

*Effective: August 14, 2020*

# University of Massachusetts, Amherst Title IX Policy and Grievance Procedures

## I. INTRODUCTION AND SCOPE

The University of Massachusetts Amherst (UMass Amherst or University) prohibits sexual harassment, as that term is defined by the United States Department of Education's Title IX regulation *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance* published in Part 106 of Title 34 of the Code of Federal Regulations. UMass Amherst is firmly committed to working to ensure that all applicants for admission or employment, employees, students and persons who are authorized to conduct business with and/or perform other services on behalf of UMass Amherst are not subjected to sexual harassment.

The University's Title IX Grievance Procedure applies to formal complaints of sexual harassment as defined by this Policy, and provides for the prompt and equitable resolution of such complaints in line with this policy and procedures.

UMass Amherst also prohibits sexual misconduct and other forms of discrimination and harassment as required by federal and state law. Sexual misconduct and additional forms of discrimination and harassment are defined by the University of Massachusetts Amherst *Policy Against Discrimination, Harassment and Related Interpersonal Violence*. Procedures for addressing such forms of discrimination and harassment may be found in the Code of Student Conduct, the UMass Amherst Interim Sexual Misconduct and Discrimination Grievance Procedures, or other University policies and procedures as applicable.

Questions about this Title IX Policy and Grievance Procedure, University of Massachusetts, Amherst Policy Against Discrimination, Harassment and Related Interpersonal Violence, and related policies and procedures may be referred to:

**William D. Brady**

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

**Equal Opportunity Office**

225 Bartlett Hall  
130 Hicks Way  
Amherst, Massachusetts 01003  
Phone: (413) 545-3464  
Email: [equalopportunity@admin.umass.edu](mailto:equalopportunity@admin.umass.edu)  
For additional information and a list of support resources on campus and off campus, please visit the [UMass Amherst Title IX webpage](#)

## II. DEFINITIONS

**Advisor**- Any person selected by a party involved in the grievance process.

- Advisors may provide support to a party, and may inspect and review evidence gathered during the investigation.
- Advisors may be, but are not required to be, an attorney.
- Complainant and respondent are encouraged, but not required, to have an advisor throughout the grievance process.
- Advisors may only act in an advisory capacity and may not represent the person or otherwise speak on behalf of the person during investigatory meetings or other proceedings.
- Advisors are required during hearings for the purpose of conducting cross-examination. The University will assign an advisor if a party does not select one for the hearing for the sole purpose of conducting the cross-examination.

**Complainant**- An individual who is alleged to be the victim of conduct that could constitute sexual harassment. An individual who files a formal complaint of sexual harassment under these procedures.

**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 or designee. The following categories of employees are confidential employees:

- Licensed sexual assault counselors, 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.

**Consent**- 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 the other person was incapacitated; and if not (2) whether a reasonable person in the same situation would have known that the other person was incapacitated; and (3) whether the person initiating the sexual activity played a role in creating the circumstances of incapacitation.

**Formal complaint**-A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment.

**Hearing Chair**- A hearing officer designated to determine the relevance of questions and explain any decision to exclude a question as not relevant during cross-examination.

**Hearing Officer**- Members of the UMass Amherst campus including faculty, staff and students appointed and trained by the Title IX Coordinator, or designee, to serve on a live hearing panel in order to review cases and determine if a Respondent violated this policy.

**Investigator**- An individual assigned to investigate formal complaints filed under this policy.

**Official with Authority**- An employee who has the authority to institute corrective measures for sexual harassment on behalf of the University. These include:

William Brady, Vice Chancellor & Chief Human Resources Office (Staff)

Brandi Hephner LaBanc- Vice Chancellor for Student Affairs and Campus life (Students)

**Preponderance of the Evidence**- Evidentiary standard used to determine whether it is more likely than not that the behavior occurred.

**Procedural Advisor**: An individual designated to ensure Title IX Hearing Panel procedures are followed.

**Program or Activity**- 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.

**Respondent**-A person who is the subject of a formal complaint of sexual harassment.

**Responsible Employee** - an employee (a) who, because of their position, must report known or possible incidents of sexual violence 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

**Supportive Measures/Remedies-** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant and respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are designed to restore or preserve equal access to the University education program or activity without unreasonable burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or prevent sexual harassment.

**Title IX Coordinator-** An individual designated by the University to oversee the University's compliance with Title IX.

### **III. JURISDICTION AND AUTHORITY**

- A.** This Title IX Policy and Grievance Procedures applies to allegations of sexual harassment 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
- B.** The grievance procedures set forth in this policy apply to allegations of sexual harassment under Title IX that occurred on or after August 14, 2020.
- C.** The Title IX Coordinator oversees the UMass Amherst Title IX Policy and Grievance Procedures.
- D.** The Title IX Coordinator may appoint hearing and appeal officers.
- E.** The Title IX Coordinator is responsible for periodic review and update of the Title IX Policy and Grievance Procedures
- F.** Parties with concerns regarding potential bias or conflict of interest may report that concern to the Title IX Coordinator. Concerns regarding the Title IX Coordinator should be reported to the Chancellor.

#### **IV. STANDARDS**

The rules of evidence used in federal and/or state criminal and/or civil proceedings does not apply to the Title IX Grievance Procedure.

The standard of proof for deciding responsibility for an alleged Title IX violation is the preponderance of evidence standard.

Any form of recording and/or streaming of any meeting, hearing, or proceedings as described or referred to in these procedures, is strictly prohibited, unless such recording or recording is explicitly permitted.

The University reserves the right to have legal counsel present during any proceeding under these procedures. When counsel will be present, the University will notify all parties involved in advance.

Notice of this Title IX Policy and Procedure, the Title IX Coordinator's contact information, and the University's non-discrimination statement is provided to students, employees, and to all individuals seeking admissions and/or employment. Additionally, Title IX required notices are distributed to all current students, staff and faculty annually in the form of a link on the University website. Printed copies are available upon request from the Equal Opportunity Office.

#### **V. RELATIONSHIP TO OTHER PROCEEDINGS**

The Title IX Grievance Procedure may occur prior to, simultaneously with, or following criminal/civil proceedings. Individual(s) may be accountable to both civil and/or law enforcement authorities and the University for behavior that constitutes a violation of both the law and University policy.

Individuals may, but are not required to, report sexual harassment incident(s) to law enforcement authorities.

Individuals have the right to file a complaint with an external agency such as those listed below, or other antidiscrimination agencies.

External enforcement agencies:

The United States Department of Education Office for Civil Rights  
5 Post Office Square, 8<sup>th</sup> Floor  
Boston, MA 02109-3921  
Telephone: (617) 289-0111  
Facsimile: (617) 289-0150  
[Email: OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

The United States Equal Employment Opportunity Commission  
JFK Federal Building,  
25 Sudbury Street  
Boston, MA 02222,  
Phone: 800-669-4000, TTY: 800-669-6820.

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

## **VI. ADDITIONS AND AMENDMENTS**

These University expectations are set forth in writing to give general notice and examples of prohibited conduct.

The Title IX Coordinator, will develop procedures for administration of the policy that are consistent with Title IX regulations. Material deviation from these procedures will generally only be made as necessary and will include reasonable advance notice to the parties involved, either by online posting and/or other written communication.

The University reserves the right to amend any provision at any time to comply with changes in federal/state/local laws or change in University policies. The University will publish such amendments in relevant campus publications/websites.

The Title IX Coordinator, or designee, may vary procedures with notice upon determining that a law or regulation requires policy or procedural alterations not reflected in the Title IX Grievance Procedure.

The Title IX Coordinator, or designee, may make minor modifications to procedure that do not materially affect the integrity of the grievance process.

Any question of interpretation of the Title IX Policy and Grievance Procedure will be referred to the Title IX Coordinator, or their designee, whose interpretation is final.

## **VII. RIGHTS AND RESPONSIBILITIES**

### **A. Rights of Parties and Witnesses:**

All Respondents, Complainants, and Witnesses have the following rights:

- To receive written notices as prescribed by the policy and procedure.
- To have an Advisor, as defined, present during any proceeding.
- To have an advisor conduct cross-examination during a hearing.
- To request reasonable accommodations due to disability.

To have access to review evidence, to the extent permitted by the policy and law.

To be informed of resources available to assist them throughout the process and an explanation of the available reporting and/or resolution options.

To have the opportunity to address information that may be used in determining an outcome.

To be free from retaliation concerning the grievance process.

To provide information for consideration during the grievance process, including identification of Witnesses.

**B. Responsibilities of the Parties and Witnesses:**

All Respondents, Complainants, and Witnesses have the following responsibilities:

To be honest and forthright in providing information.

To read all communications, ask questions about the procedures, and to identify what assistance they may need.

To represent themselves in the Title IX grievance procedure and communications.

To attend all scheduled meetings, unless alternate arrangements are made in advance.

To maintain the integrity of the grievance procedure and to refrain from interfering with the process.

To provide information related to the incident(s) under review.

To identify any witnesses who have information about the allegation(s).

**VIII. REASONABLE ACCOMMODATION FOR INDIVIDUALS WITH DISABILITIES**

Any person with a disability who is involved in the grievance process has the right to request reasonable accommodation(s) in order to ensure their full and equal participation.

Individuals affiliated with the University wishing to request reasonable accommodation(s) should make those requests directly to the Disability Services Office (students) or Human Resources Accessible Workplace (employee).

Individuals do not have to disclose information about the Title IX matter to the Disability Services Office (<https://www.umass.edu/disability/>) or the Accessible Workplace (<https://www.umass.edu/humres/workplace-accommodations-staff-and-faculty>) to request reasonable accommodation(s), except to the extent that it may assist in the determination of reasonable accommodation(s).

## IX. PROHIBITED CONDUCT

- A. Sexual Harassment under Title IX - Conduct on the basis of sex that satisfies one or more of the following:
1. An employee of the University conditions educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
  2. Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal access to the University's education program or activity; or
  3. "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.
- B. Sexual Assault-An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
1. Related Definitions:
    - **Sex Offense**: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
    - **Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
    - **Incest**—Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
    - **Statutory Rape**—Sexual intercourse with a person who is under the statutory age of consent.
    - **Rape**: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- C. Dating Violence- means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.
- D. Domestic Violence- A felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner 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 or intimate partner, 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.

- E. Stalking- 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.
  
- F. Retaliation - The interference through intimidation, 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.

## **X. REPORTING OBLIGATIONS**

The university has designated certain individuals, "responsible employees" and "officials with authority to promptly report sexual harassment of which they have knowledge of to the Title IX Coordinator including the names of all persons involved, information known as well as the relevant date, time, and location.

Sexual harassment should be reported in accordance with these procedures so that impacted individuals are informed of supportive measures, reporting options, and whenever possible, to prevent any recurrence. When an Official with Authority and/or Title IX Coordinator are informed of alleged sexual harassment the University is considered on notice per Title IX regulations.

Upon notice the Title IX Coordinator, or designee, will:

- Contact the complainant to discuss the availability of supportive measures;
- Consider the complainant's wishes with respect to supportive measures;
- Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- Explain to the complainant the process for filing a formal complaint and the grievance process.

## **XI. SUPPORTIVE MEASURES**

The Title IX Coordinator, or designee, may, at any time, coordinate the implementation of supportive measures for either a complainant or a respondent. Supportive measure can be implemented before or after the filing of a formal complaint or where no formal complaint has been filed.

Supportive measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including

measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Supportive measures may include, but are not limited to:

- Referral to counseling services
- Academic flexibility including extensions on assignments, course withdrawal petitions, modification to academic schedule, etc.
- University housing assignment modification
- Employment modifications including changes in schedule, work location, supervisor, etc.
- No contact directives

Equal Opportunity Office will keep information about supportive measures provided to the complainant or respondent confidential, to the extent that maintaining such confidentiality would not hinder the University's ability to provide the supportive measures.

## **XII. FORMAL COMPLAINT PROCEDURE**

Individuals who are participating in or attempting to participate in an education program or activity at the University may file a formal Title IX complaint with the Title IX Coordinator/Equal Opportunity Office. To the extent possible, formal complaints should include the conduct that forms the basis for the allegations of sexual harassment, the identity of the respondent, and the date and location of the alleged conduct.

Formal complaints may be submitted to the Title IX Coordinator/Equal Opportunity Office in person, by mail, by email, or by use of the following online reporting protocol:  
<https://www.umass.edu/titleix/reporting/my-reporting-options/how-report-incidents>

The Title IX coordinator may sign a formal complaint when complainant's identity is unknown, reports indicate the presence of a serial sexual predator, there are multiple reports against the same respondent but no complainant wishes to file a complaint, or the respondent is not affiliated with the university but is alleged to have committed sexual harassment in the university's educational programs or activities.

Under certain circumstances, such as where the complainant is a minor or the parent or guardian has the legal authority to act on behalf of the complainant, a parent or legal guardian may file and execute a complaint on behalf of the complainant.

The University may consolidate formal complaints arising out of the same factual circumstances when there is more than one complainant or respondent or where a cross complaint has been filed. In such cases, the University may issue a single investigative report and the parties must receive the same written determination regarding responsibility, although the determination of responsibility may be different with respect to each allegation. The University presumes that formal complaints of alleged sexual harassment are filed in good faith. In the event of a cross-complaint each party is entitled to the rights attached to their respective status.

### A. Confidential/Anonymous Complaints

Individuals may file a report or complaint confidentially or anonymously through the university's reporting mechanisms.<sup>1</sup> Please note that confidential and anonymous complaints may limit the University's ability to respond or pursue appropriate action. Filing an anonymous report is not considered filing a formal complaint, and that a "confidential" complaint or report will require the Title IX Coordinator to assess the report or complaint and determine whether the Title IX Coordinator would initiate a formal complaint based on the criteria described within these procedures.

### B. Emergency Removal

The University may impose emergency removals of student respondent(s) prior to the conclusion of a grievance process, or even where no grievance process is pending, when a respondent poses an immediate risk to the physical health or safety any student or other individual arising from the allegations of sexual harassment.

The university may elect to place a non-student employee on administrative leave during the pendency of a grievance procedure as defined by this Policy and Procedure.

When the respondent's action pose an immediate risk or identified threat, but do not arise from the allegations of sexual harassment, the University may impose removals, administrative leave and/or restrictions in accordance with other University policies and regulations (i.e., Code of Student Conduct, University of Massachusetts Amherst Policy Against Discrimination, Harassment and Related Interpersonal Violence, Interim Grievance Procedure, human resource or other university policies ) or per collective bargaining agreements.

An emergency removal is not a substitute for reaching a determination as to a respondent's responsibility for the sexual harassment allegations. The University must provide the respondent with written notice of the emergency removal, their right to challenge the application or scope of the emergency removal, and the process for challenging the emergency removal. In cases where emergency removals remain in place, the University may periodically assess and/or modify the emergency removal, administrative leave and/or restrictions must provide written notification of any modifications simultaneously to all parties.

## **XIII. COMPLAINT RESOLUTION**

Upon receipt of a formal complaint, the Title IX Coordinator or designee, will:

- Complete the actions required upon receiving notice, if not already completed,
- Evaluate jurisdiction and complaint,
- Assess appropriate supportive measures for both parties,
- Evaluate the need for any other measures, including emergency removal/administrative leave, and

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<sup>1</sup> <https://www.umass.edu/titleix/reporting/my-reporting-options/how-report-incidents>

- Initiate a grievance process that complies with Title IX regulations.

The Title IX Coordinator will determine if a formal complaint should be dismissed or proceed to investigation. At any time prior to reaching a determination regarding responsibility the University may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Informal resolution is not available in instances involving allegations that an employee sexual harassed a student.

Timeframe (s) referenced in this section can be extended for good cause, and with written notice to the parties, by the Title IX Coordinator, Investigator(s), Hearing Panel or Appeal Panel.

#### A. Informal Resolution

Parties may commence with an informal resolution in between the filing of a formal complaint and decision of responsibility in the grievance process. The Title IX Coordinator will determine if informal resolution is appropriate to resolve the complaint. If appropriate, the Title IX Coordinator will assign the informal resolution to a facilitator who will assist the parties in finding a mutually acceptable resolution.

The University will provide written notification to parties that includes: the allegation, the requirements of the informal resolution process including the circumstances under which it prevents the parties from resuming a formal complaint arising from the same allegations; the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; possible consequences resulting from participating in the informal resolution process; and information on how the records that will be maintained or could be shared.

Participation in an informal resolution process is voluntary, and will not be made a condition of either party's enrollment or employment. A written consent to the informal resolution process must be signed by all parties.

If an informal resolution agreement is reached and the matter is deemed satisfactorily resolved, a written informal resolution agreement will be signed by and provided to the complainant, the respondent, and the Title IX Coordinator. The Title IX Coordinator will maintain the record of the agreement, and will share it only to the extent necessary to carry out the purposes of the informal resolution agreement.

Ordinarily, the parties will have 30 days from the date that a facilitator is assigned to reach an informal resolution agreement. This timeframe may be extended for good cause by the facilitator or Title IX Coordinator, and written notice of such extensions shall be provided to each party.

## B. Dismissal

The University **MUST** dismiss a formal complaint if:

- Conduct would not constitute sexual harassment even if substantiated,
- Conduct did not occur in an education program or activity, or
- Conduct did not occur in the United States.

The University **MAY** dismiss a formal complaint if:

- The complainant withdraws the complaint in writing,
- The respondent is no longer affiliated with the University as a student or employee, or
- There are circumstances that prevent the University from gathering evidence sufficient to reach a determination.

When an allegation is dismissed, the University must send written notice of the dismissal including a rationale to both parties simultaneously. Both parties will have the right to appeal the dismissal in accordance with the appeal proceeding outlined in Sec. XV Appeal.

A dismissal of a formal complaint under Title IX does not preclude actions under other University's policies and regulations including, but not limited to, the Code of Student Conduct and University of Massachusetts Amherst Policy Against Discrimination, Harassment and Related Interpersonal Violence, the Interim Grievances Procedure, and the Principles of Employee Conduct.

## C. Investigation

Based on reasonably available information at the time of intake, the Title IX Coordinator will sign and initiate a formal complaint, and then assign the formal complaint for an investigation when:

- The reported conduct occurred within the University's education program or activity which requires the University to have substantial control over the Respondent, or the University to have substantial control over the context in which the conduct is reported to have occurred; or the conduct occurred in a building owned or controlled by a student organization that is officially recognized by the University;
- The reported conduct occurred in the United States; and,
- The facts set forth by the report, if substantiated, would constitute a violation of prohibited conduct as defined by the policy.

The Investigator(s) will conduct a thorough, fair and impartial investigation of formal complaints in a timely manner. The Investigator(s), is responsible for gathering evidence concerning the matter. However, parties will be asked to identify witnesses and provide relevant information, including but not limited to, documents, communications, and photographs. All parties are encouraged to provide all relevant information as promptly as possible and within established deadlines.

#### D. Notice of Allegations

The University must issue a written notice of allegation to both parties. The notice will include:

- The grievance procedure;
- Sufficient details known at that time about the allegation including identification of parties, conduct allegedly constituting sexual harassment, date and location of the incident;
- A statement that the respondent is presumed not responsible for the alleged conduct and that determination regarding responsibility is made at the conclusion of the grievance process;
- A statement that parties may have an advisor of their choosing;
- A statement of the parties right to review and inspect evidence; and
- A statement informing parties of any applicable policy(ies) prohibiting knowingly making false statement or knowingly submitting false information during the grievance process.

In the event that subsequent information is revealed, giving further information about the alleged incident, a subsequent notice may be provided.

The investigator must provide all parties with written notice of date, time, location, participants and purpose of all investigative interviews with sufficient time for the parties to prepare to participate.

#### E. Evidence Review

The Investigator(s) must provide each party and the party's advisor, if any, an opportunity to inspect and review any evidence directly related to the allegation raised in a formal complaint gathered by the investigator. The evidence may be shared in an electronic format or print copy. The Investigator(s) will notify the parties when the evidence is set for review and the method by which the parties and their advisors may access this. The parties will have ten (10) days to inspect and review the evidence and submit a written response. The inclusion of any party's medical, psychological and similar records are legally privileged are excluded unless the party has given voluntary written consent waiving privilege.

Evidence provided to the parties and their advisors may be subject to restrictions or non-disclosure agreements to prevent the dissemination of any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to a grievance procedure under these procedures. The university may require that the parties refrain from photographing and/or otherwise copy evidence that the university deems sensitive and may include material of a sexual or intimate nature.

#### F. Investigative Report

After the parties have an opportunity to respond to the evidence, the Investigator(s) will consider the parties written responses and draft an investigative report that fairly summarizes relevant evidence, including inculpatory and exculpatory evidence. The Investigator(s) will send the draft report to each party and the party's advisor, if any, for their review and written response. The draft report may be shared in an electronic format or print copy. The parties will have ten (10) days to submit a written response. After receiving the written responses, the Investigator(s) will issue the final investigative report to the parties. The final report should include the procedural steps taken in the investigation. The report shall exclude a party's legally privileged records; medical, psychological and similar records unless the party has given voluntary written consent waiving privilege.

No less than ten (10) days after the final report has been provided to the parties and the Hearing Officer(s), a Hearing will be scheduled. The Title IX Coordinator, or designee, is responsible for scheduling the Hearing.

### **XIV. HEARING PANEL PROCEDURES**

#### A. Hearing Panel

The Title IX Coordinator is responsible for the recruitment, appointment, and training of faculty, staff, and students as Title IX Hearing Officers and should take affirmative steps to appoint diverse and representative officers.

Each Title IX Hearing Panel shall be comprised of at least three (3) hearing officers each of whom has received relevant training and does not have bias or conflict of interest related to the particular case. The Title IX Coordinator, or designee, will take affirmative steps to ensure that each Hearing Panel is representative of the parties involved.

#### B. Notification of Hearing

The Respondent(s), Complainant (s), identified advisor(s), and witness(es) will be notified at least ten (10) business days prior to the date of the hearing. The standard ten day (10) business day notice is not required for rescheduled hearings. Even in cases where a party has refused to participate, the University must issue a hearing notice to the party who has chosen not to participate in the grievance process. The written notice must include:

- The specific alleged policy violation(s)
- The investigate report
- The time and place of the hearing

- The Title IX Hearing Panel procedures
- A deadline for parties to identify an advisor

### C. Procedure on Hearing Proceedings

The Hearing will be open only to the Reporting Party(ies), Respondent(s), Title IX Hearing Panel, Witness(es), Advisor(s) and Procedural Advisor(s). Others will be permitted at the discretion of the Title IX Hearing Panel in consultation with the Procedural Advisor(s). Each Hearing Panel will be assigned a Procedural Advisor (s) who will support the Hearing Panel and ensure the hearing procedures are followed. The Procedural Advisor (s) will be present for the entire hearing process (including deliberation), and will be responsible for facilitating the hearing and addressing any procedural questions. The Procedural Advisor (s) will not participate in the evaluation of information and/or the determination of a finding.

The hearing may be conducted with all parties physically present in the same geographic location. Any or all parties, witnesses and other participants may appear at the hearing virtually with technology enabling participants simultaneously to see and hear each other. At the advanced request of either the respondent or complainant, the hearing will occur with parties located in separate geographic location with technology enabling participants simultaneously to see and hear each other.

If any party or witness fails to appear at the hearing after proper notice, the hearing may proceed in their absence. When an advisor fails to appear at the hearing, the University will assign an advisor for the limited purpose of conducting the cross-examination. In the event that neither a party nor their advisor appear at the hearing, the University must provide an advisor to appear on behalf of the non-appearing party. In the event that no party appears at the hearing such that no party's statement can be relied on, the Hearing Panel should consider the available relevant evidence and make a determination regarding responsibility.

A recording of the hearing will be made by the University and the recording will be made available to both parties. All other recordings or streaming are prohibited and would be adjudicated in accordance with other applicable University policies and regulations.

The Hearing Panel may order a break or recess at any time during the hearing for a variety of reasons including, but not limited to, to confer as a panel or to allow either party time to confer with their advisor, and/or to examine the evidence.

During the hearing both parties will have the opportunity to present their positions to the Hearing Panel.

The Hearing Panel will have an opportunity to ask any relevant questions to the parties and witnesses.

Each party's advisor will have an opportunity to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the

party's advisor of choice and never by a party personally. Before a complainant, respondent, or witness answers a cross-examination or other question, the Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Hearing Panel may designate a Hearing Chair to determine the relevance of questions and explain to the party's advisor asking cross-examination questions any decision to exclude a question as not relevant.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to: 1) prove that someone other than the respondent committed the conduct alleged by the complainant; or 2) if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a party or witness does not agree to participate in the cross-examination or refuse to answer cross-examination questions, the Hearing Panel may not rely on any statements of that party or witnesses in reaching a determination regarding responsibility. The Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

#### D. Determination of Responsibility

The Hearing Panel shall put forth a written determination that will be based on the preponderance of the evidence standard, and will be the result of an evaluation of all evidence, including inculpatory and exculpatory evidence. Determinations regarding credibility may not be based on a person's status as a complainant, respondent, or witness. The determination will include the following:

1. identification of the allegations constituting sexual harassment as defined by this Policy,
2. a description of procedural steps taken from the receipt of the formal complaint through the determination; including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
3. finding of facts supporting the determination;
4. conclusions regarding the application of the Policy to the facts; and
5. a statement of, and rationale for, the result as to each allegation., including a determination regarding responsibility, any disciplinary sanctions the university imposes on a respondent, and a statement as to whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the complainant, and

6. The procedures, deadlines, and permissible bases for the complainant and respondent to appeal this determination.

#### E. Sanctions

The Hearing Panel will review the drafted determination with the relevant administrators/office and consult them as to applicable sanctions, if any.

- Staff- Vice Chancellor for Human Resources and Vice Chancellor for the respondent's administrative area
- Faculty- Provost/Vice Chancellor for Academic Affairs
- Students- Student Conduct and Community Standards Office

A final determination letter will include sanctions imposed, if any, and include procedures and permissible bases for appeal of the Hearing Panel's determination. The final determination report will be sent to the respondent and complainant simultaneously. In the event a respondent is both a student and an employee, the Hearing Panel may impose sanction(s) taking both roles into account.

Sanction(s) for students may include, but are not limited to: restriction(s) from specified University education program or activity, attend required trainings; and/or University Probation, Suspension Deferred, Suspension, or Expulsion from the University.

Sanction(s) for employees may include, but are not limited to: restriction from specified University education program or activity, attend required trainings; and/or the application of progressive discipline.

### **XV. APPEAL**

The Title IX Coordinator, or designee, is responsible for the recruitment, appointment and training of student, staff and faculty to serve as Appeals Officers. Each Appeal Panel will consist of at least three (3) Appeal Officers.

Both respondent and complainant have the right to appeal a determination of responsibility, and/or the dismissal of a formal complaint on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, and that could affect the outcome of the matter; or
3. The Title IX Coordinator, investigator(s), or Hearing Panel had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

An appealing party must submit a signed appeal letter within ten (10) business days of receiving the formal complaint dismissal or Hearing Panel Determination letter to the Appeals Panel. Upon reasonable request, the Appeal Panel may extend the appeal deadline at their discretion. Extensions will be communicated in writing to all parties and the Title IX Coordinator.

The Appeal Panel must provide both parties a copy of the appeal. When one party appeals, the other party will be notified in writing and given the opportunity to submit a written response within ten (10) business days. The Appeal Panel will not include persons who served on the Hearing Panel, a person who dismissed the complaint, the investigator assigned to investigate the complaint, and the Title IX Coordinator.

Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the responsibility determination or dismissal.

Appeals are not re-hearings of the matter. The original finding(s) and sanction(s) are presumed to have been decided reasonably and appropriately, thus the burden is on the appealing party(ies) to demonstrate and support proper bases for appeal. Appeals are confined to a review of the record and pertinent documentation regarding the bases for appeal. The appeal must state the base(s) for the appeal and include all relevant information to support the appeal. If raising a procedural irregularity or conflict of interest or bias, a detailed description must be provided. If citing new evidence, the evidence must be submitted with the appeal.

The Appeals Panel will meet in a closed session and will make a decision to uphold the decision or remand the case to a previous decision-maker(s). The decision will be made within ten (10) business days and, when applicable, include instructions for reconsideration only in light of the granted appeal grounds. The deliberations of the appeals board will remain confidential.

Where the previous decision was impacted by a procedural irregularity and/or conflict of interest or bias, or could have been impacted by the new evidence, a new Hearing Panel may be directed to reconsider the case, which can then be appealed one time.

All imposed sanction(s) will commence after the appeal period and/or process has concluded. If applicable, emergency removal, administrative leave and/or restrictions, and supportive measures will remain in place unless otherwise determined.

The Appeal Panel will then issue a written decision, including the rationale, simultaneously to both parties. The decision of the Appeal Panel is final.

The Title IX Coordinator is responsible for coordinating the implementation of any sanction(s) and remedies.

## **XVI. RECORDS**

The Equal Opportunity Office is responsible for maintenance of Title IX records for seven years including:

- Any sexual harassment investigation, including any responsibility determination, and any required recording as well as any sanctions imposed on the respondent, and any remedies provided to the complainant;
- Any appeal and its result;
- Any informal resolution and its result; and
- All materials used for training investigators, hearing and appeal officers, and Title IX Coordinators with regard to sexual harassment

## **XVII. REQUIRED TRAINING**

Title IX Coordinator, Investigators, Hearing Officers, Appeal Officers, Officials with Authority, and any other employees involved in the Grievance Procedure are required to participate annually in Title IX training. Training will be posted on the University Title IX website, or will be made available by the Title IX Coordinator for inspection during regular business hours. Additional Title IX training will be provided periodically to students and employees.