

Approved 12/6/18
Revised August 14, 2020

UNIVERSITY OF MASSACHUSETTS AMHERST
POLICY AGAINST DISCRIMINATION, HARASSMENT,
AND RELATED INTERPERSONAL VIOLENCE

*Including Sexual and Gender-Based Harassment, Sexual
Assault, Sexual Exploitation, Intimate Partner Violence,
Stalking, Complicity, and Retaliation*

TABLE OF CONTENTS

I.	STATEMENT OF POLICY	3
II.	TO WHOM THIS POLICY APPLIES	4
III.	REPORTING OPTIONS	5
IV.	PRIVACY AND CONFIDENTIALITY	7
V.	REPORTING RESPONSIBILITIES	7
A.	TITLE IX REPORTING OBLIGATIONS	7
B.	CLERY REPORTING OBLIGATIONS	8
C.	CHILD ABUSE REPORTING OBLIGATIONS	9
VI.	DEFINITIONS	9
VII.	PROHIBITED CONDUCT UNDER THIS POLICY	10
A.	UNLAWFUL DISCRIMINATION	10
B.	HARASSMENT	11
C.	SEXUAL HARASSMENT UNDER TITLE IX	11
D.	SEXUAL MISCONDUCT	11
E.	SEXUAL ASSAULT	11
F.	SEXUAL EXPLOITATION	12
G.	SEXUAL VIOLENCE	12
H.	INTIMATE PARTNER VIOLENCE	12
I.	DATING VIOLENCE	12
J.	DOMESTIC VIOLENCE	12
K.	STALKING	13
L.	RETALIATION	13
M.	COMPLICITY	13
VIII.	PREVENTION, AWARENESS AND TRAINING PROGRAMS	13
IX.	OBLIGATION TO PROVIDE TRUTHFUL INFORMATION	14
X.	RELATED POLICIES	14
XI.	POLICY REVIEW	14

I. STATEMENT OF POLICY

This Policy Against Discrimination, Harassment and Related Interpersonal Violence, Including Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Complicity, and Retaliation (“Policy”) prohibits unlawful discrimination, harassment including sexual harassment under Title IX, sexual misconduct and retaliation on the basis of race, color, religion, creed, sex, age, marital status, national origin, mental or physical disability, political belief or affiliation, pregnancy and pregnancy related condition(s), veteran status, sexual orientation, gender identity and expression, genetic information and any other legally protected class of individuals protected from discrimination under state or federal law in any aspect of the access to, admission, or treatment of students in its programs and activities, or in employment and application for employment, in education, admission, access to or treatment in, its programs, services, benefits, activities, and terms and conditions of employment at the University. ¹.. 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 opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above will be in violation of this policy. Finally, this Policy prohibits Complicity for knowingly assisting in an act that violates this Policy and Retaliation against an individual because of their good faith participation in the reporting, investigation, or adjudication of violations of this Policy. University students and employees who violate this Policy may face discipline up to and including expulsion or termination.

When brought to the attention of the University, the University will take actions appropriately to respond to, stop, remedy, and prevent the reoccurrence of any such discrimination.

Certain forms of sexual harassment, including sexual assault, intimate partner violence, stalking (collectively hereafter referred to as Sexual Harassment Under Title IX) are defined within this Policy. The University adjudicates complaints of Sexual Harassment under Title IX through the University’s Title IX Policy and Procedures.

In accordance with this Policy, the University will maintain Procedures which detail the complaint procedures and appeal rights associated with violations of this Policy.

Notice of Non-Discrimination Based on Protected Status

The University of Massachusetts Amherst (the “University”) is committed in policy, principle, and practice to maintaining an environment which prohibits discriminatory behavior and provides equal opportunity for all persons. The University affirms its commitment to provide a welcoming and respectful work and educational environment, in which all individuals within the University community may benefit from each other’s experiences and foster mutual respect and appreciation of divergent views. The University will not be tolerant of conduct which violates rights guaranteed by the law or University policies. Accordingly, and pursuant to the Affirmative Action and Non-Discrimination Policy, the University prohibits discrimination and harassment based upon protected characteristics, and retaliatory conduct, in accordance with state and federal non-discrimination laws, including but not limited to Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Violence Against Women Act of 1994, and the

Massachusetts anti-discrimination laws.

Sexual Assault, Sexual Violence, Intimate Partner Violence, and Stalking Are Prohibited Forms of Conduct

Just as the University's prohibition of discrimination based on Protected Status (including Sexual Assault as a form of Sexual Harassment) is grounded in federal law, so is its prohibition against Intimate Partner Violence and Stalking. The University's response to Sexual Assault, Sexual Violence, Intimate Partner Violence, and Stalking is governed by the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. § 1092(f) (the Clery Act), Section 304 of the 2013 Amendments to the Violence Against Women Act, and the Department of Education's Final Rule on Title IX, 34 CFR 106 Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (May, 2020) The University is committed to taking all appropriate steps to eliminate Sexual Harassment under Title IX, Sexual Misconduct, Sexual Assault, Sexual Violence, Intimate Partner Violence and Stalking; prevent the recurrence of such acts; and address their effect. . The University recognizes that Sexual Assault, Sexual Violence, Intimate Partner Violence and Stalking encompass a broad spectrum of conduct and will respond according to both the severity of the allegation and the threat it poses to the campus community.

II. TO WHOM THIS POLICY APPLIES

This Policy and associated procedure apply to the conduct of, and protect, University students and employees, including faculty and staff, Five College Interchange Students, graduate, professional and doctoral students, post-doctoral scholars, Five College Shared Employees and student employees. The non-discrimination provisions also apply to contractors and other third parties under circumstances within the University's control. This Policy pertains to acts of Prohibited Conduct committed by or against Students, Employees and Third Parties, with the exception of Sec. A. Scope of Sexual Harassment under Title IX, when:

1. the conduct occurs on campus or other property owned or controlled by the University;
2. the conduct occurs in the context of a University employment or education program or activity, including, but not limited to, University-sponsored study abroad, research, on-line, or internship programs; or
3. the conduct occurs outside the context of a University employment or education program or activity, but has continuing adverse effects on or creates a hostile environment for Students, Employees or Third Parties while on campus or other property owned or controlled by the University or in any University employment or education program or activity.

A. Scope of Sexual Harassment under Title IX

The University's Title IX Policy and Grievance Procedures apply to allegations of Sexual Harassment Under Title IX that occurred in the United States and:

1. On property owned or controlled by the University or property owned or controlled by a student organization that is recognized by the University; or
2. In connection with a University education program or activity

A university program or activity that falls within the scope of Title IX Sexual Harassment includes locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

Complaints of Sexual Harassment under Title IX are governed by the University's Title IX Policy and Procedure.

III. REPORTING OPTIONS

The University's Equal Opportunity Office is charged with monitoring the University's compliance with the Policy and responsibilities conferred by federal and state law, including but not limited to the ADA, ADEA, Title VII, Title IX, and the Massachusetts anti-discrimination laws or other laws, ensuring appropriate education and training, coordinating the University's investigation, response, and resolution of all reports under this Policy and ensuring appropriate actions to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

Reports of Prohibited Conduct should be promptly reported to the Equal Opportunity Office, the Title IX Coordinator or a Deputy Title IX Coordinator at the contact information below:

William D. Brady

Interim Title IX Coordinator
Vice Chancellor and Chief Human Resources
Officer
330 Whitmore Building
181 Presidents Drive
Amherst, Massachusetts 01003
Phone: 413-545-6124
TitleIXCoordinator@umass.edu
Web: www.umass.edu/titleix

Deputy Title IX Coordinators:

Ryan K. Morse

Interim Director
Office of Equal Opportunity
225 Bartlett Hall
130 Hicks Way
Amherst, Massachusetts 01003
Phone: (413) 545-3464

Email: rkmorse@umass.edu

Michael Eagen

Associate Vice Provost for Academic Personnel
373 Whitmore Administration Building
181 Presidents Drive
University of Massachusetts
Amherst, MA 01003
Phone: (413) 545-6221
Email: meagen@umass.edu

Patricia Cardoso-Erase

Associate Dean for Conduct and Compliance
227 Whitmore Administration Building
University of Massachusetts
Amherst, MA 01003
Phone: 413-545-6281
Email: pcardoso@umass.edu

Jeff Smith

Sr. Assoc. Athletics Director
Boyden Gymnasium, Rm 223
Amherst, Massachusetts 01003
Phone: (413) 545-2866
Email: jbsmith@admin.umass.edu

Mark Eckman & Andrea Campbell Drake

International Programs Office
70 Butterfield Terrace
University of Massachusetts Amherst
Amherst, MA 01003
Phone: (413)545-2710
Email: eckmanm@umass.edu
andreadrake@ipo.umass.edu

Reports of discrimination by the Executive Director EO/Title IX Coordinator or Deputy Coordinators should be reported to the Chancellor at the following address:

Office of the Chancellor
UMass Amherst
374 Whitmore Building
181 Presidents Drive
Amherst, MA 01003
Phone: 413-545-2211
Email: chancellor@umass.edu

IV. PRIVACY AND CONFIDENTIALITY

For any report under this Policy, every effort will be made to respect and safeguard the privacy interests of all individuals involved in a manner consistent with the need for a careful assessment of the allegation and any necessary steps to eliminate the conduct, prevent its recurrence, and address its effects.

V. REPORTING RESPONSIBILITIES

All members of the university community are *encouraged* to report instances of discrimination, harassment, and retaliation as described in this Policy. Reports should be directed to the Equal Opportunity Office. Additional reporting obligations specifically under Title IX, the Clery Act, university policy, and when child abuse is suspected, are detailed below.

High-level and supervisory employees, including Vice Chancellors, Vice Provosts, Deans, Department Heads, and Directors (including Directors of Centers and Institutes and Graduate and Undergraduate program directors) *must* report any information related to possible violations of this Policy.

A. **SEXUAL HARASSMENT UNDER TITLE IX AND SEXUAL MISCONDUCT REPORTING OBLIGATIONS**

An Employee's responsibility to report information about certain types of Prohibited Conduct to the Title IX Coordinator under this Policy is governed by their role at the University. The University designates Confidential Employees and Responsible Employees.

Confidential Employee: An employee who, because of their position, may not reveal an individual's identity or other information without permission, even to the Title IX Coordinator(s).

The following categories of employees are confidential employees:

- Licensed sexual assault counselors, physicians, psychologists, psychotherapists, social workers, clergy, and attorneys, and those persons working under the supervision of such individuals, when acting in their professional role providing services to a patient or client;
- University employees bound by statutory privilege obligations under Massachusetts law; and
 - University employees providing administrative, operational and/or related support for a confidential employee in the performance of such services.

Responsible Employee: an employee (a) who, because of their position, must report known or possible incidents of sexual violence, sexual harassment under Title IX or any other sexual misconduct by students or employees, including the known details of

the incident and the name(s) of alleged victim(s) and respondent(s), to the Title IX Coordinator(s) or other appropriate school designee ; or (b) who has the authority to take action to redress sexual harassment/misconduct; Campus police officers are Responsible Employees; but, see exception for public safety personnel.

At UMass Amherst, it has been determined that “responsible employees” include:

- faculty with administrative or supervisory responsibilities (deans and associate deans, heads and chairs, graduate and undergraduate program directors, faculty athletic representatives and directors of centers and institutes);
- Campus police officers (but, see exception noted below);
- all staff that are academic advisors;
- all coaches and trainers;
- all advisors to Registered Student Organizations, intramural sports and other student groups;
- all supervising travel external to the university and any contractors doing the same;
- all personnel in Student Affairs with the exception of confidential employees; and
- staff in managerial and supervisory roles.

All University employees are strongly encouraged to report to law enforcement any conduct that could potentially present a danger to the community or may be a crime under Massachusetts law.

Exception for public safety personnel: Although campus police officers are designated as Responsible Employees, if a student or employee reporting sexual assault or domestic violence requests confidentiality, the campus police officer must not disclose the name of the reporting party to the Title IX Coordinator(s).

B. CLERY REPORTING OBLIGATIONS

Under the Clery Act, certain University employees are designated as Campus Security Authorities. CSAs 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. Based on information reported to CSAs, the University includes statistics about certain criminal offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the University to issue timely warnings to the University community about certain reported crimes that may pose a serious or continuing threat to Students and Employees. Consistent with the Clery Act, the University withholds the names and other personally identifying information of the Complaining Party when issuing timely warnings to the University community.

C. CHILD ABUSE REPORTING OBLIGATIONS

Certain University employees may be mandated reporters of child abuse or neglect as defined by Massachusetts G.L. c. 119, § 21 and must comply with Massachusetts' mandated reporting laws.

VI. DEFINITIONS

Complainant - An individual who is alleged to be the victim of Prohibited Conduct under this Policy and as further defined by the university's Title IX Policy and Procedures.

Consent is permission to engage in communication and/or a specific, mutually-agreed upon sexual activity that is given freely, actively, and knowingly, using mutually understandable and unambiguous words or actions, or—in plain language—to agree to do the same thing, at the same time, in the same way, with each other.

- Consent cannot be inferred by silence, passivity, or not resisting;
- Consent cannot be implied by a current or previous dating or sexual relationship;
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity;
- Consent is not indefinite; it is revocable and may be withdrawn at any time, using words or actions such that a reasonable person would understand a lack of continued consent;
- Consent cannot be given by person who is
 - Asleep;
 - Incapacitated by drugs or alcohol;
 - Unconscious;
 - Mentally or physically incapacitated; or
 - Under duress, intimidation, threat, coercion, or force.
- Consent cannot be given by a person under the age of 16. It is the responsibility of the person seeking to initiate the sexual activity or conduct to affirmatively obtain consent, not the intended recipient of such conduct to deny such consent.

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and/or coercion that overcome resistance.

Coercion is the use of an unreasonable amount of pressure to engage in sexual activity. Coercion does not begin when the initiator makes an initial sexual advance. Coercion begins when the initiator continues to pressure another, through the use of psychological/emotional pressure, alcohol, drugs, threat, intimidation, or force, to engage in sexual behavior, when a reasonable person would realize that the other does not want to engage in sexual activity.

Incapacitation is the physical and/or mental inability, whether temporary or permanent, of an individual to make rational, reasonable decisions or judgments regarding one's well-being or welfare. States of incapacitation include, but are not limited to, unconsciousness, sleep, and blackouts. Incapacitation may result from the voluntary or involuntary consumption of alcohol and/or other drugs. Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. For purposes of this Policy a person is not incapacitated merely because the person has been drinking or using drugs. The question of incapacitation is determined on a case-by-case basis using both objective and subjective standards. In evaluating whether a person was incapacitated for purposes of evaluating effective consent, the University will consider: (1) whether the person initiating the sexual activity knew that their partner was incapacitated; and if not (2) whether a reasonable person in the same situation would have known that their partner was incapacitated; and (3) whether the person initiating the sexual activity played a role in creating the circumstances of incapacity.

Respondent –

- i. An individual who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct under this Policy, or
- ii. an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment Under Title IX, or
- iii. the subject of a complaint of Prohibited Conduct as defined by this Policy.

Title IX Coordinator- the individual designated and authorized by the university to coordinate and comply with the university's responsibilities under Title IX of the Educational Amendments of 1972, 20 USC §1681 and 34 CFR 106

VII. PROHIBITED CONDUCT UNDER THIS POLICY

Prohibited conduct under this Policy is prohibited regardless of the sex, sexual orientation and/or gender identity/expression of the Complainant³ or Respondent. Prohibited Conduct includes the following specifically defined forms of behavior: Discrimination, Harassment, Sexual Harassment under Title IX, Sexual Misconduct, Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Complicity, and Retaliation.

A. UNLAWFUL DISCRIMINATION

Unlawful discrimination is conduct that is directed at a specific person or persons that subjects them to treatment that adversely affects their employment, application for employment, education, admissions, University benefits, programs, or activities, because of their religion or religious belief, color, race, marital status, veteran or military status, age, sex (including sexual harassment), gender identity or expression, sexual orientation, national origin, ethnicity, disability,

genetic information, or any other legally protected class.

B. HARASSMENT

Harassment is conduct against a person or persons based upon their legally protected class that adversely has the effect of:

- i. unreasonably interfering with a person or person's employment, educational benefits, academic grades or opportunities, or participation in University programs or activities; or
- ii. unreasonably interfering with a person or person's work or academic performance; or
- iii. creating an intimidating, hostile, or offensive working or academic environment.

C. SEXUAL HARASSMENT UNDER TITLE IX

Sexual Harassment under Title IX is conduct on the basis of sex that satisfies one or more of the following:

- i. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that effectively denies a person equal access to the University's education program or activity;
- iii. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 1229(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30), as amended.

D. SEXUAL MISCONDUCT

Sexual Misconduct is unwelcome conduct of a sexual nature when:

- i. submission to or rejection of such conduct by a person or persons is used as a basis for employment or educational decisions affecting such person or persons, or participation in University programs or activities; or
- ii. such conduct unreasonably (1) interferes with a person or person's work or academic performance; (2) interferes with or limits a person or person's ability to participate in or benefit from a work or academic program or activity; or (3) creates an intimidating, hostile, or offensive working or academic environment.

E. SEXUAL ASSAULT

Sexual Assault is broadly defined as any sexual activity that is forced, coerced, or unwanted.

F. SEXUAL EXPLOITATION

Sexual Exploitation is taking sexual advantage of another person without his or her consent. Sexual exploitation includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts of another person; allowing third parties to observe private sexual acts; and engaging in voyeurism.

G. SEXUAL VIOLENCE

Sexual Violence is any physical sexual act or activity engaged in without the consent of the other individual, including when the other individual is unable to consent to the act or activity (See also, definition for *Consent*).

H. INTIMATE PARTNER VIOLENCE

Intimate Partner Violence is Dating Violence or Domestic Violence as defined below.

I. DATING VIOLENCE

Dating Violence is violence committed by a person—

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based upon a consideration of the following factors:

- (i) The length of the relationship;
- (ii) the type of relationship; and
- (iii) the frequency of interaction between the persons involved in the relationship.

J. DOMESTIC VIOLENCE

Domestic Violence includes felony or misdemeanor crimes of violence committed by

-a current or former spouse of the victim,

-by a person with whom the victim shares a child in common,

-by a person who is cohabitating with or has cohabitated with the victim as a spouse,

-by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or

-by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

K. STALKING

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- fear for his or her safety or the safety of others; or
- suffer substantial emotional distress.

L. RETALIATION

Retaliation is the interference through intimidation, including threats, coercion, or unlawful discrimination, with an individual's right or privilege secured under the law [Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Massachusetts anti-discrimination laws, or other laws] to report or make a complaint, testify, assist or participate or refuse to participate in any manner in an investigation or grievance proceeding, or hearing, or to intervene to prevent a violation of this policy.

M. COMPLICITY

Complicity is any act taken with the purpose of aiding, facilitating, promoting or encouraging the commission of an act of Prohibited Conduct by another person.

VIII. PREVENTION, AWARENESS AND TRAINING PROGRAMS

The University is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming as part of their orientation, and returning students and current employees receive ongoing training and related education and awareness programs. The University provides training, education and awareness programs to students and employees to ensure broad understanding of this Policy and the topics and issues related to maintaining an education and employment environment free from harassment and discrimination.

For a description of the University's Prohibited Conduct prevention and awareness programs, including programs on minimizing the risk of incidents of Prohibited Conduct and bystander intervention, see the University's annual Clery reports (found online at: <https://www.umass.edu/umpd/clery-act>).

IX. OBLIGATION TO PROVIDE TRUTHFUL INFORMATION

All University community members are expected to provide truthful information in any report, investigation, or proceeding under this Policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions under The Student Code (for Students), Principles of Employee Conduct (for Employees), and any other applicable and appropriate University policy or policies. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

X. RELATED POLICIES AND PROCEDURES

- University of Massachusetts, Amherst Title IX Policy and Grievance Procedure
- University of Massachusetts, Amherst Code of Student Conduct
- University of Massachusetts, Amherst Interim Grievance Procedures
- Policy Statement: Affirmative Action, Non-Discrimination, and Title IX
- Principles of Employee Conduct
- Code of Conduct for University of Massachusetts Vendors
- Policy on Consensual Relationships Between Faculty and Students:
- Policy on Employment and Contracting for Service of Relatives

XI. POLICY REVIEW

This Policy is maintained by the Equal Opportunity Office (EO). The University will periodically review and update this Policy and will evaluate, among other things, any changes in legal requirements, existing University resources, and the resolution of cases from the preceding year (including, but not limited to, timeframes for completion and sanctions and remedies imposed).