

measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the Universities to provide the accommodations or protective interim measures.

The University may provide one or more of the following protective measures:

- “no contact/communication” orders;
- escorts to ensure safety while moving between locations on campus;
- changes in academic or work schedules;
- statutorily-provided leave to employees, such as Domestic Violence Leave pursuant to M.G.L. c. 49, §52D;
- alternative housing, dining and/or office accommodations;
- restrictions from areas of campus;
- medical and/or mental health services;
- assistance in identifying an advocate to help secure additional assistance, such as off-campus and community advocacy, support and services; and/or
- academic accommodations, such as:
  - transferring to another section of a course, lecture or lab;
  - rescheduling an academic assignment or test;
  - arranging for incompletes, a leave of absence, or withdrawal from campus; and
  - preserving eligibility for academic, athletic, or other scholarships, financial aid, internships, study abroad, or foreign student visas.

The Universities may also suspend a student on an interim basis or place an employee on paid administrative leave prior to completing an investigation under this Policy when it reasonably concludes that the person: (a) poses a threat to health or safety; (b) poses a threat to University property or equipment; (c) is disruptive or interferes with an investigation under this Policy or the normal operations of the University; or (d) is charged with a serious violation of state or federal law. The University shall provide the employee or student of the specific reason(s) for the interim action. During an interim action, the University reserves the right to prohibit the person from entering upon the University’s property or participating in any University activities absent written authorization from an appropriate University official. When a person has been placed on interim suspension or paid leave of absence, the Universities will make reasonable efforts to complete the investigation process in an expedited manner.

The failure of a person to comply with an interim suspension, temporary leave or other interim measure is a violation of this Policy and may lead to additional disciplinary action.

Additionally, in some circumstances, a victim may wish to seek an order of protection from a court or appropriate jurisdiction against the alleged perpetrator. In these circumstances, Campus Police will assist individuals in their attempt to secure these orders. Individuals may also seek restriction of access to the University by non-students or non-employees when appropriate.

#### **I. WRITTEN NOTIFICATION OF RIGHTS, OPTIONS, AVAILABLE RESOURCES, SERVICES AND INFORMATION**

The Universities will provide written information to community members regarding counseling, medical and mental health services, disability accommodations, victim advocacy, legal assistance, visa and immigration assistance, and other services available on and off campus. In addition, the Universities will provide notification to victims of their rights and options set forth in this Policy, including, but not limited to, options for, protective interim measures, regardless

of whether the victim chooses to report the crime to the police or file a complaint with the University.

The Universities will notify complainants alleging sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation in writing that they have the following rights:

- to an explanation of the options available;
- to referrals to confidential assistance and support services from both on- and off-campus resources, including 24 hour services;
- to a change in on-campus residence and/or an adjustment to their academic schedule if such changes are reasonably available;
- to request that the University impose no contact/communication orders or other interim measures;
- to make a complaint that starts the University's investigation and resolution processes;
- to a prompt, thorough and equitable investigation and resolution of a complaint;
- to choose whether or not to initiate a formal investigation of the complaint, unless the University deems it necessary to investigate to protect the safety of the community or in compliance with applicable law;
- to the confidentiality of the investigation process to the extent possible (see Privacy and Confidentiality at Section G);
- to an advisor of one's choice who will assist and be present at any time during the investigation proceedings, but who may not participate in or otherwise provide representation in any way throughout the process;
- to reasonable accommodations for a documented disability during the process;
- to know, in advance, the names of all persons known to be involved;
- not to have irrelevant sexual history discussed;
- to be present at meetings and review documents;
- to speak and present information on one's own behalf;
- to submit questions for the Administrative Investigator to ask witnesses;
- to know the status of the case at any point during the process;
- to be informed of the outcome of the process in a timely manner;
- to an appeal from the outcome of the process;
- to file no complaint with the University, but receive support services from the University;
- to file a police report and/or take legal action separate from and/or in addition to the University discipline process;
- to seek and enforce a no contact, restraining or similar court order;
- to be assisted by the University in seeking assistance from or filing a complaint with local law enforcement;
- to not file a complaint or seek assistance from local law enforcement, but receive support services from the University;
- to be free from any behavior that may be construed by the University to be intimidating, harassing or retaliatory; and
- to have the matter handled in accordance with University Policy.

Respondents to claims of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation have the following rights:

- to an explanation of the allegations against them;

- to referrals to confidential assistance and support services from both on- and off-campus resources, including 24 hour services;
- to receive a copy of the complaint filed against them;
- to be presumed not in violation of University policy until a violation is established through the complaint investigation process;
- to the confidentiality of the investigation process to the extent possible (see Privacy and Confidentiality at Section G);
- to an advisor of one's choice who will assist and be present at any time during the investigation proceedings, but who may not participate in or otherwise provide representation in any way throughout the process;
- to reasonable accommodations for a documented disability during the process;
- to know, in advance, the names of all persons known to be involved;
- not to have irrelevant sexual history discussed;
- to be present at meetings and review documents;
- to speak and present information on one's own behalf;
- to submit questions for the Administrative Investigator to ask witnesses;
- to know the status of the case at any point during the investigation and resolution process;
- to be informed of the outcome of the process in a timely manner;
- to an appeal from the outcome of the process;
- to be free from any behavior that may be construed by the University to be intimidating, harassing or retaliatory; and
- to have the matter handled in accordance with University Policy.

*Note:* In some circumstances, a complaint alleging an act of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation may also allege conduct that may constitute a potential violation of other University conduct policies. To avoid duplicative efforts, the University may undertake a joint investigation of the conduct under Complaint Investigation and Resolution Procedures at Appendix 3 of the EO Plan. Based on the findings of the joint investigation, the respondent may be subject to disciplinary action for violations of the Sexual Violence Policy and/or the Student Code of Conduct, as well as other policy violations.

## **J. EDUCATION AND PREVENTION PROGRAMS**

As part of the Universities' commitment to providing working, living and learning environments free from sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, this Policy shall be disseminated widely to the campus communities through publications, new employee and student orientations, physical posting in places where students and employees are likely to see it, and other appropriate communications. A copy of this Policy shall be prominently posted on each University's website.

The Universities provide sustained and comprehensive training to the campus community concerning: (1) prevention and awareness programs that address rape, acquaintance rape, domestic and dating violence, sexual assault, and stalking; (2) the provisions of the Universities' Sexual Violence Policy; and (3) the Universities' Complaint and Investigation Procedures for alleged violations of the Sexual Violence Policy. Additionally, the Universities provide all new or incoming students and employees primary prevention and awareness programs that promote awareness of rape, acquaintance rape, domestic and dating violence, sexual assault, and stalking.

The Universities have implemented primary and on-going prevention and awareness programs for students and employees focused on sexual violence, domestic and dating violence and stalking, and the promotion of positive and healthy behaviors that foster mutually respectful relationships and sexuality. The Universities shall make preventative educational materials available to all members of the community to promote compliance and familiarity with this Policy.

In the training programs for students and employees, the Universities address the following:

- The Universities' prohibition of sexual assault, domestic violence, dating violence and stalking.
- The University's Sexual Violence Policy and Complaint and Investigation Resolution Procedures for addressing complaints of sexual assault, domestic violence, dating violence and stalking.
- The Massachusetts' legal definitions of the crimes of sexual assault, domestic violence, dating violence and stalking.
- The legal definition of "consent" in reference to sexual activity in Massachusetts.
- The rights and remedies of students and employees under Title IX.
- Practical information about identifying, preventing, and reporting sexual violence and sexual harassment.
- The reporting options available to victims, on and off campus.
- The confidential resources available to the victims, on and off campus.
- How to obtain accommodations and/or interim protective measures.
- How the Universities' analyze complaints.
- Positive options for bystander intervention that an individual may take to prevent harm or intervene in risky situation.
- The role of alcohol and drugs and student safety.
- How employees should respond to reports of sexual violence, sexual and gender-based harassment, domestic and dating violence, and stalking; employees' duty to make reports to the Universities and how to make such reports.
- The Universities' prohibition against retaliation.

In addition, the Universities provide annual training to its Title IX Coordinators and Deputy Coordinators, EO Officers, Administrative Investigators, review and appellate body members, responsible employees, Campus Police, and all others involved with the administration of this Policy and the Complaint Investigation and Resolution Procedures on the topics listed above, as well as the following:

- The obligations of responsible employees when interacting with students or employees making reports of sexual violence, sexual and gender-based harassment, domestic and dating violence, and stalking.
- The obligations of responsible employees to forward reports to the Universities.
- The dynamics of sexual violence and the unique toll it can take on self-blaming and traumatized individuals.
- Understanding how sexual violence occurs, how it is perpetrated, and how victims naturally respond during and after assault.
- Issues related to sexual violence, domestic violence, dating violence and stalking.
- The requirements of the Complaint Investigation and Resolution Procedures.
- How to conduct an investigation in a manner that protects the safety of victims and

- promotes accountability.
- How to conduct prompt, fair, impartial and thorough investigations.

Furthermore, the Universities pledge to routinely:

- evaluate current policies, procedures, and practices;
- ensure appropriate training of all persons charged with administering this Policy and/or involved in the complaint investigation and resolution process;
- evaluate who is designated an RE for Title IX reporting purposes and/or CSA for Clery Act reporting purposes, and disseminate and publish applicable list of REs and CSAs;
- ensure appropriate training of REs and CSAs;
- evaluate campus climate assessment survey data;
- provide education and prevention programming for students and employees; and
- evaluate physical security needs on campus.

## **K. INDEPENDENT INVESTIGATIONS**

At any time, the University, at its discretion, may conduct an investigation independent of, or in addition to, the procedures described in this Policy. The investigation may involve complaints or allegations of violence, or concerning violations of Title IX, VAWA and/or the Clery Act against the University, or any of its employees or students. Any such independent investigation will comply with the requirements of Title IX, VAWA and/or the Clery Act, as applicable.

## **L. COMPLIANCE CONCERNS**

All are encouraged to report any concerns about the University's handling of a sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation investigation to the University's Title IX Coordinator. Individuals may also report concerns about the University's handling of such investigations to:

U.S. Department of Education  
Office for Civil Rights  
33 Arch Street, 9th Floor  
Boston, MA 02119-1424  
Telephone: (617) 289-0111  
FAX: (617) 289-0150; TDD (877) 521-2172  
Email: [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

## **M. MASSACHUSETTS LEGAL DEFINITIONS**

Alleged incidents of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation are determined by the language of this Policy rather than by the provisions of the criminal laws of Massachusetts. However, community members who believe they have been the victim of a crime may choose to pursue a criminal investigation through local law enforcement. In those instances, the criminal laws will apply. Here are the definitions of Massachusetts crimes related to the conduct prohibited by this Policy:

### **A. Sexual Assault**

Massachusetts uses the term "rape." The definition encompasses (1) the penetration of any orifice by any body part or object (2) by force (or threat) and (3) without consent. Rape also includes instances where the victim is incapacitated ("wholly insensible so as to be incapable of

consenting”) and the perpetrator is aware or should have known of the incapacitation. Relatedly, under M.G.L. c. 268, § 40, a person who knows that an individual is a victim of an aggravated rape and is at the scene of the crime, must report the crime to law enforcement as soon as is reasonably practicable.

<http://www.malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section22;>  
<http://masscases.com/cases/sjc/450/450mass583.html>

## **B. Domestic Violence**

Section 1 of M.G.L. c. 209A defines domestic abuse as “the occurrence of one or more of the following acts between family or household members: (a) attempting to cause or causing physical harm; (b) placing another in fear of imminent serious physical harm; (c) causing another to engage involuntarily in sexual relations by force, threat or duress.”

<http://www.malegislature.gov/Laws/GeneralLaws/PartII/TitleIII/Chapter209A>

For the purposes of Chapter 209A, “family or household members” are defined as persons who (a) are or were married to one another; (b) are or were residing together in the same household; (c) are or were related by blood or marriage; (d) have a child in common regardless of whether they have ever married or lived together; or (e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts’ consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination.

<http://www.malegislature.gov/Laws/GeneralLaws/PartII/TitleIII/Chapter209A>

Section 13M of M.G.L. c. 265 prohibits assault and/or assault and battery against family or household members, which is defined as: “persons who: (i) are or were married to one another, (ii) have a child in common regardless of whether they have ever married or lived together or (iii) are or have been in a substantive dating or engagement relationship.”

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section13m>

<https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter260>

In determining whether Section 13M applies to a particular relationship, the courts shall consider the following factors: “(1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time that has elapsed since the termination of the relationship.”

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section13m>

Section 15D of M.G.L. c. 265 prohibits the strangulation or suffocation of another person.

<https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter260>

## **C. Dating Violence**

While Massachusetts does not have a law concerning dating violence, conduct may constitute an assault or assault and battery under M.G.L. c. 265, § 13A. An assault or an assault and battery: (i) upon another and [the perpetrator] by such assault and battery causes serious bodily injury; (ii) upon another who is pregnant at the time of such assault and battery, [the perpetrator] knowing or having reason to know that the person is pregnant; or (iii) upon another who [the perpetrator] knows has an outstanding temporary or permanent vacate, restraining or no-contact

order or judgment issued pursuant to [applicable law], in effect against him at the time of such assault or assault and battery.”

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section13a>

Section 13M of M.G.L. c. 265 prohibits assault and/or assault and battery against family or household members, which is defined as: “persons who: (i) are or were married to one another, (ii) have a child in common regardless of whether they have ever married or lived together or (iii) are or have been in a substantive dating or engagement relationship.”

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section13m>

<https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter260>

In determining whether Section 13M applies to a particular relationship, the courts shall consider the following factors: “(1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time that has elapsed since the termination of the relationship.”

<https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section13m>

Section 15D of M.G.L. c. 265 prohibits the strangulation or suffocation of another person.

<https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter260>

#### **D. Stalking**

Section 43 of M.G.L. c. 265 defines “stalking” as “(1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily harm.”

<http://www.malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter265/Section43>

#### **E. Consent**

There is no definition of the term “consent” in the Massachusetts General Laws. Massachusetts courts use the term “against his/her will” which means without consent. Cases have held that consent cannot be compelled or induced by force or threats, and consent is not present when the victim is incapacitated. In other words, consent requires a voluntary agreement demonstrated by words or actions, by a person with sufficient mental capacity to make a conscious choice to do something proposed by another, free of duress. Commonwealth v. Lopez, 433 Mass. 722 (2001), Commonwealth v. Lefkowitz, 20 Mass. App. Ct. 513 (1985); see also:

<http://www.malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section22>

**APPENDIX A**

<b>CONFIDENTIALITY AND REPORTING</b>		
<b>Personnel/Organization</b>	<b>Confidential Status</b>	<b>Obligation to Report to the University's Title IX Coordinator and/or Outside of the University</b>
University Counseling Services	Confidential	<p>None, with the following exceptions:</p> <p>If there is reasonable cause to suspect that a minor, or an elderly or disabled person, has been abused, Counseling Services may report this to the University in compliance with state law.</p> <p>If a person presents an imminent threat of harm to one's self or others, a clinical provider may break confidentiality.</p> <p>If one would like to request certain protective interim measures in the aftermath of reported sexual violence, e.g., more time to submit academic work or changing classes, residence halls or work locations, the Dean of Students and/or other University officials as necessary may be contacted only for the purpose of implementing the interim measures.</p> <p>De-identified statistical information may be reported to Campus Police in compliance with the Clery Act.</p>
University Health Services	Confidential	<p>None, with the following exceptions:</p> <p>If there is reasonable cause to suspect that a minor, or an elderly or disabled person, has been abused, Counseling Services may report this to the University in compliance with state law.</p> <p>If a person presents an imminent threat of harm to herself or others, a medical provider may break confidentiality.</p> <p>If one would like to request certain protective interim measures in the aftermath of reported sexual violence, e.g., more time to submit academic work or changing classes, residence halls or work locations, the Dean of Students and/or other University officials as necessary may be contacted only for the purpose of implementing the interim measures.</p> <p>De-identified statistical information may be reported to Campus Police in compliance with the Clery Act.</p>
University Chaplains, Clergy or Pastoral Counselors	Confidential	<p>None, with the following exceptions:</p> <p>If one would like to request certain protective interim measures in the aftermath of reported sexual violence, e.g., more time to submit academic work or changing classes, residence halls or work locations in the aftermath of reported sexual violence, the Dean of Students and/or other University officials as necessary may be contacted only for the purpose of implementing the interim measures.</p> <p>De-identified statistical information may be reported to Campus Police in compliance with the Clery Act.</p>

<b>CONFIDENTIALITY AND REPORTING</b>		
<b>Personnel/Organization</b>	<b>Confidential Status</b>	<b>Obligation to Report to the University's Title IX Coordinator and/or Outside of the University</b>
University Employee Assistance Program	Confidential	None
Off-Campus Medical Providers	Confidential	None
Off-Campus Rape Crisis Centers, Counseling and/or Victim Support Services	Confidential	None
Off-Campus Chaplains, Clergy, Pastoral Counselors	Confidential	None
Local Police or other Law Enforcement	<i>Not Confidential</i>	There is no obligation for local police or law enforcement to make a report to the University, but information may be shared with the University within the requirements of Massachusetts law.
Outside Agencies (MCAD, EEOC, OCR, BHE)	<i>Not Confidential</i>	The relevant agency will notify the University of accepted complaints.
Title IX Coordinators (and Deputies)	<i>Not Confidential</i>	Yes. The Title IX Coordinator will share information with University officials and employees who need to know it in order to implement University policies and procedures.
EO Officers	<i>Not Confidential</i>	Yes. The EO Officer will share information with University officials and employees who need to know it in order to implement University policies and procedures.
Campus Police/Public Safety	<i>Not Confidential</i>	Yes. Campus Police will share information with University officials and employees who need to know it in order to implement University policies and procedures.  Depending on the circumstances, an anonymous public warning may be issued by Campus Police. Whenever possible, the University will notify one if this will be issued and one's name and identifying information will not be included.
University Trustees	<i>Not Confidential</i>	Yes. Members of the Board of Trustees will share information with University officials and employees who need to know it in order to implement University policies and procedures.
The President	<i>Not Confidential</i>	Yes. The President will share information with University officials and employees who need to know it in order to implement University policies and procedures.

<b>CONFIDENTIALITY AND REPORTING</b>		
<b>Personnel/Organization</b>	<b>Confidential Status</b>	<b>Obligation to Report to the University's Title IX Coordinator and/or Outside of the University</b>
Vice Presidents, Associate and Assistant Vice Presidents	<i>Not Confidential</i>	Yes. The Vice Presidents and Associate/Assistant Vice Presidents will share information with University officials and employees who need to know it in order to implement University policies and procedures.
Director and Assistant Director of Human Resources	<i>Not Confidential</i>	Yes. The Director/Assistant Director of Human Resources will share information with University officials and employees who need to know it in order to implement University policies and procedures.
Departmental Directors and Assistant Directors	<i>Not Confidential</i>	Yes. Departmental Directors and Assistant Directors will share information with University officials and employees who need to know it in order to implement University policies and procedures, except:  Those Departmental Directors and Assistant Directors who serve in professional roles in which communications are afforded confidential status under the law (e.g., licensed mental health care providers, medical providers, pastoral counselors and clergy) will maintain confidentiality.
Residence Life Professional Staff (including RDs/RAs)	<i>Not Confidential</i>	Yes. These Residence Life professionals will share information with University officials and employees who need to know it in order to implement University policies and procedures.
Athletic Coaches, Assistant Coaches and Athletics Administrators	<i>Not Confidential</i>	Yes. These members of the Athletics Department will share information with University officials and employees who need to know it in order to implement University policies and procedures.
Studio Managers	<i>Not Confidential</i>	Yes. Studio Managers will share information with University officials and employees who need to know it in order to implement University policies and procedures.
Deans, Associate and Assistant Deans	<i>Not Confidential</i>	Yes. The Deans and Associate/Assistant Deans will share information with University officials and employees who need to know it in order to implement University policies and procedures.
Academic Department Chairs	<i>Not Confidential</i>	Yes. Academic Department Chairs will share information with University officials and employees who need to know it in order to implement University policies and procedures.
Academic and Non-Academic Program Directors and Program Coordinators	<i>Not Confidential</i>	Yes. Academic and Non-Academic Program Directors/Coordinators will share information with University officials and employees who need to know it in order to implement University policies and procedures.

**CONFIDENTIALITY AND REPORTING**

<b>Personnel/Organization</b>	<b>Confidential Status</b>	<b>Obligation to Report to the University's Title IX Coordinator and/or Outside of the University</b>
Faculty and Staff Leading or Chaperoning Travel or Overnight Trips	<i>Not Confidential</i>	Yes. Faculty and Staff Travel Leaders and/or Chaperones will share information with University officials and employees who need to know it in order to implement University policies and procedures.
Faculty and Staff Advisors to Student Groups	<i>Not Confidential</i>	Yes. Faculty and Staff Advisors to Student Groups will share information with University officials and employees who need to know it in order to implement University policies and procedures.

## **VI. POLICIES FOR REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES**

The Universities are committed to providing equal access to employment and educational opportunities for otherwise qualified persons with disabilities. The Universities recognize that individuals with disabilities may need reasonable accommodations to have equally effective opportunities to participate in or benefit from educational programs, services, activities and employment.

### **EDUCATION OF PERSONS WITH DISABILITIES**

The Universities will examine all existing admissions, student support and other student life policies, practices and facilities to assure that they do not disparately treat or impact otherwise qualified persons with disabilities. Where such disparity is found, it will be corrected as quickly and completely as is reasonable under existing financial constraints.

In accordance with the requirements of state and federal law, the Universities will provide necessary reasonable accommodations, auxiliary aids and academic adjustments (including support services) to otherwise qualified students with disabilities to assure equal access to its programs, facilities and services. Reasonable accommodations will also be afforded to applicants for admission who have disabilities to enable them to adequately pursue all opportunities for enrollment in the Universities' programs of study.

### **EMPLOYMENT OF PERSONS WITH DISABILITIES**

The Universities will examine all existing employment policies, practices and facilities to assure that they do not disparately treat or adversely impact otherwise qualified persons with disabilities. Where such disparity is found, it will be corrected as quickly and completely as is reasonable under existing operational constraints.

In accordance with the requirements of state and federal law, and through the interactive process, the Universities will afford reasonable accommodations to any otherwise qualified employee with a disability to enable the employee to perform the essential functions of the job. Reasonable accommodations will also be afforded to applicants for employment who have disabilities to enable them to adequately pursue a candidacy for any available positions.

### **PROCESS BY WHICH TO REQUEST ACCOMMODATIONS**

Any member of the University community who seeks reasonable accommodation for a disability may contact the EO Officer and/or the Title II/Section 504 Coordinator for more information. Similarly, any applicant for employment or admission who seeks assistance in the application process may contact the EO Officer and/or the Title II/Section 504 Coordinator.

Additionally, a student seeking reasonable accommodations, auxiliary aids and/or academic adjustments for a disability must contact the appropriate Office of Disability Services on the student's campus to obtain such services.

### **COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES**

Any member of the University community or any applicant for admission or employment who believes that he or she has been a victim of disability discrimination or harassment, or who alleges that the University has failed to provide reasonable accommodations, appropriate

auxiliary aids and/or academic adjustments, may initiate a claim as outlined in the Universities' Complaint Investigation and Resolution Procedures located at Appendix 3.

Further advice or information may be obtained by contacting the EO Officer and/or the Title II/Section 504 Coordinator of each University.

## **VII. MANDATORY CHILD ABUSE REPORTING POLICY**

Persons under 18 may be students or may be engaged in activities sponsored by the Universities or by third parties utilizing University facilities. Where an employee has reasonable cause to believe that a child is suffering injury from sexual abuse on campus or on University owned or controlled property, the employee and/or the University *may* be obligated to comply with the mandatory child abuse reporting requirements established at M.G.L. c. 119, §§ 51A-E. In such cases, the employee must immediately report the matter to Campus Police, who, in consultation with other officials, shall contact the Department of Children and Families ("DCF") and/or outside law enforcement. An employee may also directly contact law enforcement or DCF in cases of suspected abuse or neglect. Massachusetts law also has mandatory reporting requirements for certain occupations where elderly and disabled abuse or neglect is suspected. For more information, please contact the Campus Police.

## **VIII. CONTRACTING AND PURCHASING**

### **EQUAL OPPORTUNITY VENDORS**

When selecting contractors, suppliers, and vendors of goods and services, including goods and services secured in connection with construction projects, the Universities will offer equal opportunity to all qualified persons and entities and will not discriminate on the basis of race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status.

The Universities shall seek to locate and shall encourage the use of minority and female contractors, subcontractors, vendors, and suppliers. The Universities will identify businesses primarily operated by members of such protected classes with the help of agencies such as the State Office of Minority Business Assistance in order to encourage bids and proposals from potential contractors, vendors and suppliers.

### **EQUAL EMPLOYMENT OPPORTUNITY**

The Universities require that all persons and entities with which they contract for the provision of goods and services shall provide equal opportunity for all persons without regard to race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status.

### **CONTRACTOR COMPLIANCE**

Prior to the awarding of any contract, the Universities shall require that the contractor provide written assurance of its compliance with applicable state and federal laws and regulations, including the provisions of this Policy, prohibiting discrimination in employment.

The Universities shall require that every contract made on or after July 1, 1996, for the purchase of goods and services contain the following provisions.

“During the performance of this Agreement, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status.
2. The Contractor will comply with the provisions of the Governor’s Code of Fair Practices, with Chapter 151B of the General Laws of Massachusetts, with the Americans with Disabilities Act and with all other applicable state and federal laws barring discrimination in employment, and with Section IV of the Massachusetts State Universities’ Equal Opportunity, Diversity and Affirmative Action Plan.
3. In the performance of this Agreement, the Contractor shall take affirmative action to employ minority and female subcontractors, vendors and suppliers.
4. The University may at any time require the Contractor to supply it with such data, as it shall reasonably require for purposes of determining whether the Contractor is adhering to the above-described prohibitions against discrimination in employment.
5. In the event that the Contractor shall have failed to comply with the requirements contained in any of foregoing clauses 1, 2, 3 and 4, the University may enforce such compliance by withholding part or all of any payment then due until such time as the Contractor complies with any such requirement, and/or by cancelling, terminating or suspending the whole or any part of this Agreement. Nothing herein contained shall bar the University from pursuing such other lawful recourse as it may have to enforce compliance with the above-described requirements and to recover damages for their breach.”

The Universities reserve the right to disqualify as a contractor any person or entity that fails to adhere to the prohibitions against the discrimination, discriminatory harassment and retaliation in employment that are contained in Section IV of this Plan.

#### CONTRACTOR CONDUCT

All contractors, vendors, consultants and suppliers of goods and services shall be required, during any period when they or their agents or employees are present at the Universities, to adhere to standards of conduct that are consistent with this Policy, and all such contractors, vendors and suppliers, their agents and employees shall refrain from acts or conduct that constitute harassment of any person by reason of such person’s race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status. The Universities shall require every contractor, vendor, consultant, and supplier to instruct its agents and employees concerning the requirements of this paragraph, and to take actions including disciplinary actions, to correct any violation thereof.

## COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

Any member or the University community or any applicant for employment or admission who believes that he or she has been a victim of discrimination, discriminatory harassment, sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation by a vendor or contractor may initiate a complaint pursuant to the Universities' Complaint Investigation and Resolution Procedures located at Appendix 3. Further advice or information may be obtained by contacting the EO Officer and/or Title IX Coordinator on each University campus.

## **IX. MONITORING AND GOALS**

By and through this Plan, the Universities commit themselves to a policy of equal opportunity, diversity, affirmative action and non-discrimination in all aspects of campus life.

The Universities shall endeavor to increase the representation of qualified women, veterans, persons with disabilities and minorities in their workforces. To this end, the Universities shall continually examine and monitor their affirmative action and equal opportunity policies, procedures and practices for the purpose of determining the degree to which their workforces are reflective of the demographics of the Commonwealth's labor market. To the extent that this review reveals areas of deficiency or shortcomings, the Universities will make reasonable and good faith efforts, consistent with requirements of the law, to address and improve such deficiencies or shortcomings.

The Universities realize that the development and implementation of specific policy and programmatic efforts is essential to the establishment of a pro-active, system-wide Plan. The Universities further realize, however, that policies and programs of equal opportunity, diversity, affirmative action and non-discrimination are only as effective as the commitment to them at the local level. Accordingly, each University shall determine and implement for itself the projects, programs, defined strategies, structured activities or other tactical steps to achieve the equal opportunity, diversity, affirmative action and non-discrimination goals of this Plan on its individual campus.

On an annual basis, each University will review the progress being made toward the achievement of its compliance with this Plan and its equal opportunity, diversity, affirmative action and non-discrimination goals.

## **X. AFFIRMATIVE ACTION HIRING PROCEDURES**

The procedures set forth in this Plan take into consideration both organizational limitations and opportunities with respect to current and future employees. The Plan calls upon all staff to engage in a major effort in order to fulfill the objectives of equal opportunity for all persons at all levels of employment, in compliance with all applicable collective bargaining agreements. Each EO Officer will monitor the employment policies of the University with respect to the areas of recruitment and appointment to vacant positions to assure compliance with the objectives of this Plan. The areas to be monitored should include, but not be limited to, pre-recruitment procedures, recruitment, selection, appointments (permanent, acting, emergency and temporary), salary and benefits, and shall include employees of continuing education, grant funded programs and other appropriate areas.

## COMPLAINT INVESTIGATION AND RESOLUTION PROCEDURES

The Universities have established specific internal Complaint Investigation and Resolution Procedures to help resolve claims and complaints of discrimination, discriminatory harassment and retaliation on their campuses. The Universities' Complaint Investigation and Resolution Procedures also serve as a system of review and resolution for claims of discrimination in hiring. These Procedures specifically address claims and complaints of failure to accommodate persons with disabilities as prescribed by the ADA, the Rehabilitation Act, and Massachusetts General Laws Chapter 151B. Any applicant for employment who believes that he or she has been a victim of discrimination in hiring may initiate a claim as outlined in the Universities' Complaint Investigation and Resolution Procedures located at Appendix 3. Further advice or information regarding these complaint procedures may be obtained by contacting the EO Officer of any University.

### **XI. RESPONSIBILITY FOR THE IMPLEMENTATION OF THE EQUAL OPPORTUNITY DIVERSITY AND AFFIRMATIVE ACTION PLAN AND RELATED PROGRAMS, POLICIES AND PROCEDURES**

The final authority and ultimate responsibility for the implementation of this Plan rests with the Presidents of the State Universities. The EO Officer on each campus, however, has the responsibility for the overall development, administration and monitoring of all policies, procedures and programs pertinent to the implementation of this Plan. The EO Officer commonly reports to the President and bears the responsibility for the preparation and execution of all affirmative action policies and programs. Details regarding the EO Officer's specific duties and responsibilities can be found at Appendix 1.

All Vice Presidents, Deans, Directors, Program Coordinators, Department Chairs, and other supervisory personnel will be accountable for ensuring that equal opportunity, non-discrimination, diversity and affirmative action are integrally tied to all actions and decisions for which they are responsible and which fall within the scope of the Plan. A statement concerning such accountability will be added to all appropriate position descriptions. It shall be considered a regular function of faculty, librarians, administrators and supervisory staff that they are aware of goals and consult with the EO Officer prior to and in the course of those actions which may impact on the implementation of this Plan. In the event that a supervisor and/or the EO Officer identify problem areas that are impeding a University's efforts to meet its goals, they shall develop an action plan designed to move the University toward successful attainment of its objectives.

### **XII. POLICY AWARENESS PROCEDURES**

#### DISSEMINATION

At the commencement of each academic year, all policy statements regarding equal opportunity, non-discrimination, diversity and affirmative action at the State Universities will be distributed, either electronically or in hard copy or in both formats, as follows:

- to every office at each University, including the Human Resources Office and the Office of the Equal Opportunity Officer;
- to each University's Library;

- to all students, either in the relevant Student Handbook, Course Catalog or by e-mail distribution;
- to all employees, either in a relevant publication or by e-mail distribution;
- posted to all relevant sections of the Universities' websites;
- copies will be made available to the campus community and to the public upon request; and
- copies will also be made available in accessible formats upon request.

Periodic meetings and workshops will be held with various segments of the campus community to assist their understanding of the Universities' commitment to equal opportunity, non-discrimination, diversity and affirmative action.

Copies of all policy statements regarding equal opportunity, non-discrimination, diversity and affirmative action will also be provided to students who enroll mid-year and to all new employees upon their hire.

#### POSTING

The Universities' Policy Statement on Non-Discrimination, Diversity and Affirmative Action will be posted in areas customarily used for public announcements and on the Universities' websites. Prospective employees and applicants for admission will be informed of this Policy Statement in all advertisements posted both on and off campus.

#### RECRUITING

All employment recruiting sources used by the Universities will be informed of their commitment to equal opportunity, non-discrimination, diversity and affirmative action. Listings of current openings will be sent on a regular basis to appropriate sources for the recruitment and referral of applicants who are persons of color, women, veterans, persons with disabilities, and persons of diverse religions and national origins.

In addition, notices of position openings will be posted on campus and on the Human Resources sections of the Universities' individual websites, so that all current employees are aware of opportunities for promotion or transfer.

#### CONTRACTORS AND VENDORS

The Universities will notify all contractors, sub-contractors and vendors of the Universities' responsibilities and commitments to equal opportunity, non-discrimination, diversity and affirmative action.

#### ADVERTISING

Selection for and participation in the State Universities' employment is without regard to race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status. An Affirmative Action, Equal Opportunity and Non-Discrimination/Diversity statement will be placed in all appropriate University operational publications and advertisements.

## COMMUNITY RELATIONS

The State Universities will cooperate and work with local, state and federal government agencies and community groups, as well as national minority, multicultural, multiracial, disability, women's and veteran's organizations and other national groups that have equal employment opportunity objectives, for the purpose of developing significant access to equal opportunity for persons of color, women, veterans, persons with disabilities, and persons of diverse religions and national origins.

## **XIII. CONCLUSION**

In developing and presenting this Plan for approval to the BHE, the State Universities have committed themselves to institutional change in order to provide maximum access to a university education and university experience which equips all of our students to live and work in our diverse world. The State Universities believe that access to affordable higher education is an integral part of their mission.

With this Plan, the State Universities commit themselves not only to providing each student and employee a safe, yet exciting academic and living environment, where each member of the community is valued as an individual, whose racial, cultural, religious, gender, orientation, age, disability or socioeconomic status make her or him a valued member of a diverse community of pluralism, but in doing so, to fully prepare our students for the great diversity of the larger world. If this Plan is fully implemented, we will have moved beyond merely prohibiting the violation of human dignity and civility to the fulfillment of our mission of providing accessible higher education to the increasingly diverse population of the Commonwealth.

We commit ourselves to this effort.

# **APPENDIX 1**

## **POSITION DESCRIPTION: EO OFFICER**

The Equal Opportunity Officer (“EO Officer”) provides campus-wide leadership to promote equal opportunity, diversity and affirmative action on campus. The EO Officer works closely with the President, Vice Presidents, Department Chairs, Program Coordinators and Directors in the implementation, monitoring and evaluation of the Universities’ Equal Opportunity, Diversity and Affirmative Action Plan. He or she works with faculty and student organizations to introduce a variety of multicultural issues across the curriculum and across the campus. He or she is the ombudsman for all issues of discrimination, including discriminatory harassment, and retaliation.

The EO Officer may also serve as the Title II/Section 504 Coordinator. Similarly, the EO Officer may be the primary Title IX Coordinator for each University, although the individual campuses may designate one or more additional Deputy Coordinators to assist with Title IX compliance.

**SUPERVISION:** Reports directly to the President or the President’s designee.

**SUPERVISION EXERCISED:** Over assigned professional and non-professional staff.

**DUTIES AND RESPONSIBILITIES:** Include, without limitation:

- Provides leadership in planning and organizing events and programs to increase the awareness of diversity on campus.
- Develops plans and policies to recruit and employ members of protected classes through affirmative action and equal employment opportunity programs.
- Responsible for monitoring, implementing and evaluating recruitment to insure a policy of non-discrimination, affirmative action, equal employment/educational opportunity and diversity.
- Serves as an ex-officio member of faculty hiring committees.
- Works closely with the Vice Presidents, Directors, Program Coordinators and Department Heads to develop and implement program initiatives designed to increase diversity among faculty, staff and students.
- Plans and develops policies and procedures regarding the implementation of the ADA and the Rehabilitation Act.
- Responsible for overseeing investigations of all complaints of discrimination, discriminatory harassment, and retaliation filed pursuant to the Universities’ Discrimination Complaint Investigation and Resolution Procedures. Responsible for communicating all relevant information to appropriate persons on campus regarding the investigation process.
- May act as a representative of the University on claims presented to state/federal agencies.
- Reviews all University policies for potential discriminatory impact.
- Communicates information on laws, regulations and policies on affirmative action and equal opportunity to members of the University community.
- Exercises sign-off authority on all personnel actions.
- Assumes additional support duties assigned by the President.

\*This Position Description is illustrative and not necessarily exhaustive.

## **APPENDIX 2**

### **POSITION DESCRIPTION: TITLE IX COORDINATOR**

The Title IX Coordinator has primary responsibility for managing the day-to-day responsibilities associated with the University's compliance obligations pursuant to Title IX.

The Title IX Coordinator may also serve as the EO Officer and/or the Title II/Section 504 Coordinator. Additionally, the individual Universities may designate one or more additional Deputy Coordinators to assist the lead Title IX Coordinator with Title IX compliance.

**SUPERVISION:** Reports directly to the President or the President's designee.

**SUPERVISION EXERCISED:** Over assigned professional and non-professional staff.

**DUTIES AND RESPONSIBILITIES:** Include, without limitation:

- Serving as the University's central resource on issues related to sexual violence, sexual and gender-based harassment, domestic and dating violence, stalking and retaliation.
- Implementing and managing the University's Sexual Violence Policy.
- Ensuring that community members know their options and resources concerning the reporting of sexual violence, sexual and gender-based harassment, domestic and dating violence, stalking and retaliation.
- Overseeing the receipt, investigation and resolution of complaints of sexual violence, sexual and gender-based harassment, domestic and dating violence, stalking and retaliation by employees, students and others protected under state/federal laws/regulations and/or the University EO Plan. Where appropriate, conducting complaint investigations.
- Maintaining investigation files; maintaining a University-wide reporting system for complaints and investigation findings; identifying patterns and making recommendations.
- Developing and implementing long-term goals for programming, services, education and assessment of Title IX compliance efforts, including but not limited to sexual violence, sexual and gender-based harassment, domestic and dating violence, stalking and retaliation; providing leadership for University-wide initiatives to increase gender equity on campus.
- Overseeing education, training, and outreach programming concerning awareness and prevention of sexual violence, sexual and gender-based harassment, domestic and dating violence, stalking and retaliation.
- Providing or recommending training to Deputy Title IX Coordinators, complaint Mediators and Administrative Investigators, and other campus officials with Title IX responsibilities.
- Maintaining current knowledge of the laws, policies, procedures and best practices with regard to sexual violence, sexual and gender-based harassment, domestic and dating violence, stalking and retaliation; attending trainings, workshops, conferences to augment knowledge.
- Acting as the University's representative when attending conferences and communicating with government compliance or investigation officers; processing inquiries from third parties.
- Assuming additional support duties assigned by the President.

\*This Position Description is illustrative and not necessarily exhaustive.

## **APPENDIX 3**

### **INVESTIGATION AND RESOLUTION PROCEDURES**

FOR COMPLAINTS OF DISCRIMINATION, DISCRIMINATORY HARASSMENT,  
SEXUAL VIOLENCE, SEXUAL HARASSMENT, GENDER-BASED HARASSMENT,  
DOMESTIC VIOLENCE, DATING VIOLENCE, STALKING AND RETALIATION

#### **I. INTRODUCTION AND APPLICATION**

It is the policy of the Universities to provide each student, employee, and other person having dealings with the institutions an environment free from all forms of discrimination, discriminatory harassment, sexual violence, sexual and gender-based harassment, domestic and dating violence, stalking and retaliation as defined in the Universities' Equal Opportunity, Diversity and Affirmative Action Plan ("EO Plan") and/or each University's Student Code of Conduct.

These Procedures are intended to provide a mechanism to investigate and resolve complaints of discrimination, discriminatory harassment, sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation. These Procedures are available to all students, faculty, librarians, staff, visitors, contractors, applicants for employment or admission, and others having dealings with the Universities.

No community member may retaliate, intimidate, threaten, coerce or otherwise discriminate against any individual for filing a complaint under these Procedures or for otherwise exercising his or her rights or responsibilities under the EO Plan or the Student Code of Conduct.

Complaints of the following prohibited behaviors may be made under these Procedures:

**Discrimination or discriminatory harassment on the basis of:**

- race
- color
- religion
- national origin
- age
- disability/failure to accommodate
- sex/gender
- sexual orientation
- gender identity
- gender expression
- genetic information
- marital/parental status
- veteran status

**Any form of the following prohibited conduct:**

- sexual violence
  - rape
  - sexual assault
  - sexual exploitation
  - incest
  - statutory rape
  - aiding in the commission of sexual violence
- sexual harassment
- gender-based harassment
- domestic violence
- dating violence
- stalking

**Retaliation**

## II. INVESTIGATION AND RESOLUTION PROCEDURES

Investigations of complaints are necessary to determine:

- whether a complaint alleges a violation of the EO Plan or the Student Code of Conduct;
- whether prohibited conduct has occurred;
- whether there is an ongoing risk of harm for further prohibited conduct and, if so, what steps must be taken to prevent its recurrence;
- whether interim protective measures should be in place for the safety of the complainant or the community, or to redress the effects of prohibited conduct;
- whether the conduct warrants disciplinary action; and
- whether local or system-wide changes to policies, practices or training should be considered and implemented by the Universities.

These Procedures have been designed to provide prompt, thorough, fair and impartial processes from investigation to final result. The proceedings pursuant to these Procedures will be conducted transparently and consistently with the Universities' policies. The formal rules of process or evidence, such as those applied in criminal or civil courts, are not used under these Procedures.

The complaint investigation and resolution process is comprised of two processes, the **Informal Resolution Procedure** and the **Formal Investigation Procedure**, which are detailed below.

Deviations from the Informal Resolution Procedure or Formal Investigation Procedure shall not necessarily invalidate a decision, unless significant prejudice may result to a party or the University.

Note: While these Procedures identify certain University officers and employees who have particular roles and duties, the Universities may designate other officers or employees to perform specific roles and/or duties set forth in these Procedures.

### A. Informal Resolution Procedure

**The Informal Resolution Procedure may not be used in an effort to resolve allegations of sexual violence, domestic violence, dating violence or stalking. If you seek to make such a complaint, the Formal Investigation Procedure in Section B will apply.**

Where appropriate, the parties to a dispute may attempt to reach an informal resolution of the potential violation. The Universities encourage involved parties to request the intervention of the University to assist in an informal resolution by contacting the EO Officer.

In conference with the Title IX Coordinator and/or others as necessary, the EO Officer or the EO Officer's designee will assess the request for informal resolution against the severity of allegations and the potential risk of a hostile environment or safety concern for other campus community members. If an informal resolution is appropriate, the EO Officer will notify the parties. The University will not ask a complainant to resolve a problem with a respondent without the involvement of the EO Officer or designee.

The EO Officer or designee will facilitate a dialog with the parties in an attempt to reach a resolution. At no time prior to the resolution of the matter shall either party question or confront the other, or engage a third party to do so, outside the presence of the EO Officer or designee.

The matter will be deemed resolved when all parties expressly agree to an outcome that is acceptable to them and to the University. Every attempt will be made to conclude the Informal Resolution Process within sixty (60) days of the date of the complainant's request.

A complainant is not required to use the Informal Resolution Procedure before initiating the Formal Investigation Procedure. A party may withdraw from the Informal Resolution Procedure and initiate the Formal Investigation Procedure at any time.

## **B. Formal Investigation Procedure**

### Submission of Complaint and Initial Review

When a person believes that s/he has been harassed, discriminated or retaliated against, stalked or subjected to violence in violation of the EO Plan and/or the Student Code of Conduct, s/he may file a written complaint, preferably using the Complaint Form attached to these Procedures.<sup>5</sup> Individuals are encouraged to file complaints directly with the EO Officer, but complaints may also be filed with other offices, such as the Title IX Coordinator, Student Conduct, Human Resources, Residence Life or Campus Police. Any complaint that is initially filed with other offices will be reported to the EO Officer.

In certain circumstances, the University may initiate the Complaint Investigation and Resolution Procedures without the filing of a written complaint or the active participation of a complainant. Complaints may be generated upon receipt of a report by a complainant or by a third-party reporter, such as, but not limited to, a friend, spouse, family member, advisor, parent or coworker.

A complaint must be filed by the complainant or a University official, and the complaint must be in the words of the complainant or the University official. Complaints should contain all known facts pertaining to the alleged violation, the names of any known witnesses and others with knowledge of the allegations, and an identification of any documents or other evidence.

The EO Officer or designee will determine if the complaint falls within the jurisdiction of these Procedures. When complaints allege sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation, the EO Officer or designee will refer them to the Title IX Coordinator for jurisdictional evaluation and review. At this point, the University will implement any necessary and/or appropriate interim protective measures, or monitor and/or revise any measures already in place. If the University determines that the complaint is not properly filed pursuant to these Procedures, it will provide written notice to the complainant (or third party reporter).

### Investigation Process

If a complaint has been properly filed, or the University otherwise determines that an investigation is necessary, the University will assign the matter to an Administrative Investigator. The University may also designate other trained and knowledgeable University officials to assist with the investigation. Under circumstances where the University deems it necessary or appropriate, the University may also appoint an external investigator.

---

<sup>5</sup> Individuals who believe they have been the victim of conduct prohibited by the Sexual Violence Policy also have options to report such incidents confidentially; victims are encouraged, but not required, to file complaints pursuant to these Procedures. Please see Section E of the Sexual Violence Policy for more information on reporting options.

The Administrative Investigator will notify the respondent of the complaint, provide him or her with a copy of the complaint, and invite the respondent to submit a written response. See the model Notice to Respondent attached to these Procedures. If the respondent does not respond, or otherwise fails to participate in the investigation, the Administrative Investigator will complete the investigation on the basis of the other information obtained. Where a complaint is brought by a third party reporter, the Administrative Investigator shall attempt to meet with the potential complainant to discuss his/her participation in the investigation, and to gain additional information.

The investigation shall include, but is not limited to: an analysis of the allegations and defenses presented using the preponderance of the evidence (more likely than not) standard; consideration of all relevant documents, including written statements and other materials presented by the parties; interviews of the parties and other individuals and/or witnesses; and/or reviewing certain documents or materials in the possession of either party that the Administrative Investigator has deemed relevant. The Administrative Investigator may also review any available campus police investigation reports or the investigation reports of local law enforcement authorities.

In regards to complaints alleging sexual violence, domestic violence, dating violence or stalking, questions, statements, or information about the sexual activity of the complainant or alleged victim with any person other than the respondent is not relevant and will not be considered. Parties to such complaints are permitted to submit questions for the Administrative Investigator to ask of the other parties and witnesses, but the questions must be specifically about the allegations of the present complaint.

At the conclusion of the investigation, the Administrative Investigator shall prepare an Investigation Report for an administrative review. The Investigation Report shall: outline the investigatory steps undertaken; summarize the factual findings; state whether a policy violation has occurred based on the preponderance of the evidence; explain the rationale for the violation determination; and, if applicable, recommend a sanction(s). The Investigation Report will not be shared with the parties except upon request following the issuance of the Notice of Outcome, and then only in accordance with applicable law.

At any point during the investigation, a respondent may agree to the allegations and the recommended sanction.

#### Administrative Review

The EO Officer, Title IX Coordinator or other designated University official(s) (the “reviewing body”) will conduct an administrative review of the Investigation Report. The purpose of the administrative review is to determine whether the investigation is prompt, fair, impartial and thorough. If the reviewing body determines the investigation is deficient, the reviewing body shall remand the matter back to an Administrative Investigator for further investigation.

If the reviewing body determines that the investigation is prompt, fair, impartial and thorough, the reviewing body will then consider whether the recommended discipline or sanction is consistent with University policy and practice. In determining discipline, the Administrative Investigator and the reviewing body may consider the respondent’s disciplinary history, if one exists. The Administrative Investigator and/or reviewing body may discuss sanctions with other University personnel as necessary, such as Human Resources, Student Conduct or upper-level administrators.

At any point during the administrative review, a respondent may agree to the allegations and the recommended sanction.

### Notice of Outcome

At the completion of the administrative review, the University will notify the respondent of all sanctions imposed. If the sanctions imposed on the respondent include a separation from the residence halls or the University, and, in the opinion of the Administrative Investigator and/or reviewing body, the respondent poses a continued threat to the safety of the campus community, the sanctions may take effect immediately, and while an appeal is pending.

At the completion of the administrative review, the University will also contemporaneously issue a written Notice of Outcome to the complainant and the respondent. The Notice of Outcome shall include the following:

1. the factual findings of the investigation;
2. the policy violation determination and the rationale for the determination;
3. all sanctions that result from an allegation of sexual violence or other crime of violence;
4. the sanctions that directly relate to the complainant that arise from an allegation of discrimination, discriminatory harassment, non-violent sexual or gender-based harassment, and/or retaliation; and
5. the parties' appeal rights.

If no appeal is filed by either party within five (5) days of their receipt of the Notice of Outcome, the results will become final and the University will proceed with the imposition of the recommended sanction(s).

A person making a complaint of sexual violence, domestic violence, dating violence or stalking may submit a victim impact statement. A respondent to such a complaint may submit a statement of mitigation or extenuation.

### Option for Mediation of Formal Complaints

**Mediation may not be requested or used in an effort to resolve allegations of sexual violence, domestic violence, dating violence or stalking.**

During a formal investigation, at any time prior to the issuance of the Notice of Outcome, either party may request mediation of the complaint by contacting the EO Officer or Title IX Coordinator. All parties must agree to mediation for this option to be used.

The purpose of mediation is to resolve the dispute to the satisfaction of all parties. When mediation is appropriate, the EO Officer shall designate an impartial Mediator, who shall be mutually agreed upon and not unreasonably refused by the parties, and inform the parties in writing of the mediation process and schedule. Where practicable, a mediation session shall be conducted no later than thirty (30) days after agreed to by the parties. The timelines presented under these Complaint Investigation and Resolution Procedures shall be tolled pending the outcome of mediation. If successful in resolving the complaint, the Mediator shall reduce to writing the terms of the mediated resolution, which shall be signed by the parties. If mediation does not result in a resolution, all mediation discussions shall remain confidential and may not be used or introduced in this process or any other forum.

## Timeframe

The University will make every attempt to conclude the Formal Investigation Process within sixty (60) days of the date of the submission of the complainant. If, for good cause, an investigation cannot be completed within 60 days, the University will provide the parties status updates at reasonable intervals until the investigation is completed.

### **C. Appeals**

Either party may appeal the results of an investigation under these Procedures by submitting a written letter of appeal to the EO Officer or designee within five (5) business days of the party's receipt of the Notice of Outcome. An appeal may be transmitted electronically to the EO Officer or designee. Appeals may be submitted on the following grounds:

1. to allege a material procedural error within the investigation and resolution process that would substantially change the outcome; or
2. to consider new evidence that was not known at the time of the investigation that would substantially change the outcome.

Appeals will not be considered on any other basis.

Upon timely receipt of the appeal letter, the EO Officer shall transmit the Investigation Report and the appeal letter to the appropriate appellate officer or body for review. If the appealing party has presented an appeal on the basis of the grounds set forth above, the appellate officer or body, who shall not have participated in the investigation or administrative review, will review the appeal and make a determination to uphold, reverse or modify the decision. When necessary, the appellate officer or body may seek additional information and/or refer the matter back to the Administrative Investigator, prior to making an appellate determination.

Where practicable, within (30) days of receiving the appeal, the appellate officer or body shall contemporaneously issue a written decision to the parties in which it may uphold, reverse or modify the decision. All appellate decisions are final, provided that any corrective action and/or discipline imposed upon a unit member is subject to applicable collective bargaining agreements.

### **D. Possible Sanctions And Additional Remedies**

For Employee Respondents. Disciplinary action taken against an employee shall be regarded as an administrative action, up to and including termination, subject to all provisions of applicable collective bargaining agreements or personnel policies.

For Student Respondents. A student who has been found to have violated the EO Plan and/or Student Code of Conduct may be subject to sanctions including, but not limited to:

- reprimand
- warning
- disciplinary probation
- loss of privileges
- relocation of residence
- restriction from facilities or activities
- temporary or permanent residence hall suspension
- fines and/or restitution
- disciplinary hold
- assessment
- educational program or project
- revocation of admission or degree
- withholding of degree
- suspension
- expulsion

In general, the sanction typically imposed for students for rape or non-consensual sexual intercourse is expulsion. The sanction typically imposed for students for non-consensual sexual contact, sexual exploitation, domestic violence, dating violence and stalking is suspension or expulsion. All student sanctions, however, are determined on a case-by-case basis in consideration of: the seriousness of the violation; sanctions typically imposed for similar violations; prior disciplinary history; and any other circumstances indicating that the sanction should be more or less severe.

#### Additional Remedies Following Finding of a Violation.

Where necessary, the Universities will provide additional measures to remedy the effects of a violation. These remedies are separate from, and in addition to, any protective interim measures that may have been provided or sanctions that have been imposed. If the complainant declined or did not take advantage of a specific service or resource previously offered as a protective interim measure, such as counseling, the University will re-offer those services to the complainant as applicable or necessary.

In addition, the University will consider broader remedial action for the campus community, such as increased monitoring, supervision, or security at locations where the incidents occurred, increased or targeted education and prevention efforts, climate assessments/victimization surveys, and/or revisiting its policies and Procedures.

### III. RELATED INFORMATION AND DEFINITIONS

For the purposes of these Procedures, the following terms are defined and used as follows:

Complainant. An individual who makes a complaint under these Procedures. The Complainant may also be the University under certain circumstances.

Respondent. An individual who is accused of violating the EO Plan.

Day. A day shall mean a calendar day.

Discipline or Sanctions. The terms may be used interchangeably.

Advisors. Each victim, complainant or respondent to an investigation initiated under the Complaint Investigation and Resolution Procedures is entitled to have an advisor present during any meetings regarding the process (other than meetings between victims and University officials regarding accommodations or protective interim measures) and disciplinary proceedings. Except as otherwise required by law, the advisor may observe, but may not participate in any way whatsoever, including, without limitation, by asking questions or speaking during the meeting or proceeding. The advisor's role is to provide support and/or advice to the party. During meetings and proceedings, the advisor may speak with the party or pass notes in a non-disruptive manner. The Universities reserve the right to remove from the meeting or proceeding any advisor who disrupts the process, or who does not abide by the restrictions on their participation. In addition, please note that the University does not need to cancel or delay a meeting or proceeding simply because an advisor cannot be present. Further, the advisor is not permitted to attend a meeting or proceeding without the advisee.

The personal advisor for a complainant, a student respondent or a non-unit employee respondent can be any person, including an attorney. For respondents who are unit members, the personal advisor shall be a union representative or other University employee pursuant to the respondent's

Weingarten rights. A respondent who is a unit member may choose as an advisor a person who is not a union representative or other University employee, but the unit member will not be allowed two advisors. If the advisor is an attorney, the University's legal counsel may also attend the meeting or proceeding.

Referrals to Title IX Coordinator. Complaints of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation will be referred to the Title IX Coordinator for evaluation. Before starting an administrative investigation, the Title IX Coordinator or his/her designee will determine whether the reported facts, if true, would violate the Sexual Violence Policy and/or the Student Code of Conduct, and may consult with the complainant to obtain more information and discuss his/her options.

Interim Protective Measures. Upon review of a complaint, the University may determine that interim protective measures are necessary or appropriate. The Universities will implement interim measures as described in Section H of the Sexual Violence Policy. Interim measures may also be instituted and/or modified at any point during the investigation and resolution process.

Off Campus Behavior. The Universities may investigate off-campus conduct alleged to violate the EO Plan and/or Student Code of Conduct when such conduct involves behavior by or toward a community member, which (1) occurs during University-sponsored events or the events of organizations affiliated with the University, including study abroad and outside internships; (2) negatively impacts a victim's access to education programs and activities; (3) adversely affects or disrupts the campus community; and/or (4) poses a threat of harm to the campus community.

Grade Disputes. While grade changes must generally be pursued through the academic grade change procedure, a complaint may proceed under these Procedures when a student alleges that a grade was improper because of discrimination, discriminatory harassment, sexual violence, sexual or gender-harassment, domestic or dating violence, stalking or retaliation. The remedy for policy violations in cases pursued under these Procedures may be determined and/or implemented in conjunction with Academic Affairs.

Amnesty. Students may be hesitant to report sexual violence, sexual or gender-harassment, domestic or dating violence, stalking or retaliation out of concern that they, or witnesses, might be charged with violations of the Universities' drug/alcohol policies. While the Universities do not condone such behavior, they place a priority on the need to address sexual violence and other conduct prohibited by the Sexual Violence Policy. Accordingly, a University may elect not to pursue discipline against a student who, in good faith, reports, witnesses or possesses personal knowledge of sexual violence, sexual or gender-harassment, domestic or dating violence, stalking or retaliation.

Conflicts of Interest. If any University official involved in the investigation, resolution or appeal process believes there is a potential or actual conflict of interest regarding their role, they must disclose this conflict in advance to the EO Officer, Title IX Coordinator (where applicable) or designee. Likewise, if a complainant or respondent believes there is a conflict of interest present regarding any University official involved in the investigation, resolution or appeal process, s/he must disclose the conflict in advance to the EO Officer, Title IX Coordinator (where applicable) or designee. If a valid conflict of interest exists, the University will take steps to remedy or eliminate the conflict.

Confidentiality of Process. These Procedures will be conducted as confidentially as reasonably possible to protect the privacy of all involved. The Universities may share information about the allegations with parties, witnesses or others on a need-to-know basis, and shall share information with union representatives pursuant to Mass. Gen. Laws Chapter 150E, or as otherwise required by law. All with whom information is shared shall be advised of the confidential nature of the information and directed not to discuss it with anyone except an advisor or union representative. See Section VI of the Sexual Violence Policy for more information about confidential reporting options.

Joint Investigation. In some circumstances a respondent's conduct may constitute a potential violation of other University conduct policies in addition to the EO Plan and/or the Student Code of Conduct. To avoid duplicative efforts, the University may undertake a joint investigation of the conduct under these Procedures. Based on the findings of the joint investigation, the respondent may be subject to disciplinary action for violations of the EO Plan and/or the Student Code of Conduct, as well as other policy violations.

Preponderance of the Evidence. The standard of review used to evaluate all complaints. Under this standard, conclusions must be "more likely than not." Accordingly, the fact-finder must find that it is more likely than not that the respondent violated the University's EO Plan, Student Code of Conduct or other relevant University policy.

Notice of Meetings and Access to Information. Each party to an investigation will be provided timely notice of meetings at which such party or both parties may be present. The parties will be afforded the same and timely access to any information that the University is aware will be used at any meeting or hearing. Where appropriate or required by law, the University may redact the complainant's name and other identifying information from any information provided to the respondent, including the specific charge and the complaint or related materials.

Training of Officials Who Participate in the Investigation and Resolution Process. Proceedings pursuant to these Procedures are conducted by officials who receive annual training on the issues of discrimination, discriminatory harassment and retaliation. Officials also receive training specific to matters of sexual and gender-based harassment, domestic violence, dating violence, stalking, as well as how to conduct an investigation that protects the safety of complainants, promotes accountability, and provides all parties with the same opportunities to be accompanied to meetings or proceedings by an advisor of their choice.

Refusal of Participation. In cases where a complainant or respondent (or both) refuses or fails to participate in the investigation and resolution process, the University may continue the process without the complainant and/or respondent's participation. The failure of the respondent to participate in the investigation and resolution process will not prevent the University from imposing discipline or other sanctions when a violation is found.

Right to File an Outside Complaint. Individuals have the right to file charges of discrimination, discriminatory harassment, sexual violence, sexual or gender-harassment, domestic or dating violence, stalking or retaliation at any time with the appropriate government agency, with or without utilizing these Procedures. More information about filing an outside complaint can be found in the Non-Discrimination and Harassment Policy and the Sexual Violence Policy, both of which are contained in the EO Plan.

Concurrent Criminal or Civil Proceedings. Persons may be accountable to both the Universities and the state for conduct that constitutes potential violations of the EO Plan and/or Student Code

of Conduct and state or federal law. University investigations may be conducted before, after or simultaneously with civil or criminal proceedings, and University investigations are not subject to challenge on the grounds that civil or criminal charges involving the same conduct have been dismissed or reduced. When a person has been charged with a crime or a violation of civil law, the Universities will neither request nor agree to special consideration for the individual solely because of his/her student status. Persons subject to parallel criminal charges shall be instructed that their statements and/or other information supplied by them may be subject to subpoena.

When a criminal investigation of an incident of sexual violence, sexual or gender-based harassment, domestic or dating violence, stalking or retaliation is also occurring, the University will not delay its investigation due to the criminal investigation, unless law enforcement requests to gather evidence. When law enforcement makes such a request, the University will typically resume its investigation within three to ten days.

Withdrawal of Complaint. The complainant may withdraw a complaint at any point during the investigation. The EO Officer, Title IX Coordinator, or designee, however, may determine, in their discretion, that the allegations raised in the complaint warrant further investigation despite the complainant's desire to withdraw the complaint. See Section VII(A) of the Sexual Violence Policy for more information on the circumstances under which the University may elect to proceed with an investigation of alleged sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation.

MODEL COMPLAINT FORM

**COMPLAINT FORM**

This form is used to report information necessary to initiate an investigation of alleged discrimination, harassment, sexual or gender-harassment, domestic or dating violence, stalking or retaliation pursuant to the Universities' Equal Opportunity, Diversity and Affirmative Action Plan ("EO Plan") and/or the Student Code of Conduct. All reasonable efforts will be made to maintain the involved parties' confidentiality during the investigation and resolution procedure.

It is unlawful to retaliate against a student, employee or any other person affiliated with the University for filing a complaint or for cooperating in an investigation of a complaint.

All parties to a complaint may have a personal advisor (for union employees this may be a union representative) assist them throughout the process, in accordance with Sexual Violence Policy, Student Code of Conduct and applicable collective bargaining agreements.

Date Filed: \_\_\_\_\_ Date(s) of Alleged Incident(s): \_\_\_\_\_

A. Name (Print): \_\_\_\_\_

B. Check One: Student: \_\_\_\_\_ Employee: \_\_\_\_\_

Other: \_\_\_\_\_ (describe relationship to University)

C. Type of alleged discrimination or discriminatory harassment:

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Race                | <input type="checkbox"/> Color              | <input type="checkbox"/> Religion        |
| <input type="checkbox"/> National Origin     | <input type="checkbox"/> Age                | <input type="checkbox"/> Disability      |
| <input type="checkbox"/> Sex/Gender          | <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Gender Identity |
| <input type="checkbox"/> Gender Expression   | <input type="checkbox"/> Marital Status     | <input type="checkbox"/> Veteran Status  |
| <input type="checkbox"/> Genetic Information | <input type="checkbox"/> Other: _____       |  |

D. Type of alleged sexual violence or other prohibited conduct:

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Rape              | <input type="checkbox"/> Sexual Exploitation     | <input type="checkbox"/> Incest          |
| <input type="checkbox"/> Statutory Rape    | <input type="checkbox"/> Aiding in the Violence  | <input type="checkbox"/> Stalking        |
| <input type="checkbox"/> Sexual Assault    | <input type="checkbox"/> Domestic Violence       | <input type="checkbox"/> Dating Violence |
| <input type="checkbox"/> Sexual Harassment | <input type="checkbox"/> Gender-Based Harassment |  |
| <input type="checkbox"/> Other _____       |  |  |

E.  Retaliation

F. Name of individual(s) you believe harassed you, discriminated or retaliated against you, or engaged in violence toward you: \_\_\_\_\_

\_\_\_\_\_

G. List any witnesses: \_\_\_\_\_

\_\_\_\_\_



**NOTICE TO RESPONDENT**

**Date:** \_\_\_\_\_

**To:** \_\_\_\_\_, Responding Party

**From:** \_\_\_\_\_, Administrative Investigator

**Subject:** Complaint of Discrimination, Discriminatory Harassment, Sexual Violence, Sexual Harassment, Gender-Based Harassment, Domestic Violence, Dating Violence, Stalking and/or Retaliation

This is to notify you that on \_\_\_\_\_ a complaint alleging a violation of the University's Equal Opportunity, Diversity and Affirmative Action Plan ("EO Plan") and/or the Student Code of Conduct was filed against you with the University. A copy of the complaint is attached, as is a copy of the complaint investigation and resolution procedure. Please submit to me a written response to the complaint.

An Administrative Investigator will be contacting you to schedule an appointment to discuss this matter. Please be advised that it is unlawful to retaliate against a student, employee or any other person for filing a complaint or for cooperating in an investigation related thereto.

All reasonable efforts will be made to maintain confidentiality during the complaint procedure.

If you are an employee, any disciplinary sanctions imposed as a result of this investigation shall be regarded as an administrative action subject to all terms and conditions of applicable collective bargaining agreements or personnel policies.

All questions concerning this matter should be addressed to the Equal Opportunity Officer, Title IX Coordinator or Administrative Investigator at \_\_\_\_\_.

Finally, all parties to a complaint may have a personal advisor (for union employees this may be a union representative) assist them throughout the process, in accordance with Sexual Violence Policy, Student Code of Conduct and applicable collective bargaining agreements.

## **APPENDIX 4**

### **GUIDELINES FOR CAMPUS POLICIES AGAINST DISCRIMINATION, DISCRIMINATORY HARASSMENT AND RETALIATION**

The State Universities have promulgated a policy prohibiting discrimination and harassment based on race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status, and affirming their collective commitment to a diverse learning and living environment where intolerance and bigotry are looked upon with disfavor. With this Policy, the Universities call upon the individual campuses to develop environments that embrace the accords of civility and human dignity as preconditions to the establishment of a community and that achieve optimum utilization of its human and intellectual resources.

These Guidelines are established in order to provide guidance to the individual campuses in their effort to develop and implement a campus policy consistent with the State Universities' policy. The Guidelines consist of two components, required elements and suggested activities.

#### **REQUIRED ELEMENTS**

All individual University policies against discrimination and discriminatory harassment on the basis of membership in a protected class, particularly including those policies addressing discrimination and/or discriminatory harassment based on race, religion, and national origin, must contain certain elements, including:

1. A firm, unequivocal statement condemning discrimination and embracing multicultural/multiracial pluralism.
2. Procedures for the periodic and wide dissemination and publicity of the written policy.
3. A program of educational activities designed to enlighten faculty, librarians, administrators, staff and students with regard to:
  - developing an appreciation for diversity and pluralism;
  - developing greater awareness of the multiple ways in which racial, religious or cultural insensitivity and hostility may be manifested;
  - understanding ways in which the dominant society manifests and perpetuates racism; and
  - learning ways in which to prevent and combat racial, religious and cultural insensitivity and intolerance.
4. Determination of strategies and efforts to be undertaken for the purpose of institutional analysis to reveal institutional factors which give rise to racism and other forms of intolerance, insensitivity and discriminatory actions against members of protected classes. Remedial actions will be developed for all revealed institutional factors.
5. Incorporation of the spirit of this Policy into the official campus code of conduct for students.

6. Specific procedures of recording reported incidents of racial, cultural or religious harassment or violence, events and related confrontations. Confidentiality will be afforded any reporting individual wishing to remain anonymous, but will be offered only insofar as it does not violate the rights of the respondents or charged parties.

#### SUGGESTED ACTIVITIES

Each University must determine the specific programs and activities it will carry out in the process of implementing the policy objectives. These activities should include those that would address deterrence, education, institutional analysis, monitoring, resource development, counseling, and sanctions for unlawful and/or prohibited behavior. What follows below represents many suggested activities, which the Universities might consider undertaking in addition to those required above. This list is not intended to represent an exhaustive set of activities.

1. Develop approaches to incorporate racial and cultural sensitivity training as a component of staff and faculty development efforts;
2. Apprise incoming students of the policy and expected standards of behavior during orientation sessions;
3. Include a synopsis of the policy with all letters of acceptance sent to students;
4. Incorporate information on the policy during all student and employee recruitment efforts - these activities help make a college more attractive to students and employees interested in a safe environment;
5. Encourage and support research and scholarly activity which examines cultural diversity, racism, and strategies for combating racism;
6. Develop residential unit programs for promoting living and learning environments that foster interracial and intercultural awareness and sensitivity - films, speakers, workshops and forums within the dormitories help facilitate these promotions; and
7. Develop mechanisms to assist the institution in monitoring the racial climate at the University and identify areas needing remedial attention.

## **APPENDIX 5**

### **ADVISORY COMMITTEE FOR EQUAL OPPORTUNITY, DIVERSITY AND AFFIRMATIVE ACTION**

The President of each University shall appoint an Equal Opportunity, Diversity and Affirmative Action Advisory Committee. This Committee shall consist of members representing the respective campus constituencies of administration, faculty and librarians, and staff, and should attempt to include student(s). The Committee shall include appropriate representation of persons of color, women and persons with disabilities. Each President shall consult with his or her EO Officer with respect to these appointments. The EO Officer of each University shall be an ex-officio member of the Committee.

#### **PURPOSE**

The purposes of the Advisory Committee are:

1. to serve as an advisory group to the President;
2. to make recommendations to the President as well as to respective campus and governance committees concerning effective implementation of the Universities' Equal Opportunity, Diversity and Affirmative Action Plan;
3. to evaluate institutional compliance with respect to all equal opportunity, diversity, and affirmative action programs and to recommend appropriate strategies to the President; and
4. to keep informed as to federal and state laws and regulations as well as institutional policies impacting equal opportunity, diversity, and affirmative action.

#### **RESPONSIBILITIES**

The responsibilities of the Advisory Committee include, but are not limited to, the following:

1. to establish its own rules of order with respect to election of officers, meeting times, quorum restrictions, etc.;
2. to furnish a report of its activities and recommendations to the President upon her/his request, but at least annually;
3. if the EO Officer deems it appropriate, to appoint a member to sit on a search committee as a non-voting member to assure that the search committee complies with affirmative action/equal opportunity policies and regulations; and
4. each University will develop its own policies with respect to additional functions or tasks which may be assigned to this Committee and with respect to Committee members sitting on search committees.

---

<sup>i</sup> This EO Plan incorporates by reference, and where applicable, the requirements of: Titles VI and VII of the Civil Rights Act of 1964; Title VI of the Civil Rights Act of 1968; Titles I and II of the Civil Rights Act of 1991; Title IX of the Education Amendments of 1972 and its regulations found at 34 C.F.R. part 106; the Equal Pay Act of 1963;

---

Civil Rights Restoration Act of 1988; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990, as amended; Section 402 of the Vietnam-era Veterans Readjustment Act of 1974, Uniformed Services Employment and Reemployment Rights Act; the Age Discrimination Act of 1975; the Age Discrimination in Employment Act of 1967, as amended; the Family and Medical Leave Act of 1993; the Genetic Information Nondiscrimination Act of 2008; the reauthorized Violence Against Women Act, Pub. Law No. 113-4 (2013); the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; the Higher Education Act of 1965, as amended; Federal Executive Order 11246 of 1965, as amended by Executive Order 11375 of 1967; Federal Executive Order 12900 of 1994; Federal Executive Order 13145 of 2000; Federal Executive Order 13160 of 2000; Federal Executive Order 13166 of 2000; Massachusetts Civil Rights Act; Massachusetts General Laws Chapters 151B, 151C, and Chapter 149; St.2011, c. 199 (H3810), An Act Relative to Gender Identity; directives of the BHE, the Universities' Boards of Trustees and the Commonwealth; and other applicable local, state and federal constitutions, statutes, regulations and executive orders.

<sup>ii</sup> Section 106.13 of the Title IX regulations provides: "This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine." 34 C.F.R. § 106.13. Massachusetts Maritime Academy voluntarily complies with the provisions of this EO Plan that incorporate the requirements of, or make reference to compliance with, Title IX.

## ATTACHMENT B

### COMPLIANCE CHECKLIST: MASSACHUSETTS STATE UNIVERSITIES' SEXUAL VIOLENCE POLICY AND COMPLAINT INVESTIGATION PROCEDURES

#### VAWA/CAMPUS SAVE ACT

CONTENT/TOPIC	YES	NO	ACTION ITEM
<b>Statistical Reporting &amp; Warnings (Clery)</b>			
Statistical reporting of incidents of sex offenses reported to campus security authorities or local police	N/A		Training
Statistical reporting of incidents of domestic violence, dating violence, or stalking reported to campus security authorities or local police	N/A		Training
Statistical reporting as “hate crimes” offenses that were motivated by the victim’s actual or perceived gender identity or national origin	N/A		Training
A requirement to withhold as confidential the names of victims when issuing timely warnings	Section VII; Complaint Procedures		Training
<b>Policy Statements (Clery ASRs)</b>			
A statement of policy regarding programs to prevent domestic violence, dating violence, sexual assault, and stalking	Section IX		To be included in each University’s ASR
A statement of policy regarding procedures for responding to a report of domestic violence, dating violence, sexual assault or stalking, including the standard of evidence that will apply during a disciplinary proceeding	Sections I, VI; Complaint Procedures		To be included in each University’s ASR
A statement that a written explanation of rights and options will be given to persons who report domestic violence, dating violence, sexual assault, or stalking	Sections VIII, IX		Training

Adapted from “The Campus SaVE Act: A Compliance Guide and Compliance Checklist,” prepared by EduRisk Solutions/ United Educators (2014); and “Checklist: VAWA Amendments to Clery,” prepared by the Clery Center for Security on Campus (2014).

CONTENT/TOPIC	YES	NO	ACTION ITEM
(regardless of where the offense occurred)			
<b>Policy Statements (Clery ASRs)</b>			
A prohibition on retaliation by University officers, employees, or agents against a person who exercises his or her rights or responsibilities under any provision of the Campus SaVE Act	Sections I, II, VI; Complaint Procedures		Training
<b>Procedural Notifications for Inclusion in ASRs</b>			
A statement of the possible sanctions and protective measures that the Universities may impose after a final determination regarding stalking, rape, acquaintance rape, domestic and/or dating violence, or sexual assault	Section VIII; Complaint Procedures		To be included in each University's ASR
A statement of procedures victims should follow after a sex offense, incident of domestic violence, dating violence, sexual assault, or stalking, including written information about:	Sections V, VI; Appendix A		To be included in each University's ASR
<ul style="list-style-type: none"> <li>• the importance of preserving evidence for proof of criminal domestic violence, dating violence, sexual assault, or stalking, or for obtaining a protection order;</li> <li>• to whom offenses should be reported; and</li> <li>• options regarding notifying local police and campus authorities, including the victim's right to: <ul style="list-style-type: none"> <li>▪ notify either the local police or campus authorities;</li> <li>▪ obtain assistance from campus authorities to notify the local police;</li> <li>▪ decline to notify the local police or campus authorities</li> </ul> </li> </ul>			
Statement of rights of victims and the Universities' responsibilities regarding orders of protection, no-contact orders, restraining orders, or similar orders issued by a criminal, civil, or tribal court	Sections V, VIII		To be included in each University's ASR

CONTENT/TOPIC	YES	NO	ACTION ITEM
<b>Disciplinary Procedures for Cases of Alleged Domestic Violence, Dating Violence, Sexual Assault or Stalking</b>			
A description of each type of disciplinary proceeding used by the Universities for cases of alleged domestic violence, dating violence, sexual assault, and stalking	Section IX; Complaint Procedures		To be included in each University's ASR
A statement that the procedures will provide prompt, fair, and impartial investigation and resolution	Section IX; Complaint Procedures		To be included in each University's ASR
A description of the steps, anticipated timelines, and decision-making process for type of disciplinary proceeding	Complaint Procedures		To be included in each University's ASR
A description of the range of protective measures that the Universities may offer to a victim following an allegation of domestic violence, dating violence, sexual assault and/or stalking	Sections VIII, IX		To be included in each University's ASR
A statement that accommodations/protective measures are provided upon request and if they are reasonably available, regardless of whether the victim reports the incident to campus police or local law enforcement	Section VIII		To be included in each University's ASR
A statement that the Universities will provide written notification to victims about options for, and available assistance in, changing academic, living, transportation, and working situations if those changes are requested by the victim and reasonably available, regardless of whether the victim reports the offense to campus or local police	Sections VIII, IX		To be included in each University's ASR
Information on how to file a disciplinary complaint	Section VI; Appendix A; Complaint Procedures		To be included in each University's ASR
A description of the standard of the evidence that will be used during disciplinary proceedings	Complaint Procedures		To be included in each University's ASR
<b>Disciplinary Procedures for Cases of Alleged Domestic Violence, Dating Violence, Sexual Assault or Stalking</b>			
Information on the possible sanctions that the Universities may impose following the results of any disciplinary proceeding	Complaint Procedures		To be included in each University's ASR

CONTENT/TOPIC	YES	NO	ACTION ITEM
A statement that the procedures will be conducted by officials who receive annual training on issues related to domestic violence, dating violence, sexual assault, and stalking, as well as how to conduct a hearing process that protects victim safety and promotes accountability	Section IX; Complaint Procedures		To be included in each University's ASR
A statement that both accuser and accused are entitled to the same opportunity to have others present during an internal disciplinary proceeding, including the opportunity to be accompanied to any related meeting by an advisor of their choice	Section IX; Complaint Procedures		To be included in each University's ASR
A statement that both accuser and accused will receive simultaneous written notice of:	Section IX; Complaint Procedures		To be included in each University's ASR
<ul style="list-style-type: none"> <li>• the outcome of the disciplinary hearing;</li> <li>• the Universities' appeal procedures;</li> <li>• any change to the results before the results are final; and</li> <li>• when the results become final</li> </ul>			
Information about how the Universities will protect victim confidentiality, including how publicly available records will be kept without disclosing identity, to the extent permissible by law	Section V		To be included in each University's ASR
Information about how the Universities will maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the Universities to provide the accommodations or protective measures	Section VIII; Appendix A		To be included in each University's ASR
<b>Disciplinary Procedures for Cases of Alleged Domestic Violence, Dating Violence, Sexual Assault or Stalking</b>			
A statement that the Universities will provide written notification to students and employees about counseling, health, mental health, victim advocacy, legal assistance, and other services available on and off campus	Sections VIII, IX		To be included in each University's ASR
<b>Education and Training</b>			

CONTENT/TOPIC	YES	NO	ACTION ITEM
A statement regarding the educational programming and training offered by the Universities including:	Section X		To be included in each University's ASR
<ul style="list-style-type: none"> <li>• primary prevention programs for incoming students and new employees; and</li> <li>• ongoing prevention and awareness campaigns for current students and faculty</li> </ul>			
A statement that the Universities' education programs include:	Section X		To be included in each University's ASR
<ul style="list-style-type: none"> <li>• a statement prohibiting domestic violence, dating violence, sexual assault, and stalking</li> <li>• the applicable jurisdiction's definition of domestic violence, dating violence, sexual assault, and stalking</li> <li>• the jurisdiction's definition of consent with regard to sexual activity</li> <li>• safe and positive options for bystanders to take when witnessing potential domestic or dating violence, sexual assault or stalking</li> <li>• information about risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks</li> </ul>			
Provide educational programming for all incoming students and new employees concerning:	(See Section X)		Complete training by 3/7/2015
<ul style="list-style-type: none"> <li>• rape and acquaintance rape</li> <li>• domestic violence and dating violence</li> <li>• sexual assault</li> <li>• stalking</li> <li>• primary prevention and awareness programs</li> </ul>			
<b>Education and Training</b>			
Conduct Campus Climate Survey	(See Section X)		Complete training by 3/7/2015
Conduct Bystander Intervention Training	(See Section X)		Complete training by 3/7/2015
Provide specialized training for all employees involved in the complaint and investigation procedures on issues related to	(See Section X)		Complete training by 3/7/2015

CONTENT/TOPIC	YES	NO	ACTION ITEM
<ul style="list-style-type: none"> <li>• domestic violence and dating violence</li> <li>• sexual assault</li> <li>• stalking</li> <li>• how to conduct an investigation</li> <li>• and conducting a hearing process that protects the safety of victims and promotes accountability</li> </ul>			
Ongoing prevention and awareness programs should be offered to all employees	(See Section X)		Training

**ATTACHMENT B**

**COMPLIANCE CHECKLIST: MASSACHUSETTS STATE UNIVERSITIES’  
SEXUAL VIOLENCE POLICY AND COMPLAINT INVESTIGATION PROCEDURES**

TITLE IX (INCLUDING OCR AND WHITE HOUSE TASK FORCE GUIDANCE)

<b>CONTENT TOPIC</b>	<b>YES</b>	<b>NO</b>	<b>ACTION ITEM</b>
<b>Nondiscrimination Policies: Content and Distribution</b>			
A policy statement that the Universities do not discriminate on the basis of sex in their education programs	Section I; also EO Plan (Section II)		N/A
A policy statement that both sexual violence and sexual harassment are types of sex discrimination	Section I		N/A
An inclusive policy provision that persons of all protected classes, including persons with disabilities, LGBT and gender non-conforming persons, have the same rights and protections under Title IX	Section I		N/A
Definition of sexual violence and sexual harassment	Section II		N/A
Examples of the types of conduct prohibited by the policy	Section II		N/A
A statement that questions about Title IX can be directed to the Title IX Coordinator or to OCR	Section I		N/A
The Title IX Coordinator’s name, office address, telephone number and email address	Section I; campus websites		Update campus websites
A jurisdictional statement that the Universities’ policy applies to sexual violence or sexual harassment that occurs outside a University program, if the conduct negatively affects a victim’s University experience or the overall University environment	Section I		N/A

CONTENT TOPIC	YES	NO	ACTION ITEM
<b>Nondiscrimination Policies: Content and Distribution</b>			
A statement that the policy is disseminated to:	EO Plan (Section III)		N/A
<ul style="list-style-type: none"> <li>• students;</li> <li>• administrators, faculty, and other employees;</li> <li>• applicants for admission; and applicants for employment</li> </ul>			
A statement that the policy is available:	EO Plan (Section III)		N/A
<ul style="list-style-type: none"> <li>• on the Universities' websites;</li> <li>• in formats accessible to persons with disabilities;</li> <li>• in hard copy at multiple campus locations; and</li> <li>• in both printed and electronic publications, including student handbooks, codes of conduct, and catalogs</li> </ul>			
<b>Designating Title IX Coordinators</b>			
An identification of the Title IX Coordinator and Deputy Coordinators, if any	Section I; campus websites		Update campus websites
An identification of the senior coordinator among those with deputy or supporting roles	Campus websites		Update campus websites
<b>Designating Title IX Coordinators</b>			

CONTENT TOPIC	YES	NO	ACTION ITEM
A statement of the Title IX Coordinator's duties to:	Section I; EO Plan (Title IX Coordinator Job Description)		N/A
<ul style="list-style-type: none"> <li>investigate or oversee the investigation of all incidents of alleged sexual violence or sexual harassment;</li> <li>ensure that consistent standards and practices apply to all such investigations;</li> <li>identify and address patterns or systemic problems;</li> <li>make it clear that he or she is available to meet with persons who believe sexual violence or sexual harassment has occurred;</li> <li>assist campus security or law enforcement as needed; and</li> <li>keep a confidential log of complaints to help identify any students or employees who are the subject of multiple assault or sexual harassment complaints</li> </ul>			
<b>Complaint Procedures for Sexual Violence or Sexual Harassment Allegations</b>			
Adoption and publication of complaint procedures for complaints of alleged sexual violence and sexual harassment	Complaint Procedures		N/A
A statement that the complaint procedures apply to student complaints of sexual violence or sexual harassment against other students, employees, or third parties	Complaint Procedures		N/A
An explanation of where and to whom students should go if they are victims of sexual violence or sexual harassment	Sections V, VI; Appendix A		N/A
Information on how to file complaints	Complaint Procedures		N/A
Information about counseling and other victim support services available either on or off University grounds	Section V		N/A
<b>Complaint Procedures for Sexual Violence or Sexual Harassment Allegations</b>			
An explanation of how the Universities will respond to allegations of sexual violence, including any interim measures it may take, such as a	Sections I, VI, VIII; Complaint		N/A

<b>CONTENT TOPIC</b>	<b>YES</b>	<b>NO</b>	<b>ACTION ITEM</b>
“no contact” order between the parties	Procedures		
A prohibition of retaliation against complainants and anyone participating in an investigation	Sections I, II, VI; Complaint Procedures		N/A
A statement that for mediation or other informal resolution procedures may not be used in cases of alleged sexual violence	Complaint Procedures		N/A
A statement that for mediation or other informal resolution procedures in cases of alleged sexual harassment:	Complaint Procedures		N/A
<ul style="list-style-type: none"> <li>• the Universities will not ask a complainant to work out problems directly with the accused individual; and</li> <li>• the Universities will notify the parties of the right to end the informal resolution procedure at any time and pursue a formal complaint</li> </ul>			
A statement of the typical time frames for all major stages of the process, including time frames for:	Complaint Procedures		N/A
<ul style="list-style-type: none"> <li>• conducting a full investigation of the complaint;</li> <li>• advising both parties of the outcome of the complaint; and</li> <li>• filing appeals by the parties</li> </ul>			
A statement that the Universities aim to complete the complaint process within 60 days, unless multiple complainants or incidents are involved	Complaint Procedures		N/A
A statement of the process used to extend the typical time frames when necessary	Complaint Procedures		N/A
A statement that periodic status updates will be provided to both parties during the complaint process	Complaint Procedures		N/A
<b>Responding to and Investigating Incidents/Meeting with Complainants</b>			
A statement that victims of alleged sexual violence or sexual harassment will be provided:	Sections V, VI, VIII, IX; Appendix A		N/A

CONTENT TOPIC	YES	NO	ACTION ITEM
<ul style="list-style-type: none"> <li>• information regarding all internal options the complainant can pursue, including formal and informal resolution procedures;</li> <li>• a statement that the Universities will treat the parties equitably;</li> <li>• information regarding the importance of seeking immediate medical attention for sexual violence;</li> <li>• information regarding other health care and counseling services, including those available both on and off campus;</li> <li>• options for avoiding contact with alleged perpetrators, including academic and housing changes;</li> <li>• a statement that when taking steps to separate complainants from alleged perpetrators, the Universities attempt to minimize the burden on the complainants;</li> <li>• a statement that the Universities prohibit retaliation and that the Universities will take action to protect them from it;</li> <li>• information on the complainant’s right to file criminal charges;</li> <li>• information on assistance with filing criminal charges, if desired;</li> <li>• information on the complainant’s right not to file criminal charges; and</li> <li>• written documentation of the matters discussed, including a summary of the complainant’s options and the support resources available</li> </ul>			
<b>Conducting Internal Investigations</b>			
A statement of the circumstances under which the Universities will conduct investigation of incidents of alleged sexual violence or sexual harassment	Sections I, VI		N/A
<b>Responding to and Investigating Incidents</b>			
A statement that investigations will be kept as confidential as possible and that information is disclosed only on a “need to know” basis, to the extent permissible by law	Section V		N/A
Information on how the Universities process requests for confidentiality	Section VII		N/A

<b>CONTENT TOPIC</b>	<b>YES</b>	<b>NO</b>	<b>ACTION ITEM</b>
Information on how the Universities process requests for no investigation	Section VII		N/A
A prohibition of retaliation by the alleged perpetrator, any witness or others who participate in an investigation	Sections I, II, VI; Complaint Procedures		N/A
<b>Conducting Investigations and Appeals</b>			
A statement that the “preponderance of the evidence” standard is used in disciplinary proceedings related to sexual violence or sexual harassment	Complaint Procedures		N/A
A definition of the “preponderance of the evidence”	Complaint Procedures		N/A
A statement that both parties are given similar and timely access to any information that will be used at the hearing	Section IX; Complaint Procedures		N/A
A statement that both parties are given the same opportunity to present relevant evidence and witnesses	Section IX; Complaint Procedures		N/A
A statement that the parties may bring an advisor of their choice to any meeting related to an investigation or appeal, and an explanation of the advisor’s role	Section IX; Complaint Procedures		N/A
A description of the documentation of all investigation and appeal proceedings	Complaint Procedures		N/A
<b>Providing Notice of Outcome and Appeal Rights</b>			
A statement that both parties receive simultaneous written notice of the outcome of the hearing and of any appeal process	Section IX; Complaint Procedures		N/A
A statement that victims of sexual violence or sexual harassment will be informed of any sanction imposed on the perpetrator that relates directly to the victim, such as a “no contact” order, transfer to different classes or housing, or a suspension	Complaint Procedures		N/A

<b>CONTENT TOPIC</b>	<b>YES</b>	<b>NO</b>	<b>ACTION ITEM</b>
A statement that in cases of alleged sexual violence, both parties will be informed of the investigation results regardless of whether the University concludes an assault was committed	Complaint Procedures		N/A
A statement of the parties' equal appeal rights	Section IX; Complaint Procedures		N/A
<b>Title IX Training - Employees and Resident Advisors</b>			
The Universities must provide comprehensive and sustained training on prevention, policy awareness and procedure awareness to all campus constituencies	(See Section X)		Training
The Universities must provide training on how to report sexual violence or sexual harassment to:	(See Section X)		Training
<ul style="list-style-type: none"> <li>• administrators</li> <li>• faculty</li> <li>• campus police</li> <li>• resident advisors</li> <li>• other employees likely to witness or receive reports of sexual harassment or sexual violence</li> </ul>			
<b>Title IX Training - Employees and Resident Advisors</b>			
The training must include practical information on:	(See Section X)		Training

CONTENT TOPIC	YES	NO	ACTION ITEM
<ul style="list-style-type: none"> <li>• how to identify sexual violence and sexual harassment</li> <li>• the Universities' responsibilities to address sexual violence and sexual harassment</li> <li>• how to recognize warning signals</li> <li>• the dynamics of sexual violence</li> <li>• how to report sexual violence and sexual harassment to appropriate University officials</li> <li>• how to provide information to victims regarding confidential reporting options</li> </ul>			
The Universities must provide specialized training to those designated as Responsible Employees, including information on:	(See Section X)		Training
<ul style="list-style-type: none"> <li>• understanding their reporting obligations</li> <li>• confidentiality</li> <li>• students' rights under Title IX</li> <li>• students' remedies under Title IX</li> <li>• available student services</li> </ul>			
<b>Title IX - Students</b>			
The Universities should provide training to students on:	(See Section X)		Training

CONTENT TOPIC	YES	NO	ACTION ITEM
<ul style="list-style-type: none"> <li>• students' rights under Title IX</li> <li>• what behaviors constitute sexual violence and sexual harassment</li> <li>• how to report sexual violence or sexual harassment</li> <li>• the different reporting options, including confidential reporting options</li> <li>• the Universities' Sexual Violence Policy</li> <li>• the Universities' disciplinary and complaint investigation procedures</li> <li>• the potential consequences for violating the Universities' Sexual Violence Policy</li> <li>• how the Universities analyze complaints</li> <li>• what to do if they learn of an incident of sexual violence or sexual harassment</li> <li>• the role of alcohol and/or drugs</li> <li>• amnesty</li> <li>• consent</li> <li>• hostile environment</li> <li>• incapacitation</li> <li>• the importance of seeking prompt medical attention</li> <li>• Prohibition against retaliation</li> </ul>			
<b>Title IX Training - Individuals Handling Complaint Procedures/Key Employees</b>			
The Universities must provide annual training for anyone involved in implementing the complaint investigation procedures, including:	(See Section X)		Training

CONTENT TOPIC	YES	NO	ACTION ITEM
<ul style="list-style-type: none"> <li>• Title IX Coordinators and Deputy Coordinators</li> <li>• EO Officers</li> <li>• Campus Police</li> <li>• Administrative Investigators</li> <li>• Reviewing Body Members</li> <li>• Appellate Body Members</li> <li>• Licensed Counselors</li> <li>• Nonprofessional Counselors/Victim Advocates</li> </ul>			
The training must address:	(See Section X)		Training
<ul style="list-style-type: none"> <li>• students' rights under Title IX</li> <li>• the Universities' Sexual Violence Policy and complaint and investigation procedures</li> <li>• the availability of protective measures, accommodations, and support resources</li> <li>• required notifications to students and parties</li> <li>• the psychology/dynamics of sexual violence and working with the trauma-impaired</li> <li>• consent and incapacitation</li> <li>• the role of alcohol and drugs</li> <li>• hostile environment</li> <li>• handling complaints of sexual violence or sexual harassment</li> <li>• how to conduct investigations</li> <li>• how to interview victims, the accused and witnesses</li> <li>• proper/improper questioning</li> <li>• how to evaluate evidence impartially and how to evaluate credibility</li> <li>• how to maintain documentation</li> <li>• conflicts of interest</li> <li>• the preponderance of the evidence standard</li> </ul>			



## ATTACHMENT C



Alison Little Sabatello  
Direct Dial: 617-330-7094  
E-mail: ASabatello@rubinrudman.com

### MEMORANDUM

To: Dena Papanikolaou, Board of Higher Education

From: Alison Little Sabatello

cc: Vincent Pedone, James Cox

Re: Summary of Proposed Changes to the Massachusetts State Universities' Equal Opportunity, Diversity and Affirmative Action Plan

Date: November 21, 2014

---

#### Contextual Changes

The focus of the proposed amendments to the Plan is to achieve compliance with:

- Title IX of the Education Amendments of 1972 and its regulations at 34 CFR part 106;
- the reauthorized Violence Against Women Act (“VAWA”), which included the Campus Sexual Violence Elimination (“SaVE”) Act, and its regulations at 34 CFR part 668 (effective July 1, 2015); and
- the Clery Act.

The proposed amendments to the Massachusetts State Universities' Equal Opportunity, Diversity and Affirmative Action Plan (“EO Plan”) conform to the recently-issued guidance documents from the Department of Education and the White House Task Force to Protect Students from Sexual Assault.

#### Organizational Changes

1. For ease of use and accessibility, a separate Definitions and Terms section has been added at Section III.

2. The Policy Against Discrimination, Discriminatory Harassment and Retaliation has moved to Section IV.
3. The current Policy Against Sexual Harassment (Including Sexual Assault & Violence) has been replaced with a more comprehensive Policy on Sexual Violence (Including Sexual Harassment, Gender-Based Harassment, Domestic Violence, Dating Violence and Stalking) (“Sexual Violence Policy”) at Section V.
4. To keep the substantive non-discrimination policies grouped together, the Policies for Reasonable Accommodations for Persons with Disabilities has moved to Section VI from Section VIII.
5. A Mandatory Child Abuse Reporting Policy has been removed from the draft Sexual Violence Policy and added to the EO Plan at Section VII.
6. The Contracting and Purchasing section has moved to Section VIII; the Policy Awareness Procedures at Section II has moved to Section XII; the Responsibility for Plan Implementation section has moved to Section IX; and the Affirmative Action Hiring Procedures at Section V have moved to Section X.
7. A Monitoring and Goals section has been reintroduced to the EO Plan at Section IX. (The Section reflects the Universities’ actions in these regards at the local campus level.)
8. A Position Description for Title IX Coordinator is added to the Appendices at Appendix 2.
9. The current Discrimination Complaint Procedures at Appendix 2 and the Title IX Complaint Procedures at Appendix 3 have been eliminated and replaced with a singular set of Complaint Investigation and Resolution Procedures at Appendix 3.

#### Substantive Changes

1. At Section II, the Policy Statement on Non-Discrimination and Diversity will be revised to conform to the more direct and plain-language format advocated by the Department of Education.
2. At Section III, the Policy Awareness Procedures will be updated to address the availability of policy statements in formats accessible to persons with disabilities.
3. In Section VI, certain definitions will be updated to conform to current law and federal guidance. Other minor revisions will be made to harmonize Section VI with the provisions of the new Sexual Violence Policy and Complaint Investigation and Resolution Procedures.
4. The Sexual Violence Policy revises the existing Sexual Harassment Policy to conform to the substantive and procedural requirements of Title IX, the Campus SaVE Act and the Clery Act as currently interpreted by the federal government. As the requirements are comprehensive, I point your attention to the two Compliance Checklists I have provided.

5. The new Complaint Investigation and Resolution Procedures mark the most significant departure from the current EO Plan.

The current EO Plan contains two distinct complaint procedures: (1) one for so-called “Title IX issues,” including sexual harassment, sexual violence, domestic violence, dating violence and stalking; and (2) one for all other issues of discrimination, discriminatory harassment or retaliation. Furthermore, under the current EO Plan, all student complaints against other students, no matter the basis, were processed pursuant to each campus’s student conduct procedures.

The new Complaint Investigation and Resolution Procedures will unify the existing sets of procedures into a single set of procedures with universal application to all members of the campus communities, including students. Among the primary reasons for synthesizing the existing procedures into a universal set of procedures are:

- to minimize confusion as to the application of the complaint procedures;
- to ease confusion and discrepancies across the campuses in the administration of the procedures;
- to centralize and minimize the number of employees required to be trained by federal law in the process of complaint investigations as well as the substantive issues of sexual violence, sexual harassment, relationship violence and other prohibited conduct;
- to take into account the situations in which complainants present allegations of mixed issues (for example, a sexual assault plus a race discrimination claim);
- to minimize the chance that employee complaints and student complaints will be handled under different standards and by persons with differing levels of training;
- to ensure consistency of response to all allegations of prohibited conduct, no matter the position or identity of the complainant; and
- to allow for the conclusion of the investigative process within the 60-day period advocated by the Department of Education.

The proposed Complaint Investigation and Resolution Procedures eliminate the Step 3 review provided under current sets of procedures. Rather, the proposed Procedures consist of investigative fact-finding and a single level of appeal.

The proposed Procedures follow the investigatory model favored by the Department of Education. The current Discrimination Complaint Procedures at Appendix 2 have historically operated on an investigatory model (albeit one that included a possible hearing at

Step 2 and a second level of appeal at Step 3). Certain of the campuses have already implemented a full or partial investigatory model in their student conduct procedures.

This investigatory model involves the investigation of a complaint by a trained investigator or team of investigators, whose responsibility it is to conduct the fact finding and make a determination of whether a violation of University policy has occurred (using the preponderance of the evidence standard mandated by the Department of Education). If warranted, the investigator also makes a recommendation of discipline. This model includes an additional administrative review of the investigator's work (to ensure that the investigation is fair and impartial) to provide an additional level of due process. Upon the conclusion of the investigation and administrative review, the Universities shall simultaneously issue to the parties a "notice of outcome" in accordance with federal requirements. Both parties then have a limited right of appeal on the grounds of new evidence or material procedural error. The outcome of the appeal is final.