

# **SEXUAL HARASSMENT POLICY AND PROCEDURES**

**UNIVERSITY OF MASSACHUSETTS AMHERST**

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## **POLICY**

The University of Massachusetts Amherst is committed to providing faculty, staff and students with an environment where they may pursue their careers or studies without being sexually harassed. Sexual harassment of or by any member of the University community is unacceptable and will not be tolerated. It is illegal and constitutes a violation of Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Massachusetts G.L.c.151B and 151C.

For the purposes of this policy, it is defined as follows:

Unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: 1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic work; or 2) submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile or sexually offensive working or academic environment.

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

- repeated unwanted sexual flirtations, advances or propositions;
- continued or repeated verbal abuse or innuendo of a sexual nature;
- uninvited physical contact such as touching, hugging, patting, brushing or pinching;
- verbal comments of a sexual nature about an individual's body or sexual terms used to describe an individual;
- display of pictures, posters or cartoons that a reasonable person would find offensive or sexually suggestive;
- continued or repeated jokes, language, epithets or remarks of a sexual nature;
- prolonged staring or leering;
- making obscene gestures or suggestive or insulting sounds;
- demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment or academic status or promises of preferential treatment;
- indecent exposure.

In determining whether an alleged incident constitutes sexual harassment, those entrusted with administering this policy will look at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The final decision regarding a suitable penalty will be made from the finding of fact on a case-by-case basis and from any record of previous sexual harassment by the Respondent.

The Equal Opportunity and Diversity Office, 243 Lederle GRC Lowrise (545-3464) will be responsible for administering this policy and its procedures. The Executive Director for Equal

Opportunity and Diversity will serve as Chair of the Sexual Harassment Board (see Section VIII.A. for a description of this Board and its responsibilities) but may delegate all or part of this role to a designee. In such instances, overall decision making authority for matters related to this policy and procedures will continue to rest with the Executive Director for Equal Opportunity and Diversity. The Equal Opportunity and Diversity Office, in concert with the Chancellor, the Deputy Chancellor, and Vice Chancellors will see that all supervisors on the Amherst campus receive information and training concerning sexual harassment and the responsibilities of supervisors when complaints are received.

## **PROCEDURES**

### **I. Purpose and Scope**

This grievance procedure is intended to provide a fair, prompt and reliable determination about whether the University's sexual harassment policy has been violated. Anyone who, at the time of the alleged harassment, was either employed by or enrolled at the University of Massachusetts Amherst may file a complaint alleging violation of this policy. Specific procedures for complaint processing will be determined consistent with the exceptions noted in the last paragraph of this section. No University employee or student is exempt from the jurisdiction of this policy.

In most instances, complaints will be initiated by the target of the alleged harassment. However, the University reserves the right to initiate a formal grievance (or to continue processing a complaint even after a request to withdraw has been submitted by the Complainant in accordance with Section IV) when, in the opinion of the Chair of the Sexual Harassment Board, it is appropriate to do so. In such instances the Chair of the Sexual Harassment Board, in consultation with the Chancellor, will designate who will present the University's case.

As in any grievance procedure justice requires that the legal rights, as well as the right to academic freedom, of the Complainant and the Respondent be fully assured. The University will make every effort to protect these rights and will knowingly undertake no action that threatens or compromises them. Notwithstanding, nothing in these procedures is intended to prevent the University administration from taking appropriate interim measures to protect one or more of the parties until such time final adjudication regarding the complaint has been reached.

This procedure is not intended to impair or limit the right of anyone to seek a remedy available under state or federal law. A Complainant may file a complaint with an external agency to meet state and federal agency deadlines without jeopardizing his or her right to a University hearing. (See Section XI.) Upon official notification that an individual has filed with an external agency, the University will inquire if the Complainant wishes to continue with the internal grievance process. Should the Complainant seek to discontinue the internal process, the University will nonetheless continue to fact find and take appropriate measures.

If the Respondent is a member of the Chancellor's staff, the Deputy Chancellor will serve the role described for the Respondent's Vice Chancellor in this procedure. If the Respondent is the Deputy Chancellor, the Chancellor will serve the role described for the Respondent's Vice

Chancellor. If the Respondent is the Chancellor, the matter shall be referred to the President's Office. [Note: In all instances throughout this document where the term Vice Chancellor is used, it will be understood that the term also refers to the Deputy Chancellor or Chancellor, whichever is appropriate.]

When the Respondent in a formal grievance is an undergraduate or graduate student, the Complainant should contact the Dean of Students Office, 227 Whitmore Building (545-2684); all such complaints will be handled in accordance with procedures as described in the *Code of Student Conduct*. In instances in which a Respondent is both a student and an employee, the Chair of the Sexual Harassment Board shall review the circumstances of the case and determine which grievance procedure is appropriate.

## **II. Confidentiality**

All parties involved in any aspect of this process will act at all times to preserve the confidentiality of these proceedings. Information will be shared with those individuals who have a legitimate and operational need to be informed, and to the extent that it is necessary to maintain the effectiveness of this process. Individuals found to have violated the confidentiality of this process may be subject to disciplinary proceedings consistent with the provisions of their collective bargaining agreement or other applicable administrative rules and regulations.

## **III. Deadlines**

A Complainant will have twelve months following an incident to initiate a complaint under this policy and procedures unless he or she can show good reason for having that deadline waived. Requests for exceptions to the filing deadline must be made in writing to the Chair of the Sexual Harassment Board who will render a decision in writing following his or her review of the request. Legal counsel may be consulted in making this determination.

In some instances, particularly when a pattern of behavior is the subject of the complaint, supporting evidence may include reports of behavior that occurred outside of the twelve month filing deadline. In these instances, a written request for an exception is not required; however, the Chair of the Sexual Harassment Board may be asked by the Respondent to rule on the admissibility of such evidence. The decision of the Chair in these instances is final.

Failure to meet any of the deadlines stipulated in this procedure will not result in a decision by default or prevent the process from continuing.

## **IV. Requirements for Participation & Withdrawals**

If a Respondent fails to answer a charge or to participate in this process, the Chair of the Sexual Harassment Board will notify his or her Vice Chancellor of that fact. Failure to respond to a claim or to appear at a hearing will be considered a breach of responsibility and could result in disciplinary action. Furthermore, a Respondent will not prevent this process from proceeding by

his or her silence or absence; failure to respond to a complaint or to appear at a hearing may result in the process proceeding solely on the basis of the Complainant's testimony and evidence.

A Complainant may request to withdraw a formal grievance after it has been filed by submitting written reasons for the withdrawal to the Chair of the Sexual Harassment Board. The Chair will be responsible for notifying the Respondent of the request to withdraw. The Respondent must provide written agreement to the withdrawal before the charges are dropped. A Respondent who does not agree to the withdrawal request must provide written reasons to the Chair of the Sexual Harassment Board who, after consultation with appropriate administrators including, where necessary, legal counsel, will issue a written determination to the parties regarding the status of the claim. A Complainant may not interrupt the process simply by failing to appear at the hearing or other required meetings. Failure to appear may result in the hearing proceeding solely on the basis of the Respondent's testimony and evidence.

None of the above actions should be construed to impinge upon the right of the University to initiate or continue a claim in spite of a request to withdraw when, in the opinion of the Chair of the Sexual Harassment Board, the allegations are sufficiently egregious to merit further action on the part of the University. The alleged victim will be relied upon to serve as a witness under these circumstances.

## **V. Retaliation**

No individual shall be retaliated or discriminated against for participating in these procedures. Any act of retaliation directed against person(s) participating in these procedures is illegal. Complaints of retaliation should be addressed to the Executive Director for Equal Opportunity & Diversity who will determine the appropriate action.

## **VI. Penalties**

The penalties for those found to have violated this policy may include, but will not be limited to, any one or combination of the following: verbal admonition, written warning placed in the personnel file, probation, suspension without pay, demotion, removal from administrative duties, and dismissal. Any disciplinary measures imposed will be consistent with applicable union contractual provisions.

## **VII. Filing Sexual Harassment Complaints**

The University recognizes that it has a responsibility to provide a procedure for rapid and equitable resolution of all sexual harassment complaints. In many instances, resolution can be reached without the need for formal measures. The goal in all instances is to ensure that inappropriate and offensive behavior is stopped. To assist Complainants in resolving sexual harassment complaints, the University has established both informal and formal procedures, and has identified a group of individuals, "Complaint Handlers", (see Appendix A) who can advise parties of appropriate options and procedures. In addition, the University has identified volunteers from the University community who are willing to serve as "Support and Referral Contacts" (see

Appendix B); Support and Referral Contacts, who can serve the needs of either Complainants or Respondents, are available to accompany participants to meetings or formal hearings and can provide support throughout the process.

### **VII.A. Initiating a Complaint**

Complainants may initially consult with a Support and Referral Contact (see Appendix B) who can provide information about the complaint handling system and options available for resolution. Individuals may alternatively initiate discussions regarding a potential complaint directly with their departmental supervisor; department head or chair; or similarly situated administrator with line authority (these individuals may collectively be referred to as “Complaint Handlers”; see Appendix A of this document); or Complainants may directly contact the Equal Opportunity & Diversity Office (EO&D). [Note: The Appendices referred to in this paragraph will be updated annually and widely published.] All of the above-named individuals can provide advice regarding available options and procedures, and assist in determining how to proceed with the complaint (i.e. informally or formally).

The Complaint Handler (initial intake person as identified in the preceding paragraph) will assess the matter; determine what immediate action must be taken; and advise the Complainant about how to proceed – informally, using one of the methods described in Section VII.B.1-3 or formally, using the methods described in Sections VII.C and VIII.

The Complaint Handler may also consult with the Chair of the Sexual Harassment Board to determine the appropriateness of proceeding under these procedures. The Chair of the Sexual Harassment Board has the authority to discontinue processing a complaint. This decision is final and not subject to appeal.

The Complaint Handler, in consultation with the Chair of the Sexual Harassment Board, will identify the appropriate fact finding mechanism. Fact-finding will be done either internally (by a University staff member) or externally (by a person whose services will be retained specifically for this purpose). When fact-finding results in a written report, this report will be forwarded to the Chair of the Sexual Harassment Board and may later be introduced into the record during a formal hearing process.

Complaint Handlers must file a written report of all complaints, regardless of their disposition, with the Equal Opportunity and Diversity Office who will maintain a record of all informal complaints and formal grievances. Such record will include Complainants' and Respondents' names and the outcome of proceedings, including sanctions imposed if any. At the end of every academic year the EO&D Office will prepare an annual report of statistics and relevant commentary for the Chancellor. The annual report will be available to faculty, staff and students upon written request to the Equal Opportunity and Diversity Office. The annual report will not contain names, but may contain other relevant statistical data including, but not limited to, status of the parties (e.g. undergraduate or graduate student; classified or professional staff; or faculty); department or other campus affiliation; nature of the complaint; and outcome.

## **VII.B. Informal Resolution**

In some circumstances informal resolution of a complaint prior to or instead of initiating the formal process may be more satisfactory than directly proceeding to a formal grievance. Informal resolution options include, but are not limited to, self-help; consultation and action at the department level; or mediation through the Ombuds Office.

Further information regarding the informal resolution process may be obtained from Support and Referral Contacts (see Appendix B); Complaint Handlers (see Appendix A); or by contacting the Equal Opportunity and Diversity Office (EO&D).

### **VII.B.1 Self-Help**

The goal in any complaint process is to stop the harassing behavior. If a Complainant believes he or she is experiencing inappropriate conduct and can comfortably confront the individual responsible for the inappropriate conduct, then the following steps may be taken:

- confront the person(s) promptly;
- inform the person(s) that the conduct is offensive, intimidating, or embarrassing;
- describe the effect of this behavior;
- request that the behavior stop immediately.

The Complainant should have the above conversation with a witness present who can corroborate the exchange. If this is not possible or practical, the Complainant may write a letter incorporating the above points and give it to the person in front of a witness. The Complainant should retain a copy of this letter.

In all instances, the Complainant should document the event(s), including dates, times, places and witnesses.

If this action fails to provide the Complainant with the appropriate relief, or as an alternative to using this approach, the measures described below may be considered.

### **VII.B.2 Consultation and Action at the Department Level**

When the Complainant cannot comfortably and directly confront the Respondent, or the behavior has continued in spite of direct confrontation, then the Complainant should report the behavior to someone in a position of authority who can intervene. Such persons include an immediate supervisor, department head or chair, or similarly situated supervisory personnel (see Section VII.A.).

### **VII.B.3 Mediation**

It is sometimes the case that the issue under contention can be resolved through mediation. The Ombuds Office, located in Room 823 Campus Center, is available to provide mediation

services. The Ombuds Office is also prepared to provide referrals for more formal measures when circumstances warrant it.

### **VII.C Formal Resolution (Filing a formal grievance)**

Complainants who are dissatisfied with or do not wish to utilize informal resolution should consult directly with the EO&D Office to determine the appropriateness of filing a formal grievance. Although informal resolution attempts are not required prior to filing a formal grievance, they are nonetheless encouraged.

Any individual who chooses to file a formal sexual harassment grievance may do so immediately following the incident giving rise to the complaint, or following efforts to reach an informal settlement. In no event will it be filed greater than twelve months following the incident which gave rise to the complaint unless the provisions of Section III have been met. After initially meeting with the Complainant to assess the complaint, including the appropriateness of the complaint being filed under this Policy and Procedures (see Section VII.A.), the EO&D Office will advise the Complainant of appropriate next steps.

## **VIII. Formal Grievance Procedure**

Following appropriate initial consultation with the EO&D Office, the grievance must be submitted in writing to the Chair of the Sexual Harassment Board on an official grievance form (obtainable from the EO&D Office). The grievance must clearly and concisely state a description of the matter being complained about; it may also indicate any remedy sought. The complaint form must be signed and dated by the Complainant. The Chair of the Sexual Harassment Board will provide the Respondent and the Respondent's Vice Chancellor with a copy of the complaint in a timely manner.

The Respondent will have ten working days to submit a written response to the EO&D Office. This statement, which must be submitted on the official form provided by the EO&D Office, will contain full and specific responses to each claim in the grievance, admitting, denying or providing a full explanation of the allegations. The response must be signed and dated by the Respondent. The Chair of the Sexual Harassment Board will forward a copy of the response to the Complainant and the Respondent's Vice Chancellor. If an investigation has not already taken place and a fact-finder's report completed, then one will immediately commence. The Chair of the Sexual Harassment Board will appoint the fact-finder and provide the fact-finder with a copy of the response and the complaint.

The fact-finder will conduct a thorough investigation and forward a written report to the Chair of the Sexual Harassment Board as quickly as possible. The Chair of the Sexual Harassment Board will review the report to determine next steps.

When a hearing is to be held, it will be conducted in accordance with the procedures outlined below.

If, consistent with Section VII.A (paragraph 3), the Chair of the Sexual Harassment Board determines that the complaint should be dismissed and a hearing should not be held, the Chair will provide written notification of this decision to the Complainant, the Respondent, and the Respondent's Vice Chancellor. This decision is final and not subject to appeal under these procedures.

The Chair of the Sexual Harassment Board will provide copies of the fact-finder's report to the Complainant and the Respondent.

### **VIII.A. The Sexual Harassment Board**

The Sexual Harassment Board consists of fifty members of the University community, appointed by the Chancellor, each for a term of three years, which may be renewed. Every effort will be made to ensure a widely representative and diverse group. The Board will include at least eight members from each of the campus' five constituent groups, namely classified employees, faculty, graduate students, professional staff, and undergraduate students. The Chancellor will appoint remaining Board members without regard to constituent group.

Following their appointment, Board members will participate in a workshop designed to educate them about sexual harassment as well as the procedures for conducting a sexual harassment hearing.

### **VIII.B. The Hearing Panel**

When a hearing is to be held, the Chair of the Sexual Harassment Board will appoint a three member Hearing Panel. At least one member of each Hearing Panel will be drawn from the Complainant's and Respondent's respective constituencies (that is, classified employee, faculty member, graduate or undergraduate student, or professional staff). The Chair will designate one member to serve as the Presiding Officer.

Prior to their participation in a hearing, the Chair of the Sexual Harassment Board will meet with the Hearing Panel to review sexual harassment issues and the hearing procedures.

Before the hearing is convened, the parties will receive written notification of the Panel's appointment from the Chair of the Sexual Harassment Board. Each party to the proceeding will have the right to object to the appointment of any panel member on the grounds that that member's participation would jeopardize the party's right to a fair and reliable hearing. All objections must be submitted in writing to the Chair of the Sexual Harassment Board. The Chair of the Sexual Harassment Board will determine whether objections have merit; will judge whether a panel member will be seated; and will provide the objecting party with a written decision. This decision will be final.

The Hearing Panel will hear testimony and consider evidence related to the complaint, including the written findings of fact as prepared by the fact-finder. (These findings will be provided to the Panel along with copies of the complaint and the response prior to the hearing.)

The Panel will, on the basis of all relevant information and testimony before them, make a determination about whether the University policy on sexual harassment has been violated and, if so, will submit a recommendation for appropriate penalty and relief to the Chair of the Sexual Harassment Board. The Chair will review the Panel's recommendation and forward it, along with appropriate commentary, to the Respondent's Vice Chancellor.

### **Duties and Powers of the Presiding Officer and the Hearing Panel**

#### **The Presiding Officer will:**

1. ensure an orderly presentation of all evidence;
2. ensure that the proceedings are accurately recorded; and
3. see that a fair and impartial decision based on the issues and evidence presented at the hearing is issued by the Hearing Panel.

#### **The Hearing Panel will:**

1. define issues of contention;
2. conduct a fair and impartial hearing which ensures the rights of all parties involved;
3. receive and consider all relevant evidence which reasonable people customarily rely upon in the conduct of serious business;
4. ensure that the Complainant and Respondent have full opportunity to present their positions and to present witnesses and evidence which support their positions; further, the Hearing Panel may also name individuals to appear as witnesses;
5. ask relevant questions of the Complainant, Respondent, and witnesses to elicit information which may assist the Hearing Panel in making a decision; members of the University community have a responsibility to fully cooperate with this process;
6. continue the hearing to a subsequent date if necessary to permit either party or the Panel to produce additional evidence, witnesses, or other relevant materials;
7. change the date, time or place of the hearing on its own motion or for good reason shown by either party, and with due notice to all parties;
8. permit both parties to submit written arguments following the conclusion of the hearing;

9. rule by majority vote on all questions of fact, interpretations of rules, regulations and policies, recommendations for penalties and relief, and any requests that are made during the hearing.

The Hearing Panel may consult with or have the assistance of University Legal Counsel throughout this process.

### **VIII.C. The Hearing**

The Hearing is intended to provide a forum within which a panel of peers determines whether University policy has been violated. Both parties will be given a full and fair hearing. The proceeding, although formal, is not a court proceeding and the Hearing Panel will not be bound by the procedures and rules of evidence of a court of law. In most instances, Complainants and Respondents will be expected to speak for themselves. The Hearing Panel will hear and admit evidence which it believes is pertinent to the case.

#### **The Hearing Panel will conduct the hearing by the following procedures:**

1. The Chair of the Sexual Harassment Board will initially provide the Hearing Panel with copies of the complaint, the response, and the fact-finder's report; the Chair will also work with the Hearing Panel and the parties to coordinate the scheduling of the hearing. A closed hearing will be held as soon as possible following the final appointment of the Hearing Panel. The Complainant and the Respondent must submit all documents they intend to introduce at the hearing, as well as the names and affiliations of their witnesses and advocates (see Section VIII.C.5) in reasonable advance of the hearing date. Actual deadlines for submissions of these materials will be established once a hearing date has been set. The Chair of the Sexual Harassment Board will ensure that the parties and the Hearing Panel receive copies of all submitted materials. Documents not submitted in advance of the hearing may be introduced into the record on the day of the hearing provided all parties and the Panel are accorded sufficient time to review the documents and respond accordingly. In this case, the party submitting the documents must provide sufficient copies for all relevant parties.
2. The Hearing Panel will convene prior to the hearing date to review the complaint, the response, the fact-finder's report and all materials submitted by the parties. The Panel may, upon review of materials and witness lists submitted by the parties, identify additional witnesses they wish to call on the day of the hearing or request that the parties provide additional materials. The Presiding Officer will provide the parties with the names of additional witnesses and copies of all additional materials requested by the Panel as far in advance of the hearing as possible.
3. The Presiding Officer may meet with the parties prior to the hearing to review hearing procedures and to respond to any procedural matters that have arisen.

4. The Complainant and Respondent will have the opportunity to hear and respond to all testimony, to examine all evidence, and to present evidence and witnesses which advance arguments relevant to the issues in contention.
5. Each party will have the right to be accompanied and advised by two people at any stage of the proceedings. Advisors are not restricted to Support and Referral Contacts. Either one of the advisors may be an attorney. In most instances, Complainants and Respondents will be expected to speak for themselves. Advisors, including legal counsel, will not address the Hearing Panel directly except with the permission of the Panel.
6. The Chair of the Sexual Harassment Board must be advised as soon as possible, but in no event less than five working days in advance of the hearing date if either party will be accompanied by an attorney.
7. Each of the parties is responsible for informing their respective advocates and witnesses of the date, time, and place of the hearing.
8. If either party is a member of a collective bargaining unit, the advisors mentioned above may, upon the request of the party, be representatives of his or her union. However, neither party will be required to be advised by a union representative. When there is no request for union representation, the Chair of the Sexual Harassment Board will notify the appropriate union in writing that a hearing has been scheduled; the union will be allowed to send an observer.
9. The hearing will be recorded on tape by the Hearing Panel and the tapes will become the property of the University. Following the completion of the hearing, either party may have supervised access to the tapes by submitting a written request to the Chair of the Sexual Harassment Board.

**The proceedings before the Hearing Panel will be as follows:**

Following opening remarks, the Presiding Officer will summarize the charge(s) and ask the Respondent to either admit or challenge the allegation(s).

The Complainant will present a brief opening statement, followed by the same from the Respondent. Each party will then present their evidence and witnesses, followed by witnesses called by the Hearing Panel. Questions may be posed at any stage of the proceedings consistent with the protocol established by the Presiding Officer at the onset of the hearing process. Each party may make a brief concluding statement to the Hearing Panel.

Either party may submit a written argument following the hearing, provided he or she notifies the Presiding Officer no later than two working days after the hearing. The written argument may not introduce new information, but rather must be a summary of the information already introduced and presented. The Parties will have ten working days to submit written

arguments to the Presiding Officer. The Presiding Officer will send copies of written arguments to each party.

A Hearing Panel, by a majority vote of its members, may make other rules concerning the procedure of a hearing which it deems appropriate and consistent with this Sexual Harassment Policy.

#### **VIII.D. Decision of the Hearing Panel**

Following the hearing and submission of written arguments, if any, the Hearing Panel will convene for private deliberations to determine whether the University's policy on sexual harassment has been violated. The Panel will prepare a detailed report noting its conclusion; this report will clearly state the facts of the case and the supporting evidence; the conclusion must be fully supported by the evidence elicited at the hearing. The decision of the Hearing Panel will be submitted to the Chair of the Sexual Harassment Board as soon as possible following the completion of the Panel's deliberations.

When the Panel finds no violation, the Chair of the Sexual Harassment Board will forward the Hearing Panel's report along with appropriate commentary to the Respondent's Vice Chancellor. The Vice Chancellor will review the materials and submit his or her final decision in a timely manner to the Complainant, the Respondent, and the Chair of the Sexual Harassment Board. The fact that there has been no violation will be registered in all University records pertaining to the case.

When the Panel finds a violation of the Sexual Harassment Policy has occurred, the Hearing Panel will recommend a penalty for the Respondent and relief for the Complainant if appropriate. The Chair of the Sexual Harassment Board will review the Panel's decision and provide appropriate commentary to the Vice Chancellor. This commentary may include an adjustment to the recommended penalty if, upon review of University records, it is determined that there have been past violations of this Policy by the Respondent; specific written reasons for the adjusted penalty must be provided. The Chair will subsequently forward the Hearing Panel's report, the complete record of the hearing, and appropriate commentary to the Respondent's Vice Chancellor.

The Vice Chancellor will render his or her decision in writing directly to the Complainant, the Respondent, and the Chair of the Sexual Harassment Board immediately following review of all of the materials noted above. When a violation has been found, the Vice Chancellor will be responsible for determining and implementing both the penalty and relief. The Vice Chancellor's determination of penalty and relief (including the dates by which each will be implemented) will be included in the written decision submitted to the Complainant, the Respondent, and the Chair of the Sexual Harassment Board. The Chair will notify the Hearing Panel of the final decision.

Following receipt of the Vice Chancellor's decision, the parties may request copies of any written record. Requests must be submitted in writing to the Chair of the Sexual Harassment Board.

## **VIII.E. Review**

Within thirty days after receiving a written copy of the Vice Chancellor's decision, the Respondent, the Complainant, or the Chair of the Sexual Harassment Board may request a review by submitting a written petition to the Chancellor (who may appoint a designee to handle the review). The petition for review will set forth in detail the specific grounds upon which review is sought. The Chancellor will ensure that the Respondent's Vice Chancellor, Chair of the Sexual Harassment Board, the Hearing Panel, and the parties receive a copy of the petition. The Chancellor will review the record of the case, which includes the taped record of the hearing; documents considered by the Panel; the Panel's findings and recommendations; and any record of previous offenses. Based upon this review, the Chancellor may modify or vacate a Vice Chancellor's decision. The Chancellor may, for example, decide that the Panel's findings are unsupported by a preponderance of evidence, or that some aspect of the process violated an individual's legal rights, academic freedom, or these procedures.

The Chancellor or designee may: a) affirm or revise the decision of the Vice Chancellor; b) request specific findings from the Panel; or c) remand the case to the Chair of the Sexual Harassment Board for a new hearing before a new Hearing Panel. In the course of review, the Chancellor may consult with University Legal Counsel who will have access to the complete record of the case.

The Chancellor or designee will render a written decision in as timely a manner as possible following receipt of the petition for review and all materials relating to the grievance. The Chancellor's decision will be sent to the Respondent's Vice Chancellor, the Complainant, the Respondent, the Hearing Panel, and the Chair of the Sexual Harassment Board. The Chancellor's decision will constitute final University disposition of the matter.

## **IX. Records**

Records of all proceedings under this Policy will be kept by the Equal Opportunity and Diversity Office and may be accessible to authorized staff as necessary. For example, records may be accessed when determining an appropriate penalty for a subsequent sexual harassment complaint; when a complaint of retaliation is made; when a decision is reviewed; or when a Respondent is a candidate for a supervisory position.

The records will also be available to University Legal Counsel for any proceeding related to these policies or procedures, whether internal to the University or in any judicial or administrative proceeding in which the University, its trustees, officers, employees or agents are a party.

## **X. Standard of Proof**

A violation of this Sexual Harassment Policy will be found only where there is a preponderance of evidence that a violation has occurred. The Hearing Panel, the Vice Chancellors,

the Deputy Chancellor and the Chancellor will be bound to make their determinations based on this standard of proof.

## **XI. State and Federal Remedies**

In addition, complaints of sexual harassment may be filed with one or more of the government agencies set forth below.

1. **EEOC - Equal Employment Opportunity Commission**  
John F. Kennedy Federal Building  
475 Government Center  
Boston, MA 02203  
(800) 669-4000  
TTY (800) 669-6820
  
2. **MCAD - Massachusetts Commission Against Discrimination**  

<u>Boston Office:</u> One Ashburton Place, Room 601 Boston, MA 02108 (617) 994-6000 TTY (617) 994-6196	<u>Springfield Office:</u> 436 Dwight Street, Room 220 Springfield, MA 01103 (413) 739-2145
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3. **OCR - Office for Civil Rights**  
United States Department of Education  
5 Post Office Square, 8<sup>th</sup> Floor/Suite 900  
Boston, MA 02109-3921  
Telephone: (617) 289-0111  
TTY: (800) 877-8339

## Appendix A

### Complaint Handlers

*Complaint Handlers* are those individuals who have been specially trained to receive complaints of sexual harassment and to advise Complainants about, and assist them in choosing, the appropriate option(s) for handling their complaint. Complaint Handlers are empowered to fact find or delegate fact-finding, and resolve complaints. Complaint Handlers will also provide information to all parties (i.e. Complainant(s) and Respondent(s)) regarding the availability of *Support and Referral Contacts* and will encourage their use.

Complaint Handlers include the following individuals: Department Heads and Chairs, Managers, Directors, Deans, Vice Chancellors and all other administrators with line authority.

Complaint Handlers will:

1. receive complaints;
2. advise Complainants about available options;
3. assist Complainants in implementing options;
4. consult with and report complaints to the EO&D Office;
5. identify and ensure the appropriate fact finding strategy;
6. make recommendations about or impose discipline as appropriate in informal cases;
7. provide recommendations to the parties about support and available resources, including the availability of Support and Referral Contacts;
8. do appropriate follow-up to ensure non-retaliation.

## Appendix B

### **Support & Referral Contacts**

*Support and Referral Contacts* are members of the University community who have either been nominated or volunteered to perform this function. They have been specially trained to be initial points of contact for individuals who have complaints of sexual harassment; to facilitate Complainants and Respondents in competently engaging the complaint handling system; and to provide information and advice about available resources when other areas of an individual's life have been affected by the existence of a complaint. **Support and Referral Contacts are NOT finders of fact or case managers.** The names of these individuals will be published regularly in a variety of places throughout the campus.

Support and Referral Contacts will:

1. serve as the first point of contact;
2. make appropriate referrals;
3. do appropriate follow-up;
4. serve as a resource;
5. be available throughout the entire process.

These individuals can provide support and information to either Complainants or Respondents, although each will be represented by a different Support and Referral Contact. Support and Referral Contacts are available as *the first point of contact* whenever a complaint of sexual harassment arises and, as such, will be responsible for referring Complainants to the appropriate Complaint Handler. (Conversely, Complaint Handlers will be responsible for ensuring that the parties are aware of the support and referral services available through this group.) It is intended that Support & Referral Contacts are available to the parties throughout the entire complaint resolution process, including when a formal grievance is initiated.