University of Massachusetts Amherst
Harassment, Nondiscrimination and Sexual Misconduct
Policy

Policy & Procedure for Civil Rights Equity Grievance Resolution for
Faculty, Staff and Students

INTRODUCTION & SCOPE

The Amherst campus of the University of Massachusetts (hereinafter “Amherst”) is committed in policy, principle, and practice to maintain an environment which prohibits illegal discriminatory behavior and which provides equal opportunity for all persons. The University adheres to all federal and state civil rights laws banning discrimination in public institutions of higher education. Amherst will not discriminate against any employee, applicant for employment, student or applicant for admission on the basis of race, color, religion, creed, sex, age, marital status, national origin, mental or physical disability, political belief or affiliation, veteran status, sexual orientation, gender identity and expression or genetic information or any other protected category under applicable local, state or federal law. This includes protection for those opposing discrimination or participating in any grievance process on campus or within the Equal Employment Opportunity Commission or other human rights agencies.

This policy covers nondiscrimination in employment and in access to educational opportunities. Note, do we want to put specific UMass civil rights laws here? Amherst specifically prohibits the differential treatment of employees, students, applicants for student status or employment on the basis of political belief or affiliation, and membership or non-membership in any organization. Therefore, any member of the campus community, guest or visitor who acts to deny, deprive or limit the educational, employment, residential and/or social access, benefits and/or

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1 The federal civil rights laws applicable to the entire community includes: Title IX of the Educational Amendments of 1972 (covering sex/gender, gender identity and gender expression discrimination); Section 504 of the Rehabilitation Act of 1973 and The Americans with Disabilities Act of 1990 (covering discrimination related to disability); Title VI of the Civil Rights Act of 1962 (covering race, color and national origin). The federal civil rights law applicable only to employees is Title VII of the Civil Rights Act of 1964 (covering race, color, religion, sex, national origin in the workplace)
opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of the University policy on nondiscrimination. When brought to the attention of the University, the University according to the procedures below will appropriately remedy any such discrimination.

A major responsibility emanating from this commitment is the provision of a fair, effective, and efficient mechanism that rectifies or eliminates policies, practices, and actions that are discriminatory, lack provision for due process, or mitigate against the Amherst campus’ affirmative action efforts.

Amherst affirms its commitment to promote the goals of fairness and equity in all aspects of the educational enterprise. All policies below are subject to resolution using the University’s Equity Grievance Process, as detailed below. The Equity Grievance Process is applicable regardless of the status of the parties involved, who may be members or non-members of the campus community, students, student organizations, faculty, administrators and/or staff. The University reserves the right to act on incidents occurring on-campus or off-campus, when the off-campus conduct could have an on-campus impact or impact on the employment standards or educational mission of the University.

Débora D. Ferreira serves as the Executive Director for Equal Opportunity and Diversity (hereinafter EO&D) and as the University’s Title IX Coordinator, and oversees implementation of the University’s Affirmative Action and Equal Opportunity plan, disability compliance and the University’s policy on equal opportunity, harassment and nondiscrimination. Reports of discrimination, harassment and/or retaliation should be made to the Executive Director EO&D/Title IX Coordinator for the complaints where the accused is Faculty or Staff. (Note: this part should have the specific contact information for the Intake persons here) For the complaints where the accused is a graduate or undergraduate student the reports of discrimination, harassment and/or retaliation should be made to the [Associate Dean] at the Dean of Students Office promptly, but there is no time limitation on the filing of grievances2, as long as the accused individual remains subject to the University’s jurisdiction. All reports are acted upon promptly while every effort is made by the University to preserve the privacy of reports. Anonymous reports may also be filed online, using the reporting forms posted at Anonymous Witness Form - https://www.umass.edu/umpd/anonymous-witness-form, Anonymous Tips Line - https://www.umass.edu/umpd/anonymous-tips-line and online reporting form http://www.umass.edu/dean_students/studentconductprocesses/reportanincident/. Reporting is addressed more specifically in Section 7, below [insert hyperlink].

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2 Alternatively, the terminology of “reporting party” may be used in lieu of grievance.
Reports of discrimination by the Executive Director EO&D/Title IX Coordinator or Designee should be reported to the Chancellor.

Office of the Chancellor
UMass Amherst
374 Whitmore Building
Amherst MA 01003

Phone: 413-545-2211
Email: chancellor @ umass.edu

University Policy on Accommodation of Disabilities
Amherst is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if he or she has a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the institution whether qualified or not. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, and performing manual tasks, walking or caring for oneself.

Executive Director EO&D/Title IX Coordinator has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any complaint alleging noncompliance. (Note: see___________________(office information) from the Office of Disability Services for information regarding disability documentation and provision of reasonable accommodations—insert hyperlink)

Students with Disabilities
Amherst is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs and activities of the University.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the Director of Disability Services, Insert hyperlink here and/or name and contact information who coordinates services for students with disabilities. The director reviews documentation provided by
the student and, in consultation with the student, determines which accommodations are appropriate to the student's particular needs and academic programs.

**Employees with Disabilities**
Pursuant to the ADA, Amherst will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive or would result in undue hardship.

An employee with a disability is responsible for requesting an accommodation in writing to Director of Disability Services and provides appropriate documentation. The Director of Disability Services [identified person] will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

**JURISDICTION OF THE POLICY**

This policy applies to behaviors that take place on the campus, at University-sponsored activities, learning environments and events and will apply off-campus and to actions online when the Executive Director EO&D/Title IX Coordinator or Deputy Coordinators or designee, determines that the off-campus conduct affects a substantial University interest. A substantial University interest is defined to include:

a) Any action that constitutes criminal offense as defined by federal or Massachusetts state law. This includes, but is not limited to, single or repeat violations of any local, state or federal law committed in the municipality where the University is located;

b) Any situation where it appears that the accused individual may present a danger or threat to the health or safety of self or others;

c) Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or

d) Any situation that is detrimental to the educational interests of the University.
Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc. occurring completely outside of the University’s control (e.g. not on University networks, websites or between University email accounts) will only be subject to this policy when those online behaviors can be shown to cause a substantial on-campus disruption. Otherwise, such communications are considered speech protected by the 1st Amendment.

Off-campus discriminatory or harassing speech by employees, including by electronic communication, may be regulated by the University only when such speech is made in an employee’s official or work-related capacity.

Inquiries about this policy and procedure may be made internally to:

**Débora D. Ferreira, Executive Director for EO&D/Title IX Coordinator**
Kelly A. Burgess, Assistant Director, serves as a deputy Title IX Coordinator for EO&D
Office of Equal Opportunity and Diversity
243 Lederle GRC Lowrise
740 N. Pleasant Street
Amherst, Massachusetts 01003-9306
Phone: (413) 545-3464
Email: eod@admin.umass.edu

Or to Deputy Coordinators:

**Dean of Students Office**
Patricia Cardoso, Associate Dean of Student Conduct
Phone: (413) 545-2684
Email: doso@stuaf.umass.edu
Web: www.umass.edu/dean_students

**UMass Amherst Police Department**
Brian Henault, Lieutenant
Non-emergency phone: (413) 545-2121
Email: brianh@admin.umass.edu
Web: www.umass.edu/umpd

**The Center for Women and Community (formerly known as Everywoman’s Center) (Confidential)**
Becky Lockwood, Associate Director, Counseling and Rape Crisis Services
24 Hour Sexual Assault Crisis Hotline: (413) 545-0800 TTY: (413) 577-0940
Main phone number: (413) 545-0883
Email: ewcmail@admin.umass.edu
Center for Counseling and Psychological Health (CCPH) (Confidential)
Harry Rockland-Miller, Associate Director for University Health Services/Director for CCPH
Phone: (413) 545-2337
Web: www.umass.edu/counseling

University Health Services
George Corey, Executive Director for University Health Services & Medical Director
Phone: (413) 577-5020
Email: gcorey@uhs.umass.edu
Web: www.umass.edu/uhs

Residential Life
Jean Ahlstrand MacKimmie, Director of Residence Education
William Elum, Assistant Director of Residence Education for Community Standards
Phone: (413) 545-1964
Web: www.housing.umass.edu

Athletic Department
Jeff Smith, Associate AD for Sports Medicine
Phone: (413) 545-2866
Email: jbsmith@admin.umass.edu
Web: www.umassathletics.com

Center for Student Development
Erin Donnally Drake, Director of Student Activities and Involvement
Phone: (413) 545-5176
Email: donnally@umass.edu
Web: www.umass.edu/studentlife/involved

International Programs
Kalpen Trivedi, Director for Education Abroad
Phone: (413) 545-5181
Email: ktrivedi@ipo.umass.edu
Web: www.umass.edu/ipo

Inquiries may be made externally to:

Susan Rhodes, Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
Government Center
J.F.Kennedy Federal Building - Room 1875
Or for employment inquiries:
Equal Employment Opportunity Commission (EEOC)
Contact: http://www.eeoc.gov/contact/

Massachusetts Commission Against Discrimination (MCAD)
Under Chapter 151B, Massachusetts General Laws Annotated, it is unlawful to discriminate against a person(s) on the basis of race, color, religion, creed, national origin or ancestry, handicapping condition, veteran status, or sexual orientation. The MCAD, a state agency, monitors discrimination in the areas of housing, employment, loans, and educational opportunities. Any person claiming to be aggrieved by an alleged unlawful practice may file a complaint with this agency. The offices to contact are:

Springfield Office:
Massachusetts Commission Against Discrimination
436 Dwight Street, Suite 220
Springfield, MA 01103
(413) 739-2145

Boston Office:
Massachusetts Commission Against Discrimination
One Ashburton Place, Room 601
Boston, MA 02108
(617) 994-6000
TTY (617) 994-6196
**DEFINITIONS**

**Grievance:** A grievance is an actual or perceived cause for protest or complaint arising out of some perceived or actual harm due to some action taken by the University or member(s) of the University community. When this alleged action has the impact of limiting or denying an individual's legal rights, or has the impact of imposing on an individual's right to pursue an education or the right to work at the University the University will engage in a prompt and effective response. An EO&D or Title IX grievance that alleges that this action caused the complainant to be treated differently on the basis of race, color, religion, creed, sex, age, marital status, national origin, mental or physical disability, veteran status, sexual orientation, gender identity and expression or genetic information in violation of federal or state laws or University policy.

When the University is put on notice of a sex/gender allegation the University has an obligation to provide resource information to the Reporting Party and provide a prompt and effective response consistent with the wishes of the Reporting Party and the degree of potential pattern of behavior or risk of harm to the reporting party or community is present. *(Note: you suggested adding “the accused” and asked if this would appear not to be equitable. My response is that this is the preliminary part of the process and would totally be within the determination of the person making the allegation (Reporting Party) regarding if he/she wants to engage in an investigation and resolution process at all.)*

**Forms of Discriminatory Action:**

**Discrimination Based on Disparate Treatment** - Defined as treating some people less favorably than others because of the factors listed above. Intent to discriminate is important and sometimes can be inferred from the fact of differences of treatment.

**Discrimination Based on Disparate Impact** - Involves practices that fall more harshly on one group than another and cannot be justified by business necessity. (The intent to discriminate need not be shown in this case.)

**Consent:**

Consent is knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct.
A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the individual responding party of sexual misconduct was intoxicated and, therefore, did not realize the incapacity of the other. Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. Silence or the absence of resistance alone is not consent. A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the act to continue, and, if that happens, the other person must stop immediately.

In Massachusetts, a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old is a crime, as well as a violation of this policy, even if the minor wanted to engage in the act.

**Consent:** Certain “acts” of sexual violence require a determination of whether an individual had the requisite capacity to give consent. Where “consent” is a determinative component of the act, this definition of consent shall apply.

Consent Defined: Consent is informed. Consent is given willingly, freely, actively and knowingly. Consent is mutually understandable, unambiguous words or actions; which indicate a willingness to engage in mutually agreed upon sexual activity (or in more plain language--to agree to do the same thing, at the same time, in the same way, with each other). **One may not engage in sexual activity with another who one knows or should reasonably know to be physically or mentally incapacitated, including incapacitation by drug or alcohol use or under threat of violence.**
i. When a person is under the legal age of consent under the law, that person cannot consent.

ii. When substance use is involved, a person is not considered able to give consent when that person’s judgment is incapacitated such that he or she would not be capable of making rational decisions about his or her welfare, and as such the person would not be able to give consent to engage in sexual activity.

iii. When because of his/her temporary or permanent mental or physical

iv. Consent is revocable and may be withdrawn at any time. Once consent is withdrawn, all sexual activity must cease unless and until additional effective consent is given.

**Responsible Employee:** *Note: this is still being determined by the System Office*

**Incapacitation:** As defined as the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, but are not limited to, unconsciousness, sleep, and blackouts. Where alcohol or drugs are involved, incapacitation is defined with respect to how the alcohol or other drugs consumed affects a person’s decision-making capacity, awareness of consequences, and ability to make fully informed judgments. Being intoxicated by drugs or alcohol does not diminish one’s responsibility to obtain consent. The factors to be considered when determining whether consent was freely and knowingly given include whether the accused knew, or whether a reasonable person should have known, that the accuser was incapacitated.

**Victim Advocate:** An individual serving as a “victim advocate” should possess specialized training in victim neurobiology and trauma and skills in addressing the broad scope of victim-based issues.

Under Massachusetts’s law (Mass. Gen. L Ann. Ch 233, Sec 20J for sexual assault counselor, and Sec. 20K for domestic violence counselor. A Sexual Assault Counselor is a person who is employed by or is a volunteer in a rape crisis center, has undergone thirty-five (35) hours of training, who reports to and is under the direct control and supervision of a licensed social worker, nurse, psychiatrist, psychologist, or psychotherapist and whose primary purpose is the rendering of advise, counseling or assistance. A Domestic Violence Victims’ Counselor is a person who is employed or volunteers in a domestic violence victims’ program who has undergone a minimum of twenty-five (25) hours of training, and who report to and is under the
direct control and supervision of a direct service supervisor of a domestic violence victim.

**Confidentiality:** Reports of, and any subsequent investigations of, sexual harassment, sexual assault, dating violence, or domestic violence must be conducted in such a manner as to maintain confidentiality to the extent practicable under the circumstances. Information should only be shared with individuals who have a legitimate and operational need to be informed, and to the extent necessary to maintain the effectiveness of the process.

Different people on campus have different reporting responsibilities and different abilities to maintain privacy or confidentiality, depending on their roles at the University. Each campus shall provide a statement of confidentiality and identify its confidentiality procedures in regard to reports and investigations so that a complainant understands what information may be kept confidential, and by whom. The statement of confidentiality to be used by the University system office and campuses follows:

**Confidentiality Defined.** Certain employees are bound by statutory privilege obligations under Massachusetts law. They may not reveal a client's or patient's confidences, without permission, even to the Title IX Officer. These employees are sexual assault counselors, psychologists, psychotherapists, social workers, and attorneys, and persons working under the supervision of these individuals.

Certain other employees have been designated by the University as Confidential Employees. While not holding statutory privileges, they have been determined by the University to have responsibilities that supersede their obligations under Title IX, and should not reveal a client or patient's confidence, even to the Title IX Officer. Currently, the only employees with this designation are treating physicians. Other employees, defined as Responsible Employees, may not guarantee confidentiality, but should refer the decision to the campus Title IX Officer.

Responsible Employees are required to provide the information complainants disclosed to them to the Title IX Coordinator. Information disclosed to Responsible Employees, will be shared, to the extent necessary, with those individuals necessary to respond to the situation. The complainant will be told what information will be disclosed, to whom it will be disclosed, and why.

The University will be unable to conduct an investigation into a particular incident or pursue disciplinary action against an alleged accused if the victim chooses to (1) speak
only to a physician, professional counselor, clergy member, sexual assault counselor, domestic violence counselor or advocate; and (2) maintain complete confidentiality. Even so, these individuals will assist the victim in receiving other necessary protection and support, such as victim advocacy, disability, medical/health or mental health services, or legal services, and will advise the victim regarding their right to file a Title IX complaint with the University and a separate complaint with local or University police. If a complainant insists on confidentiality, such professionals, counselors and advocates will likely not be able to assist the complainant with: University academic support or accommodations; changes to University-based living or working schedules; or adjustments to course schedules. A complainant’s receipt of remedial support will not be dependent upon that person’s willingness to file a complaint or report to law enforcement but may be limited by the individual’s willingness to allow his/her identity to be known.

A complainant who at first requests confidentiality may later decide to file a complaint with the University or report the incident to the police, and thus have the incident fully investigated. These counselors and advocates can provide victims with that assistance if requested by the complainant. These counselors and advocates will also explain that Title IX includes protections against retaliation, and that the University will not only take steps to prevent retaliation when it knows or reasonably should know of possible retaliation, but will also take strong responsive action if it occurs.

Responsible Employees, the Title IX Coordinator, University-employed physicians, professional counselors, sexual assault and domestic violence counselors and advocates, and certain other University employees are required to explain to victims their rights and options with respect to confidentiality.

**Dating and Domestic Violence:** Domestic and/or Dating Violence: Abuse, (including; but not limited to physical and/or sexual), or threats of such abusive violence committed by one intimate partner who is, or has been in, a romantic or intimate relationship with another intimate partner. Domestic violence and dating violence can occur between current or former intimate partners who have dated or lived together. Domestic violence can occur between current or former intimate partners who are married, or have been married, or have a child together. Both Domestic and Dating violence can occur in opposite-sex and same-sex relationships.

**PROHIBITED CONDUCT**

**Discriminatory and Bias Related Harassment**
Harassment constitutes a form of discrimination that is prohibited by law. Amherst will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, Amherst may also impose sanctions on the harasser.

Amherst’s harassment policy explicitly prohibits any form of harassment, defined as unwelcome conduct on the basis of actual or perceived membership in a protected class, by any member or group of the community. A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent/pervasive and objectively offensive that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities. ³

Offensive conduct and/or harassment that does not rise to the level of discrimination or that is of a generic nature not on the basis of a protected status may not result in the imposition of discipline under University policy, but will be addressed through civil confrontation, remedial actions, education and/or effective conflict resolution mechanisms. For assistance with conflict resolution techniques, employees should contact the Ombuds Office and students should contact the Dean of Students Office Director of Student Conduct.

Amherst condemns and will not tolerate discriminatory harassment against any employee, student, visitor or guest on the basis of any status protected by university policy or law.

Types of Sex/Gender Misconduct
Massachusetts state law defines various violent and/or non-consensual sexual acts as crimes. Additionally, Amherst has defined categories of sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, Amherst considers Non-Consensual Sexual Intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, Amherst reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual

³ This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department Of Education Office For Civil Rights, Racial Incidents And Harassment Against Students At Educational Institutions Investigative Guidance. The document is available at http://www.ed.gov/about/offices/list/ocr/docs/race394.html.
misconduct or other gender-based offenses, including intimate partner or relationship (dating and/or domestic) violence, non-consensual sexual contact and stalking based on the facts and circumstances of the particular grievance. Any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender identity of those involved, may commit Acts of sexual misconduct. Violations include:

**Sexual Harassment**

Both the Equal Employment Opportunity Commission and the State of Massachusetts regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. Amherst has adopted the following definition of sexual harassment, in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.\(^4\)

Sexual harassment is *[NOTE: This is not exactly like the one from the System Office, you may keep this or replace it with the language provided from that office]*:

- Unwelcome, sexual or gender-based verbal, written, online and/or physical conduct.\(^5\)

\(^4\) Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment, “Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX,” which can be found at [http://www2.ed.gov/legislation/FedRegister/other/2001-1/011901b.html](http://www2.ed.gov/legislation/FedRegister/other/2001-1/011901b.html), as well as the April, 2011 Dear Colleague Letter on Campus Sexual Violence, which can be found at: [http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf](http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf)

\(^5\) Some examples of possible Sexual Harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor’s office or on the exterior of a residence hall door
- Two supervisors frequently ‘rate’ several employees’ bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus
- Male students take to calling a particular brunette student “Monica” because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, “sexual relations” and Weight Watchers.
- A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.
Anyone experiencing sexual harassment in any University program is encouraged to report it immediately to the University's Title IX Coordinator.

Sexual harassment creates a hostile environment, and may be disciplined when it is:

- Sufficiently severe, persistent/pervasive and objectively offensive that it,
  - Has the effect of unreasonably interfering with, denying or limiting employment opportunities or the ability to participate in or benefit from the university's educational, social and/or residential program, and is
  - Based on power differentials (quid pro quo), the creation of a hostile environment or retaliation. [Note: this is not exactly like the one from the System Office, you may keep this or replace it with the language provided from that Office]

**Non-Consensual Sexual Intercourse**

Defined as:

- any sexual penetration or intercourse (anal, oral or vaginal)
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.

**Non-Consensual Sexual Contact**

Defined as:

- any intentional sexual touching
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

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6 The Massachusetts state definition of sexual assault is defined as any crime in which the offender subjects the victim to sexual touching that is unwanted and offensive. The unwanted sex act is one that is forced upon someone, whether it is penetration or simply sexualized touching. Grabbing a woman's buttocks without her permission, for example, would be considered sexual assault and not rape. There are two categories of sexual assault – indecent assault and battery, and aggravated sexual assault. If any harm comes to the victims as a result of the indecent assault, it can be elevated to an aggravated indecent assault crime. Essentially, if any medical attention is required due to injuries sustained during a sexual assault, it becomes a case of aggravated sexual assault. With this will come much harsher punishments including longer prison sentences. Regardless, both crimes are forms of sexual assault involve sexual contact that is manipulated, forced, or coerced.
Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

**Sexual Exploitation**

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed)
- Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent)
- Prostitution
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) and without informing the other person of the infection, and further includes administering alcohol or drugs (such as “date rape” drugs) to another person without his or her knowledge or consent

**Retaliation**

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging harassment, supporting a party bringing a grievance or for assisting in providing information relevant to a claim of harassment is a serious violation of University policy and will be treated as another possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the Executive Director EO&D/Title IX Coordinator or Designee and will be promptly investigated. Amherst is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.
OTHER CIVIL RIGHTS OFFENSES, WHEN THE ACT IS BASED UPON THE STATUS OF A PROTECTED CLASS

- Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class
- Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of their actual or perceived membership in a protected class
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another on the basis of actual or perceived membership in a protected class
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the hazing policy) on the basis of actual or perceived membership in a protected class; hazing is also illegal under Massachusetts State law and prohibited by University policy
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class
- Violence between those in an intimate relationship to each other on the basis of actual or perceived membership in a protected class (this includes romantic relationships, dating, domestic\(^8\) and/or relationship violence\(^9\))

\(^7\) For any campus that decides to replace existing conduct processes entirely—for all forms of misconduct—with the 1P1P model, all references in this section to protected class status should be removed.

\(^8\) The Massachusetts state definition of domestic violence is it is a crime to commit domestic violence (also called domestic abuse), which includes physical harm, attempts to cause physical harm, inflicting fear of imminent serious physical harm, and involuntary sexual relations between family and household members. It is also a crime in Massachusetts to violate a protective order.

Family and household members include people who:

- are or were married
- are or were living together
- are related by blood or marriage
- have children together, and
- are dating or have dated.

(Mass. Gen. Laws ch. 209A, § 1.)

which is applicable to criminal prosecutions for domestic violence in Massachusetts, but may differ from the definition used on campus to address policy violations.

\(^9\) Examples:

- Employee A has been in an intimate relationship with Employee B for over a year; Employee A punches Employee B in the face during an argument (Dating Violence).
• Stalking\textsuperscript{10}, defined as a course of conduct directed at a specific person on the basis of actual or perceived membership in a protected class that is unwelcome and would cause a reasonable person to feel fear\textsuperscript{11}

• Any other University rules, when a violation is motivated by the actual or perceived membership of the victim on the basis of sex or gender or in a protected class, may be pursued using this policy and process.

**POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS\textsuperscript{12}**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University/College. For the personal protection of members of this community, relationships in which power

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\begin{itemize}
  \item Student A has been in an intimate relationship with Student B for over a year; Students A & B live together. During an argument, Student A shoves Student B to the ground (Domestic Violence).
  
  \textsuperscript{10} The Massachusetts state law definition of stalking is defined as willfully, maliciously, and repeatedly following, harassing, or threatening a person with the intent to place that person in imminent fear of death or serious bodily injury. It is punishable by imprisonment for up to five years, a fine of up to $1,000, or both. The law covers acts or threats including those conducted by mail, telephone, or telecommunication devices, including electronic mail, Internet communications, and facsimile communications (Mass. Gen. Laws. Chapter 265, § 43), which is applicable to criminal prosecutions for stalking in Massachusetts, but may differ from the definition used on campus to address policy violations.
  
  \textsuperscript{11} Examples
  
  \item Employee A recently ended an intimate relationship with Employee B. For the past three weeks, B has been sending A 100 text messages per day and waits by A’s car at the end of each day to beg and plead with her to take him back. When she refuses, he loses control, makes threatening gestures, and tells her she will regret this. Employee A indicates she is fearful of what B might do to her (Stalking).
  
  \item Mark is a student on campus who has always been fascinated by women who dye their hair. One day, he notices MaryLou, whose hair is dyed a very bright purple. He follows her home to see where she lives, and begins to track her history, actions and movements online. His fascination increases to the point where he follows her frequently on campus, takes pictures of her without her permission, and spies through her window at night with a long-range camera lens. He wants to have her beautiful purple hair for his own, so that he can stroke it whenever he wants.

\end{itemize}

\textsuperscript{12} This section is offered as an optional inclusion, as some campuses prefer to include this policy elsewhere, such as a faculty handbook or employee manual. We include it here to inform students, not just employees, of our expectations.
differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes RAs and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

**REPORTING OFFENSES UNDER THIS POLICY**

**Remedial Action Upon Reporting**

Immediately upon notice of alleged harassment, retaliation and/or discrimination, the University will implement initial remedial and responsive and/or protective actions. Such actions could include but are not limited to: no contact orders, providing counseling and/or medical services, academic support, living arrangement adjustments, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, referral to campus and community support resources.

The University will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor who has been found to engage in harassing or discriminatory behavior or retaliation. Procedures for handling reported incidents are fully described below.

Deliberately false and/or malicious accusations of harassment, as opposed to grievances which, even if erroneous, are made in good faith, are just as serious an offense as harassment and will be subject to appropriate disciplinary action.

**CONFIDENTIALITY AND REPORTING**

University officials, depending on their roles at the University, have varying reporting responsibilities and abilities to maintain confidentiality.

In order to make informed choices, one should be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus,
some resources may maintain confidentiality, offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist for you to report crimes and policy violations and these resources will take action when you report victimization to them. Most resources on campus fall in the middle of these two extremes; in some circumstances the law, protects employees from divulging private information that is shared with them, except in rare circumstances, in other circumstances the Responsible Employee is mandated to share all information with the Executive Director EO&D/Title IX Coordinator or Deputy Coordinator. The following describes the three reporting options at Amherst:

Confidential Reporting
If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with on-campus counselors, campus health service providers, on and off-campus local rape crisis counselors, domestic violence resources, local or state assistance agencies, or on or off-campus members of the clergy/chaplains when information is shared with them in the context of that confidential reporter’s job responsibilities. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor or elder. Campus counselors and Faculty and Staff Assistance are available to help and can be seen on an emergency basis during normal business hours. These employees will submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

Reporting to a Responsible Employee
All university employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting Parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Otherwise, employees must share all details of the reports they receive. If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law.

In cases indicating pattern, predation, threat, weapons and/or violence, the University will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the
victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by University when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Placing a Responsible Employee on notice of a sex/gender harassment, discrimination or misconduct still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: EO&D Office, Dean of Students Office, University Police (if the reporting party wishes), and the Threat Assessment Team if appropriate. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of university policy and is subject to disciplinary action ranging from a warning up to and including termination of employment.

**[OPTIONAL ADDITIONAL INFORMATION]:**

**FEDERAL STATISTICAL REPORTING OBLIGATIONS**

Certain campus officials have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

**Federal Timely Warning Obligations**
Victims of sexual misconduct should be aware that University administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The University will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

EQUITY GRIEVANCE PROCESS FOR RESOLVING COMPLAINTS OF HARASSMENT, SEXUAL MISCONDUCT AND OTHER FORMS OF DISCRIMINATION

The grievance process is intended to investigate, and where possible, resolve complaints of alleged discrimination or sexual misconduct against prospective employees, employees, prospective students, and students involved at the Amherst campus(es). The guidelines below are to be used by the EO&D Office and Dean of Students Office to enable all University Reporting Parties to use the grievance process to resolve the initiating problem without fear of retaliation. These procedures are intended to ensure that the Executive Director EO&D/Title IX Coordinator or Designee, will conduct a thorough, reliable and impartial investigation of all allegations of discrimination. The procedures should aid Reporting Parties and the University representatives in arriving at just resolutions.

The procedures described below will apply to all complaints involving students, staff or faculty members with the exception that unionized or other categorized employees will be subject to the terms of their respective collective bargaining agreements/employees’ rights to the extent those agreements do not conflict with federal or state compliance obligations. Redress and requests for responsive actions for complaints brought against non-members of the community are also covered by these procedures.

Filing A Complaint
Any member of the community, guest or visitor who believes that the Policy on Harassment Non-Discrimination and Sexual Misconduct has been violated, and wishes to file a complaint should contact the Executive Director of EO&D/Title IX, Dean of Students Office or designated Deputies.
Parties bringing a grievance to the University are encouraged to speak to university officials designated as Intake Officers, such as the Executive Director of EO&D/Title IX Coordinator, Deputy Coordinators, or others specifically designated (and trained) to engage in an intake interview for a Formal Report of incidents of sexual misconduct. Campus Police can not be included in this category because they are not designated as Responsible Employees with mandatory reporting obligations based on the Massachusetts Rape Shield law, and the prohibition of sharing information with the University. Parties bringing a grievance have the right, and can expect, to have grievances taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through these procedures. Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a party bringing a grievance’s rights and privacy.

All employees designated to provide intake of Formal Complaints of a potential violation of this University policy are expected to promptly contact the Executive Director of EO&D/Title IX Coordinator or Deputy Coordinator, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with the maximum possible privacy: specific information on any complaints received by any party will be reported to the Executive Director of EO&D/Title IX Coordinator or Deputy Coordinator, but, subject to the University’s obligation to redress violations. Every effort will be made to maintain the privacy of those initiating a report of a complaint. In all cases, the University will give consideration to the complainant with respect to how the complaint is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal complaint.

Reports to the Title IX Coordinator or Deputy Coordinators who are responders can be made via email, phone or in person at the contact information below:

**Débora D. Ferreira, Executive Director for EO&D/Title IX Coordinator**
Kelly A. Burgess, Assistant Director, serves as a deputy Title IX Coordinator
Office of Equal Opportunity and Diversity
243 Lederle GRC Lowrise
740 N. Pleasant Street
Amherst, Massachusetts 01003-9306

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13 Alternatively, “Reporting party” may be used in lieu of “party bringing a grievance.”
Complaint Intake
Following receipt of notice or a complaint, the Title IX Coordinator or Designee\(^{14}\) will, promptly review the information provided and engage in the preliminary investigation to determine the intent and willingness of the reporting party to engage in a broader investigation and to make a preliminary determination of the presence of pattern behavior, threats or violence. The Title IX Coordinator or Designee will provide the reporting party with resource information regarding medical, mental health, safety resources as well as information regarding the investigation and resolution process. This will generally be conducted through an e-mail to the reporting party unless either the Title IX Coordinator or Designee serves as the intake officer for the formal complaint. Additionally, the Title IX Coordinator or Designee will initiate immediate and appropriate remedial support for the reporting party. Normally, within two business days, an initial determination will be made whether a policy violation may have occurred and/or whether conflict resolution might be appropriate. If the reporting party does not appear to allege a policy violation or if conflict resolution is desired by the reporting party, and appears appropriate given the nature of the alleged behavior, then the complaint will not proceed to a formal investigation.

\(^{14}\) In circumstances involving student to student harassment/misconduct the Deputy Title IX Coordinator for students will be assigned to lead the investigation and resolution; in circumstances involving employees to employees the Title IX Coordinator will take the lead on the investigation and resolution and in cases involving students and employee(s) the Title IX Coordinator and Deputy Coordinator for students will coordinate the resolution. If circumstances require, the Chancellor or Title IX Coordinator may designate another person to oversee the process should a complaint be made against the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.
A full investigation will necessarily be pursued if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members. The University aims to complete all investigations within a 60 business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator or Deputy Coordinator with notice to the parties.

The Equity Grievance Process is comprised of two procedures - the informal procedure and the formal procedure.

**Informal Procedure**

- In an attempt to encourage prompt resolution of potential grievances, the Reporting Party may request the intervention of the EO&D/Title IX Office to resolve the matter informally. The Executive Director EO&D/Title IX Coordinator will attempt to resolve the matter informally with the administrators closest to and best able to discuss the situation. In matters involving students, the Dean of Student’s Office will be the office designated to address the matter if the matter involves students and employees the Dean of Student’s Office will work with the Executive Director EO&D/Title IX Coordinator for a resolution. All matters involving student employees, including graduate students will be addressed by the Dean of Student’s Office as the Designee for the Executive Director EO&D/Title IX Coordinator. Informal resolution attempts will not have precedential value nor will any statements or efforts made to resolve the matter informally have prejudicial effect on any subsequent formal grievances.

- The Executive Director EO&D/Title IX Coordinator may initiate a review in the absence of a request by the reporting party, but only on the basis of significant evidence.

**Conflict Resolution**

Conflict resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the formal hearing process to resolve conflicts. The Executive Director EO&D/Title IX Coordinator or Designee will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue and the susceptibility of the conduct to conflict resolution. In a conflict resolution meeting, the Executive Director EO&D/Title IX Coordinator or Designee will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies. The Executive Director EO&D/Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions.
Conflict resolution will not be the primary resolution mechanism used to address complaints of sexual misconduct or violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the formal process is completed should the parties and the Executive Director EO&D/Title IX Coordinator believe that it could be beneficial.

**Interim Remedies**

If, in the judgment of the Executive Director EO&D/Title IX Coordinator or Designee, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the accused individual or the ongoing activity of a student organization whose behavior is in question, the Executive Director EO&D/Title IX Coordinator or Designee may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. These remedies may include referral to counseling and health services or to the Faculty and Staff Assistance Program (FSAP), education to the community, altering the housing situation of an accused student or resident employee (or the alleged victim, if desired), altering work arrangements for employees, providing campus escorts, implementing contact limitations between the parties, offering adjustments to academic deadlines, course schedules, etc.

The University may interim suspend a student, employee or organization pending the completion of the investigation and procedures. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the opportunity to meet with the Executive Director EO&D/Title IX Coordinator or Deputy Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Executive Director EO&D/Title IX Coordinator or Deputy Coordinator has sole discretion to implement or stay an interim suspension under the Policy on Harassment Non-Discrimination and Sexual Misconduct, and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to University housing and/or the University campus/facilities/events. As determined by the Executive Director EO&D/Title IX Coordinator or Deputy Coordinator, this restriction includes classes and/or all other University activities or privileges for which the student or employee might otherwise be eligible. At the discretion of the Executive Director EO&D/Title IX Coordinator or Deputy
Coordinator, alternative coursework options may be pursued to ensure as minimal an impact as possible on an accused student.

**Formal Process**

If a Reporting Party wishes to pursue a formal complaint or if the University, based on the alleged policy violation, wishes to pursue a formal complaint, then the Executive Director of EO&D/Title Coordinator or Deputy Coordinator will appoint a trained investigator to conduct the investigation, usually within two business days of determining that a complaint should proceed. Investigation of complaints brought directly by those alleging harm should be completed expeditiously, normally within 15 business days of notice to the Executive Director EO&D/Title IX Coordinator or Deputy Coordinator. Investigation may take longer when initial complaints fail to provide direct first-hand information. The University may undertake a short delay (3-10 days, to allow evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. University action will not be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. All investigations will be thorough, reliable and impartial.

**Investigation**

The assigned Investigator(s) should create a positive dialogue with each party interviewed and the witnesses with the goal of guiding the interviewee to meet expectations, by:

- Explaining the role of the Investigator;
- Explaining the importance of the Policy on Harassment Non-Discrimination and Sexual Misconduct;
- Discussing the allegation and the behavior that led to the allegation; and
- Providing an opportunity to enable each person interviewed to explain his/her involvement or knowledge about the situation or allegation.

Upon completion of the investigation the investigator(s) will meet with the Executive Director EO&D/Title IX Coordinator or Designee to discuss and review the investigation process and information obtained. The Executive Director EO&D/Title IX Coordinator or Designee will either request further investigation or will direct the investigators to commence writing the Investigation Report. The investigation report will reflect facts ascertained in the investigation. Upon completion of the written report the Investigator(s) will present the report to the Executive Director EO&D/Title IX Coordinator or Designee who will review the report to determine if it meets the standard of being thorough, reliable and impartial and if such standard is reached will sign off on the report.
The Executive Director EO&D/Title IX Coordinator or Designee will make a determination of a finding based on the facts presented in the Investigation Report and applying a preponderance of the evidence standard and will make a recommendation to the appropriate Vice Chancellor or Provost.\footnote{15 Findings related to accused faculty or staff will be made to the Provost or Vice Chancellor and findings related to accused students will be made to the Vice Chancellor for Student Affairs}

If it is found that the allegations in the complaint or reported are unfounded, the Reporting Party will be notified in writing that his/her complaint or allegations of misconduct were investigated and determined to be unfounded based on a preponderance of the evidence, and the complaint/case is dismissed and closed.

**Appeals**

All requests for appeal considerations must be submitted in writing to the Executive Director EO&D/Title IX Coordinator or Designee within three business days of the acceptance of the finding by the appropriate Vice Chancellor or Provost.

A three-member panel designated by the Executive Director EO&D/Title IX Coordinator or Deputy Coordinator who was not involved in the complaint previously will consider all appeal requests. Any party may appeal, but appeals are limited to the following:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed are substantially disproportionate to the severity of the violation. [Note: this is optional – I’m not crazy about it but many schools want it in – your call]

The appeals panel will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. When any party requests an appeal, the other party (parties) will be notified and joined in the appeal. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds
have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately.

Where the appeal panel finds that at least one of the grounds is met, and proceeds, additional principles governing the hearing of appeals include the following:

- Appeals decisions by the panel are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original hearing, and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the Executive Director EO&D/Title IX Coordinator or Designee for reconsideration.
- Sanctions imposed are implemented immediately unless the Executive Director EO&D/Title IX Coordinator or Designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The Executive Director EO&D/Title IX Coordinator or Designee will normally, after conferring with the appeals panel, render a written decision on the appeal to all parties within 2-3 business days from hearing of the appeal.
- All parties should be informed of whether the grounds for an appeal are accepted and the final results of the appeal decision.
- Once an appeal is decided, the outcome is final: further appeals are not permitted.

**Failure to Complete Sanctions/Comply with Responsive Actions**

All respondents are expected to comply with conduct sanctions/responsive/corrective actions within the time frame specified by the Executive Director EO&D/Title IX Coordinator or Designee. Failure to follow through on conduct sanctions/responsive/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the University and may be noted on a student’s official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Executive Director EO&D/Title IX Coordinator or Designee.

**Records**

In implementing this policy, records of all complaints, resolutions, and hearings will be kept by the Executive Director EO&D/Title IX Coordinator or Deputy Coordinator. The records may be accessible to authorized staff as necessary. For
example, records may be accessed when determining an appropriate sanction for a subsequent violation; to determine pattern behavior; when a complaint of retaliation is made; when a decision is reviewed; or when a Responding Party 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.

**Statement of Reporting Party's Rights**

- To be treated with respect by University officials.
- To take advantage of campus support resources (such as Counseling & Psychological Services, the Office of the Chaplains, and University/College Health Services for students, or EAP services for employees).
- To experience a safe living, educational and work environment.
- To have an advisor [advocate] of one’s choice during every phase of this process.
- To refuse to have an allegation resolved through conflict resolution procedures.
- To receive amnesty for student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
- To be free from retaliation.
- To have complaints heard in substantial accordance with these procedures.
- To full participation of the injured party in any process.
- To be informed in writing of the outcome/resolution of the complaint, sanctions where permissible and the rationale for the outcome where permissible.
- Refer to law enforcement and have assistance.
- Working, housing and living and academic accommodations modified as necessary.
- No contacts orders put in place and enforced.

**Statement of Responding Party’s Rights**

- To be treated with respect by University officials.
- To take advantage of campus support resources (such as Counseling & Psychological Services, the Office of the Chaplains, and University/College Health Services for students, or FSAP services for employees).
- To have an advisor [advocate] during every phase of this process.
• To refuse to have an allegation resolved through conflict resolution procedures.
• To have complaints heard in substantial accordance with these procedures.
• To be informed of the outcome/resolution of the complaint and the rationale for the outcome, in writing.

Revision
These policies and procedures will be reviewed and updated annually by the Executive Director EO&D/Title IX Coordinator. The Executive Director EO&D/Title IX Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party. However, the Executive Director EO&D/Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of its implementation will apply. Policy in effect at the time of the offense will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy.

Reporting External to the University
A complainant dissatisfied with the University's resolution may seek redress to a state or federal compliance agency. Filing a complaint with the EO&D Office or Deputy Coordinators does not deny a person the right to file with outside agencies. These outside agencies and the issues they investigate are as follows:

Massachusetts Commission Against Discrimination (MCAD)
Under Chapter 151B, Massachusetts General Laws Annotated, it is unlawful to discriminate against a person(s) on the basis of race, color, religion, creed, national origin or ancestry, handicapping condition, veteran status, or sexual orientation. The MCAD, a state agency, monitors discrimination in the areas of housing, employment, loans, and educational opportunities. Any person claiming to be aggrieved by an alleged unlawful practice may file a complaint with this agency. The offices to contact are:

Springfield Office:
Massachusetts Commission Against Discrimination
436 Dwight Street, Suite 220
Springfield, MA 01103
(413) 739-2145

Boston Office: 
Massachusetts Commission Against Discrimination
One Ashburton Place, Room 601
Boston, MA 02108
(617) 994-6000
TTY (617) 994-6196

Office of Federal Contract Compliance Programs (OFCCP)/Department of Labor
On October 5, 1978, President Carter signed Executive Order 12086. This order is the most recent amendment to Executive Order 11246. It gives OFCCP the compliance responsibility for equal opportunity programs previously assigned to eleven other federal agencies. This agency monitors discrimination in employment and in educational institutions (including hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, national origin, or sex. The local office to contact is:
Office of Federal Contract Compliance Programs
U.S. Department of Labor
John F. Kennedy Federal Building
Room E-235
Boston, MA 02203
(617) 624-6780

Equal Employment Opportunity Commission (EEOC)
The EEOC monitors discrimination in employment under Title VII, which prohibits discrimination in employment (including hiring, upgrading, salaries, fringe benefits, training, and other conditions of employment) on the basis of race, color, religion, national origin or sex. The EEOC places great emphasis on employment practices which classify jobs as "male" or "female" or which maintain separate line of progression based on sex where this would adversely affect any employee. The local office to contact is:
U.S. Equal Employment Opportunity Commission
John F. Kennedy Federal Building
475 Government Center
Boston, MA 02203
(800) 669-4000
TTY (800) 669-6820

Office for Civil Rights (OCR)/U.S. Department of Education
The OCR monitors: 1) Title IX, which specifies prohibitions against discrimination on the basis of sex in educational programs; 2) the Rehabilitation Act of 1973, which prohibits discrimination based on handicap in areas related to employment, program accessibility, and student programs. Anyone who has a complaint relating to sex discrimination or discrimination based on personal impairment may contact:

U.S. Department of Education  
Office for Civil Rights  
5 Post Office Square, 8th Floor/Suite 900  
Boston, MA 02109-3921  
Telephone: (617) 289-0111  
TTY: (800) 877-8339

Procedures Related to Complaints Filed Outside the University System

A. Notification of external complaints is usually sent by the outside agencies directly to the Chancellor's Office to the attention of the EO&D Office. A copy of the complaint is then sent to the appropriate vice chancellor or executive officer and the University Legal Counsel for their information.

B. Responses to compliance agencies' queries are submitted to the EO&D Office by the appropriate parties closest to the alleged problem. The Chancellor, in consultation with the EO&D Office, University Legal Counsel, and the appropriate administrators, will determine the University's position vis-a-vis the complaint.

C. Any determination or resolution of these complaints is made by the appropriate vice chancellor or executive officer in whose area the complaint has been filed, usually after consultation with the EO&D Office and the University Legal Counsel.

D. All legal matters are handled by the University Legal Counsel in consultation with the vice chancellor or executive officer in whose area the complaint has been placed, and the Director of EO&D.

This policy and procedure was implemented fill in here please