

610 CMR: BOARD OF HIGHER EDUCATION

610 CMR 6.00: AFFIRMATIVE ACTION

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6.01: Purpose

610 CMR 6.00 contains the procedures of the Board of Higher Education for carrying out its responsibilities in the administration and enforcement of M.G.L. c. 15A, § 9(w).

6.02: Scope

The Board of Higher Education establishes an affirmative action policy to assure that:

- (1) there shall be equal opportunity in employment and admission for all persons;
- (2) there shall be no illegal discrimination in employment in or admission to any institution or the Board including programs and activities because of race, color, sex, sexual orientation, religion, age, national origin, disability or veteran status; and
- (3) the full realization of equal opportunity in employment and admission will be promoted and achieved through a positive ongoing and continuing affirmative action program undertaken in each institution of higher education in the Commonwealth. This policy of Equal Opportunity/ Affirmative Action shall apply and shall be an integral part of every aspect of all personnel/ admission policies and practices, including recruitment, admissions, employment practices and advancement of all employees and students of all institutions of higher education and the staff of the Board. This policy shall be implemented in accordance with all applicable federal and state laws and executive orders.

6.03: Definitions

For the purposes of 610 CMR 6.00, the following terms will mean:

Age. Used consistent with its definition in the Age Discrimination Act of 1975, 42 U.S.C. section 6101 *et seq.* and the Age Discrimination in Employment Act of 1967 as amended, 29 U.S.C. section 621 *et seq.*

Board. the Board of Higher Education established by Massachusetts M.G.L. c. 15A or its successor.

Employment and admissions. shall include recruitment.

Handicapped or disabled. Used consistent with its definition in the Rehabilitation Act of 1973, 29 U.S.C. section 701 *et seq.* Americans with Disabilities Act - 42 U.S.C., section 2101, *et seq.*

Institution. Each public college or university, including each campus or other subdivision thereof, of higher education within the Commonwealth of Massachusetts, as set forth in M.G.L. c. 15A, § 5.

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Minorities or minority groups. Persons legally residing in the United States who are Black, Cape Verdean, Western Hemisphere Hispanic, Eskimo, American Indian, Asian or Pacific Islander.

Personnel/admission policies and practices. All formal or informal, expressed or implied policies, programs, and practices affecting employment, recruitment and admission within an institution, segment, or the Board. This will include but is not limited to recruitment, admission, retention, hiring, training, promotion, compensation, transfer, suspension, termination, tenure, and all terms, conditions, and privileges of employment/admission within the control of a segment, institution or the Board.

Student. Any individual enrolled on a full-time or part-time basis in an institution.

6.04: Nondiscrimination

To assure nondiscrimination, each institution and the Board must:

- (1) Carefully and systematically examine all its personnel/admission policies and practices to be sure that they do not adversely impact on any employee/student on the grounds of race, color, sex, sexual orientation, age, national origin, disability or veteran status.
- (2) Implement a program necessary to assure that policies and practices are implemented in a nondiscriminatory manner.

6.05: Affirmative Action

610 CMR 6.00 requires affirmative action on the part of institutions and the Board to make every reasonable effort to assure that all practices and procedures are designed to promote positive advancement of minorities and women throughout all aspects of the institution's and the Board's operation. Each institution, and the Board shall develop and maintain an affirmative action program in order to ensure equal opportunity.

6.06: Affirmative Action Plans

Each institution shall develop and maintain affirmative action plans consistent with applicable state and federal law.

6.07: Collective Bargaining

- (1) Where union contracts are being negotiated, institutions should ensure that layoff, retrenchment, or nonrenewal provisions include a statement that these provisions will be administered to the extent permitted by state or federal law so as to minimize or avoid any disproportionate adverse impact of minority or female or handicapped employees, and any detrimental effect on affirmative action gains which have been made.
- (2) Whether or not such a statement is included in the union contract, if any, the employer shall take all reasonable efforts to ensure that retrenchment, layoff, or nonrenewal decisions minimize or avoid any disproportionate adverse impact on women, minorities, and handicapped employees.

6.08: Compliance and Enforcement

Each institution shall include, as part of its affirmative action plan, institutional enforcement procedures to ensure institutional compliance with 610 CMR 6.00. Said enforcement procedures shall include, but not be limited to procedures for the resolution of grievances arising from alleged inequities at an institution.

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The Board shall review the enforcement procedures and report its findings to the institution. In the event that the Board, in its review, finds the enforcement procedures to be inconsistent with the purposes of the 610 CMR 6.00, the Board shall instruct the institution to forward to the Board revised procedures within 30 calendar days of receipt of the Board's findings.

6.09: Compliance Reports

Each institution shall, biennially by November 30th, file with the Board a compliance report in a form that the Board may prescribe, including but not necessarily limited to a copy of the Higher Education Staff Information Report, EEO-6, 29 CFR 1602.50.

6.10: Board Affirmative Action Responsibilities

The Board shall maintain an affirmative action function directed by a senior/upper level staff member and whose duties shall include the implementation, administration and enforcement of 610 CMR 6.00 and dissemination of rules and regulations and interpretations regarding Equal Opportunity and Affirmative Action emanating from the federal and/or state level, as well as maintaining liaison between applicable federal and state agencies and may furnish technical assistance to the segments and institutions upon request.

6.11: Institutional Affirmative Action Officers

Each institution shall appoint a full time employee whose responsibilities shall include serving as Affirmative Action Officer. Said employee shall be a senior/upper level staff member who shall be directly responsible to and reports to the chief executive officer of the institution. The institution shall notify the Board of the name, job description and classification of its affirmative action officer. Thereafter, each institution shall immediately notify the Board of any vacancies, terminations, or new appointments of Affirmative Action Officers.

6.12: Sanctions

Whenever the Board determines that an institution may have failed to comply with or has violated 610 CMR 6.00 it shall notify the institution and require an appropriate response from said institution assuring conformance with its affirmative action policy.

Where appropriate, the Board shall then require the institution to enter into a memorandum of agreement with the Board which shall include a plan for remedying the violation or non-compliance. This plan may include goals and timetables or other affirmative action measures. Compliance with the memorandum of agreement must be completed or evidence of reasonable progress must be demonstrated prior to the review of any new programs or petitions for degree granting authority, or prior to the approval of budgets. Should the institution fail to demonstrate reasonable progress toward the memorandum of agreement, the Board shall:

- (1) Notify the institution of its intention to cite the institution for non-compliance, together with a detailed statement of reasons thereof, and notify said institution of its right to provide any documentation indicating that its actions are in compliance with its affirmative action policy. The institution may take any necessary steps to remedy such non-compliance prior to any further Board action.
- (2) Cite the institution for non-compliance together with a detailed statement of reasons for the citation of non-compliance.
- (3) Report said determination of non-compliance together with a detailed statement of reasons thereof to the appropriate federal and/or state agencies.
- (4) Take appropriate action which may include but not be limited to the following actions until said violations are remedied:
 - (a) Deny new program approval;
 - (b) Deny degree granting authority;

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- (c) Hold in abeyance review of new programs;
- (d) Seek appropriate relief in law and/or equity.

The governing board having authority over the institutions found in non-compliance with 610 CMR 6.00 shall use its legal authority and power to ensure compliance with 610 CMR 6.00.

6.13: Severability

If any provision of 610 CMR 6.00 or the application to any circumstances shall be held invalid, the remainder of 610 CMR 6.00 or the application of 610 CMR 6.00 to such circumstances other than those to which it is held invalid shall not be affected thereby.

REGULATORY AUTHORITY

610 CMR 6.00: M.G.L. c. 15A, § 9(w).

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(PAGES 35 THROUGH 38 ARE RESERVED FOR FUTURE USE.)