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I. INTRODUCTION

The University of Massachusetts Boston (the “University”) is committed to maintaining a safe and healthy learning, living and working environment that is free from all forms of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation. Consistent with this commitment, the University complies with Title IX of the Higher Education Amendment of 1972, which prohibits discrimination and harassment on the basis of sex in education programs and activities, as well as retaliation for the purpose of interfering with any right or privilege secured by Title IX. The University does not discriminate on the basis of sex in admission to or employment in its education programs and activities.

This Student Procedure (the “Procedure”) ensures the implementation of the University of Massachusetts Non-Discrimination and Harassment Policy (Doc.T16-040) (the “Policy”) and prohibits all forms of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation. These behaviors are antithetical to the University’s educational mission and are prohibited forms of harassment under Title IX. The University provides educational and prevention programs, services for individuals who have been impacted by discrimination and harassment on the basis of sex, and accessible, timely and equitable methods of investigation and resolution of complaints.

This Procedure is intended to comply with Title IX, the reauthorized Violence Against Women Act, including the Campus SaVE Act, the Clery Act, and the guidance documents on Title IX issued by the Department of Education’s Office for Civil Rights and the 2017 White House Task Force to Protect Students from Sexual Assault.

A. Procedure Purpose

The purpose of this Procedure is for the University to educate the campus community about sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, as well as educate the community as to efforts to prevent, address and remedy all forms of such prohibited conduct. Accordingly, this Procedure:

- states that sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation are prohibited and will not be tolerated;
- defines and describes the conduct that is prohibited;
- explains what to do if one experiences sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation;
- identifies available on- and off-campus resources;
- identifies the persons with whom one may speak confidentially;
describes all reporting options, including how to file a complaint with the University;

- specifies the rights of both complainants and respondents; and

- explains the University’s response to alleged incidents, including how reports of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation are evaluated, investigated and resolved

B. Prohibition Against Sexual Violence, Sexual Harassment, Gender-Based Harassment, Domestic Violence, Dating Violence, Stalking and Retaliation

The University prohibits and will not tolerate sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation. These behaviors violate this Procedure, state and federal civil rights laws, and possibly the criminal laws of Massachusetts.

These behaviors can occur between strangers or acquaintances, including between people involved in an intimate or sexual relationship. Victims can be any gender. Any person, regardless of gender identity, can commit sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, and these behaviors can occur between people of the same or different gender.

The University prohibits any student, faculty or staff member, visitor or contractor, regardless of gender, from sexually harassing, stalking, engaging in sexual violence toward or committing domestic or dating violence against another community member or anyone having dealings with the University. Any member of the University community who believes that they have been subjected to such misconduct is encouraged to report it as described in this Procedure. Upon receiving a report, the University will respond quickly and seriously, and, where appropriate, will take steps to prevent the recurrence of the behavior, remedy its effects, and discipline individuals who violate this Procedure.

The University prohibits retaliation against anyone who reports sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, who assists another in making a report, or who participates in an investigation of a report. All persons should feel free to report their concerns without fear of retribution or reprisal.

C. Application of This Procedure

This Procedure applies to all University students without regard to a person’s race, color, religion, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, marital or parental status, or veteran status. This Procedure applies to all University programs and activities, both on and off campus. This Procedure will govern when the incident involved student respondents who will be subjected to the Student Code of Conduct. This includes, Graduate Assistants (GA) when the incident occurs in their role as a student, outside the scope of their duties. For instances where the student is a victim and the respondent is a faculty or staff member, the following complaint procedure will govern. www.umb.edu/diversity/policies
Acts of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation that take place off-campus may be subject to investigation and disciplinary action under this Procedure when the conduct involves behavior by or toward a community member, which (1) occurs during University-sponsored events or the events of organizations affiliated with the University, including study abroad and outside internships; (2) negatively impacts a person’s access to education programs and activities; (3) adversely affects or disrupts the campus community; and/or (4) poses a threat of harm to the campus community.

Harassment, misconduct, or violence related to a person’s sex, sexual orientation, gender identity, or expression is sometimes also related to a person’s race, age, disability, or membership in another protected class. Discrimination against or harassing any person on such a basis is prohibited by the University’s Non-Discrimination and Harassment Procedure as described in Part II (“EO Procedure”). In cases where the alleged conduct implicates both Procedures, the University will coordinate its evaluation, investigation, and resolution efforts to address the alleged conduct on all prohibited bases.

D. Title IX Coordinator

The University has appointed a Title IX Coordinator(s), who has the primary responsibility for coordinating the University’s efforts to comply with and carry out its responsibilities under Title IX.

In this role, the Title IX Coordinator(s): administers this Procedure; monitors the University’s responsive actions to ensure that the learning, living and working environments are free of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation; and monitors the steps taken to remedy the effects of the misconduct on the Complainant(s), including any investigation, resolution or disciplinary proceedings. The Title IX Coordinator(s) also: provides information about reporting options and support resources; initiates interim protective measures; evaluates requests for confidentiality; coordinates appropriate accommodations; assists persons in filing complaints with law enforcement (when requested); provides or facilitates training for faculty, staff and students; and may investigate complaints.

Anyone with questions, concerns or complaints related to Title IX, sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, and/or this Procedure may contact Title IX Coordinator(s) at UMass Boston:

Marie Bowen
Vice Chancellor
Office of Human Resources
3rd Floor Quinn
TEL: 617.287.5150
crtix@umb.edu

Students may also contact:
Shawn J. De Veau, Deputy TIX Coordinator for Students
Associate Dean of Students
CC 4115
updated 10/1/19
Any person with questions or concerns about any form of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence and stalking and/or retaliation may also contact:

The U.S. Department of Education Office of Civil Rights
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
617-289-0111; TDD: 800-877-8339
OCR.Boston@ed.gov
II. DEFINITIONS AND TERMS, INCLUDING EXAMPLES OF VIOLATIONS, AND WHAT IS NOT A VIOLATION

For the purposes of this Procedure, the following terms are defined as follows:

A. General Definitions

Advisor means an individual whom both the Complainant and the Respondent may each have present for emotional and personal support and assistance during the Intake Meeting, Investigation, Informal Resolution or the various stages of the Formal Resolution process. The advisor may not speak, make statements or question other parties at any point during any of these processes.

Campus Security Authority (“CSA”) are University employees who are designated for the purposes of the Clery Act and must provide the Department of Public Safety with non-identifying statistical victim information regarding all reported incidents of sexual assault, dating violence, domestic violence and stalking. This statistical information is used by the University to compile their Annual Security Report, and by the Department of Public Safety for purposes of advising the campus of any potential safety risks or concerns.

Clery Act means the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 20 U.S.C. Section 1092(f); 34 C.F.R., Part 668.46), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA);

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.

Complainant means the individual, or the university itself, who makes a complaint alleging a violation of this Procedure against themselves or another individual.

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;
- 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 a 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.

**Confidential Employee** is 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, 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.

**Dating Violence** is abusive behavior (including, but not limited to, physical, emotional, and/or sexual acts or conduct) 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 will be determined by factors such as the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved.

**Day** means calendar day.

**Domestic Violence** is any abusive behavior (including, but not limited to, physical, emotional, and/or sexual acts or conduct) committed:

- against a person who is a current or former spouse;
- against a person with whom the abuser shares a child in common;
- against a person who is or has cohabitated with the abuser as a spouse;
- against a person similarly situated to a spouse;
- between a parent and child;
- between members of the same household in an intimate relationship; or
- against any other person similarly situated.
FERPA means the Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232(g); 34 C.F.R. Part 99. Confidentiality with respect to a person accused of violating this Procedure is governed by FERPA. FERPA provides that personally identifiable information maintained in the educational records of an institution shall not be disclosed, except as otherwise specified by law.

Force is the use of any physical force, violence, threats, or intimidation (implied threats) to gain sexual access. A person who is the object of sexual aggression (actual or threatened force) is not required to physically, verbally, or otherwise resist a sexual aggressor.

Gender means a person’s sex (female or male). “Gender” and “Sex” can be used interchangeably for the purposes of this Procedure.

Gender Expression refers to the external characteristics and behaviors that relate to a perception of gender, including but not limited to dress, mannerisms, speech patterns, social interactions, and body characteristics.

Gender Identity refers to an individual’s internal sense of gender, which may be male or female, man or woman, or not conforming to those binary genders. A person’s gender identity may be different or the same as the person’s sex assigned at birth.

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: (a) whether the person initiating the sexual activity knew that their partner was incapacitated; and if not; (b) whether a reasonable person in the same situation would have known that their partner was incapacitated; and; (c) whether the person initiating the sexual activity played a role in creating the circumstances of incapacity.

Intrusion of Privacy is photographing, videotaping, filming, digitally recording, or by any other means secretly viewing, with or without a device, another person without that person’s consent in any location where the person has a reasonable expectation of privacy, or in a manner that violates a reasonable expectation of privacy. Unauthorized storing, sharing, and/or distribution is also prohibited. These provisions may not be utilized to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly.
Investigator means the neutral fact-finder who, during the course of an investigation, typically conducts interviews with the Complainant, the Respondent, and relevant third-party witnesses and makes a determination as to whether or not the Respondent is responsible for a violation of the Procedure. The Investigator must be impartial, free of any actual conflict of interest, and have specific and relevant training and experience. A Claimant or Respondent who has concerns that the assigned Investigator cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.), may report those concerns to the Title IX Coordinator who will assess the circumstances and determine whether a different Investigator should be assigned to the matter. Investigators do not function as advocates for Claimants or Respondents. Investigators can, however, identify campus support and other resources for Claimants and Respondents.

Privacy Employee is an employee designated by the University as a “Privacy Employee.” These individuals have privacy responsibilities that supersede their obligations under Title IX. These employees should not disclose a client or patient's confidence, even to the Title IX Coordinator(s). These individuals include:

a) licensed treating physicians (and those persons working under the supervision of these individuals) when acting in their professional role in the provision of services to a patient who is a University student or employee and any University employee providing administrative, operational and/or related support for such treating physician in their performance of such services.

The system office and each campus shall designate Privacy Employees. The obligations of the designated Privacy Employees shall be published for the University community.

Rape is any penetration of any orifice, no matter how slight, by any object, including any body part without consent. This may be committed by force, threat, intimidation, coercion, or through exploitation of another's mental or physical condition (such as incapacitation) of which the responding party knew or reasonably should have known.

Reasonable Person is an individual under similar circumstances and with similar identities to the victim in the victim’s circumstances.

Respondent means the individual who is alleged to have violated the University’s Policy, Procedure, and/or Code of Conduct.

Responsible Employee (“RE”) is an employee who: (a) who, because of his/her 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; or (c) whom a student reasonably believes has this authority or duty. Campus police officers are Responsible Employees; but see exception for public safety personnel.
At a minimum, the following categories of employees are Responsible employees:

- Designated Administrators;
- Campus police officers (but, see exception noted below);
- Resident assistants;
- Student Affairs staff (including student employees); and
- Faculty with significant responsibilities over student activities.

**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).

**Retaliation** is the interference through intimidation, including threats, coercion, or unlawful discrimination, with the individual’s right or privilege secured under the law [Title IX of the Education Amendments of 1972, Title VII of Civil Rights Act of 1964, the Violence Against Women Act 1994, the Massachusetts anti-discrimination laws, or other laws] or interfering with an individual’s right to make a complaint, testify, assist, or participate in any manner in an investigation, proceeding or hearing, or to intervene to prevent a violation of this policy.

**Sexual Harassment** is unwelcome conduct of a sexual nature when:

a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, education, or participation in University programs or activities; or
b) 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
c) such conduct unreasonably interferes with a person or person’s work or academic performance; interferes with or limits a person or person’s ability to participate in or benefit from a work or academic program or activity; or creates an intimidating, hostile, or offensive working or academic environment.

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

a) unreasonably interfering with a person or person’s employment, educational benefits, academic grades or opportunities, or participation in University programs or activities; or
b) unreasonably interfering with a person or person’s work or academic performance; or
c) creating an intimidating, hostile, or offensive working or academic environment.
Hostile Environment exists when the discriminatory harassment is sufficiently severe or pervasive to interfere with an employee's professional performance, or to deny or limit a student's ability to participate in or benefit from the university's programs or activities based on sex. The university will evaluate the conduct from the perspective of a reasonable person in the alleged victim's position, considering all of the circumstances. Please see the Non-Discrimination and Harassment Policy for further information about sex discrimination, sexual harassment, and hostile environments created thereby.

Gender-Based Harassment is a form of sexual harassment on the basis of gender, gender identity, gender expression, sexual orientation, or failure to conform to stereotypical notions of masculinity or femininity.

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

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.

Sexual Orientation means an inherent or immutable enduring emotional, romantic or sexual attraction to other people.

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).

Stalking is any course of conduct (more than one act) directed at a specific person (directly, indirectly, through a third party or other means) that places that person in reasonable fear for his or her safety or the safety of others.

Standard of Review is the standard in which complaints pursued under this procedure will be evaluated. Specifically, all complaints will be evaluated under a “preponderance of the evidence” standard. Under this standard, conclusions must be “more likely than not.” Accordingly, the fact-finder must find that it is more likely than not that the Respondent violated the University’s Code of Conduct or other relevant University policy or procedure.

Statutory Rape means sexual intercourse with a person who is under the statutory age of consent, which is 16 in Massachusetts. Attempts to commit statutory rape are also prohibited by this Procedure.
Substantial Emotional Distress means significant suffering or anguish that may, but not necessarily, require medical or other professional treatment or counseling.

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.

Undesignated Employee is an employee who is not designated as a Responsible Employee, a Confidential Employee, or a Privacy Employee. Undesignated employees are encouraged to practice bystander awareness and to report any incidents of abuse or sexual misconduct to the Title IX coordinator(s).

B. Examples of Sexual Violence and Sexual Harassment Violations

Listed below are examples, expanding on and clarifying the definitions outlined in Section A above.

1. Sexual Violence

As defined by the U.S. Department of Education’s Office for Civil Rights, sexual violence “refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to the [person’s] age or use of drugs or alcohol, or because an intellectual or other disability prevents the [person] from having the capacity to give consent).” All forms of sexual violence are prohibited by the University and Title IX.

a) Rape is the penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person’s consent. Rape is also the performance of oral sex or anal sex on another person without that person’s consent. This may be committed by force, threat, intimidation, coercion, or through exploitation of another’s mental or physical condition (such as incapacitation) of which the responding party knew or reasonably should have known. Non-Consensual Sexual Intercourse means an act of vaginal, oral, or anal penetration, no matter how slight, by an object or body part and includes fellatio, cunnilingus and acts that also may be referred to as sexual assault, rape, or “acquaintance rape”. Non-Consensual Sexual Intercourse committed by a date, friend, or someone the victim knows casually is the most prevalent form of this offense on college campuses nationwide. Attempts to commit Non-Consensual Intercourse are also prohibited by this Procedure.

b) Sexual Assault is any kind of sexual physical contact that involves any form of coercion, force or lack of consent. Sexual physical contact includes the intentional touching of another person on an area of the body generally recognized as a private part of the body with any part of one’s own body or object, no matter how slight; or touching any part of another person’s body with a private part of one’s own body, no
matter how slight. Sexual intercourse means penetration, no matter how slight, of a bodily orifice (vagina, anus, or mouth) by an object or by a body part, and/or non-consensual oral sex or anal sex. Attempts to commit Non-Consensual Contact are also prohibited by this Procedure.

Examples of sexual assault include, but are not limited to:

- kissing or fondling without consent;
- rape;
- advancing sexual activity without consent;
- ignoring a partner’s objections to sexual activity on one occasion even when consent has been given in the past; and
- engaging in manipulative, threatening and coercive behavior to obtain consent.

c) **Sexual Exploitation** is taking sexual advantage of another person without his or her consent, such as 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; allowing third parties to observe private sexual acts; and engaging in peeping or voyeurism; performing sexual acts or disrobing or exposing oneself for sexual gratification in the presence of another person without consent; non-consensual recording by any means (video, audio, photograph, or other method) of sexual activity or nudity and/or distribution of the recordings; going beyond the boundaries of consent (e.g., allowing people to watch consensual sexual acts without knowledge of the participants); or knowingly transmitting a sexually transmitted infection to another. Attempts to commit Sexual Exploitation are also prohibited by this Procedure.

Sexual exploitation is taking sexual advantage of another person for one’s own benefit or the benefit of anyone other than that person without that person’s consent. Examples of behavior that could rise to the level of sexual exploitation include, but are not limited to:

- prostituting another person;
- recording images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness without that person’s consent;
- distributing through social media, texting, email or other media images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and
viewing another person’s sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person’s consent.

d) **Incest** is sexual intercourse between persons who are related to each other and whose marriage would be prohibited by law. Attempts to commit incest are also prohibited.

c) **Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent, which is 16 in Massachusetts. Attempts to commit statutory rape are also prohibited.

f) **Aiding in the Commission of and Act(s) of Sexual Violence** is prohibited. Examples of aiding in the commission of violence include, but are not limited to:

- videotaping a friend having sex with a person who has passed out drunk at a party;
- helping a friend to drug the friend’s date’s drink; and
- encouraging students to engage in sexual activity when one knows those students to be incapacitated by drugs or alcohol.

g) **Lack of Consent** is a lack of an understandable exchange of affirmative words or actions, which indicate a willingness by all parties to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement. It is the responsibility of the person seeking to initiate the sexual activity or conduct to affirmatively obtain the consent, not the intended recipient or such conduct to deny such consent.

Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent. For example, a position of influence could include supervisory or disciplinary authority.

Silence, previous sexual relationships or experiences, and/or a current relationship may not, in themselves, be taken to imply consent. While nonverbal consent is possible (through active participation), it is best to obtain verbal consent. Similarly, consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.

Consent:

- Cannot be inferred by silence, passivity, or not resisting;
- Cannot be implied by a current or previous dating or sexual relationship;
- To one form of sexual activity does not imply consent to other forms of sexual activity;
- 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;
- Cannot be given by a person under the age of 16;
- 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.

b) **Incapacitation** - Persons unable to consent due to incapacitation also include, but are not limited to: persons under age 16; persons who are intellectually incapable of understanding the implications and consequences of the act or actions in question; and persons who are physically helpless. A physically helpless person is one who is asleep, blacked out, involuntarily physically restrained, unconscious, or, for any other reason, unable to communicate unwillingness to engage in any act. Incapacitation may result from the voluntary or involuntary consumption of alcohol and/or other drugs. A person whose incapacitation results from mental disability, sleep, blackout, involuntary physical restraint, or the consumption of rape drugs cannot give consent. 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.

The use of alcohol or drugs to render another person mentally or physically incapacitated as a precursor to or part of a sexual assault is prohibited. The use of alcohol, medications or other drugs by the Respondent or accused does not excuse a violation of this Procedure. An individual who is incapacitated by alcohol and/or drugs both voluntarily or involuntarily consumed may not give consent. Alcohol or drug related incapacitation is more severe than impairment, being under the influence, or intoxication. Evidence of incapacity may be detected from context clues, such as slurred speech, bloodshot eyes, smell of alcohol on the breath, shaky equilibrium, vomiting, unusual behavior or unconsciousness. While context clues are important in determining incapacitation, they alone do not necessarily indicate incapacitation.

- Alcohol or drug related incapacitation is more severe than impairment, being under the influence, or intoxication.
- For purposes of this Procedure 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.
- The fact finder will determine whether the Complainant was incapacitated and whether there were facts and circumstances that
would have caused a person, who was unaffected by alcohol or drugs, to be aware that the Complainant was incapacitated. In evaluating whether a person was incapacitated for purposes of evaluating effective consent, the University will consider:

- whether the person initiating the sexual activity knew that their partner was incapacitated; and if not
- whether a reasonable person in the same situation would have known that their partner was incapacitated; and
- whether the person initiating the sexual activity played a role in creating the circumstances of incapacity.

j) **Force** is the use of physical strength or action (no matter how slight), violence, threats of violence or intimidation (implied threats of violence) as a means to engage in sexual activity. A person who is the object of actual or threatened force is not required to physically, verbally or otherwise resist the aggressor.

j) **Coercion** is the use of an unreasonable amount of pressure or emotional manipulation to persuade another 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. When someone makes it clear that s/he does not want to engage in sexual behavior, or s/he does not want to go beyond a certain point of sexual activity, continued pressure beyond that point can be considered coercive. Consent cannot be given due to coercion, force, intimidation, or threats.

2. **Sexual Harassment**

Sexual Harassment is unwelcome verbal, non-verbal, and/or physical conduct of a sexual nature when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or education; and/or

- submission to, or rejection of, such conduct by an individual is used as a basis for academic or employment decisions affecting that individual; and/or

- when such severe and pervasive conduct has the purpose or effect of substantially interfering with an individual’s academic or professional performance or creating a sexually intimidating, hostile, or offensive employment, educational, or living environment.

It includes sexual misconduct, dating violence, domestic violence, and stalking as well as other unwelcome harassing behavior based on sex, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of sexual nature.
Examples of sexual harassment may include, but are not limited to:

- repeatedly pressuring another person for sexual activity;
- making sexist remarks about an individual’s clothing, body or sexual activities;
- unnecessary touching, patting or pinching another person;
- demanding sex from a subordinate while making threats concerning the subordinate’s job;
- demanding sex from a student while making implied threats concerning the student’s grade;
- electronically transmitting derogatory, demeaning or pornographic materials;
- posting explicit sexual pictures on an exterior office door or on a computer monitor; and
- sexually assaulting another person.

Sexual harassment can occur between people of any gender. It can occur between equals (e.g., student to student, staff to staff, faculty to faculty) or between persons of differing power status (e.g., supervisor to subordinate, faculty to student, coach to athlete). It is possible for a person who appears to have the lesser power to commit sexual harassment (e.g., a student harassing a faculty member).

In order for conduct to constitute sexual harassment under this Procedure, a reasonable person under similar circumstance would have to conclude that the behavior was harassing or discriminatory.

Reasonable directions or warnings by authorized University personnel as to the time, place and manner in which employees perform their assigned responsibilities, students carry out their educational assignments or program participants engage in sponsored activities do not constitute evidence of sexual harassment under this Procedure.

**a) Hostile Environment** exists when sexual harassment is sufficiently severe or pervasive to deny or limit a person’s ability to participate in or benefit from the University’s programs or activities. A hostile environment can be created by anyone involved in the University’s programs or activities (e.g., administrators, faculty members, students, and campus visitors).

To make the ultimate determination of whether a hostile environment exists for campus community member(s), the University considers a variety of factors related to the severity, persistence, or pervasiveness of the sexual harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and, (5) the degree to which the conduct affected one or more person’s education or employment. The university will evaluate the conduct from the perspective of a reasonable person in the alleged victim’s position, considering all of the circumstances.
Please refer to the Non-Discrimination and Harassment Procedure (“EO Procedure” in Part II) for further information about sex discrimination, sexual harassment, and hostile environments created thereby.

A single or isolated incident may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to show evidence of a hostile environment, particularly if the harassment is physical.

b) **Gender-Based Harassment** is unwelcome conduct of a nonsexual nature based on a person’s actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes, is prohibited when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or education; and/or
- submission to, or rejection of, such conduct by an individual is used as a basis for academic or employment decisions affecting that individual; and/or
- such conduct has the purpose or effect of substantially interfering with an individual’s academic or professional performance or creating an intimidating, hostile, or offensive employment, educational, or living environment based on gender.

Examples of gender-based harassment include, but are not limited to:

- using derogatory comments and terms toward a male or female who do not act in ways that align with their gender stereotype, such as a male being called names for being interested in the arts or a female being called names for being interested in construction;
- telling someone to use a restroom that does not align with that person’s gender identity; and
- making generalized derogatory comments about one gender, such as “all females” are ______ or “all males” are ______.

The definition of hostile environment provided under the Sexual Harassment section above also applies in the context of Gender-Based Harassment.

While harassment based on non-sexual factors may be distinguished from sexual harassment, these types of behaviors may contribute to the creation of a hostile environment. Thus, in determining whether a sexually hostile environment exists, the University may consider acts of gender-based harassment. In order for conduct to constitute gender-based harassment under this Procedure, a reasonable person under similar circumstance would have to conclude that the behavior was harassing or discriminatory.
Reasonable directions or warnings by authorized University personnel as to the time, place and manner in which employees perform their assigned responsibilities, students carry out their educational assignments or program participants engage in sponsored activities do not constitute evidence of gender-based harassment under this Procedure.

3. **Domestic and Dating Violence**

Domestic and dating violence are acts of abusive or coercive behavior (physical, sexual, financial, verbal and/or emotional) used by a perpetrator to gain or exercise control over another, including any behaviors that intimidate, manipulate, humiliate, isolate, frighten, threaten, blame, hurt, injure, or wound someone. Domestic and dating violence can occur in relationships between persons of any gender.

Domestic violence is such behavior directed against a current or former spouse, family member (blood, step, adoptive or foster), person with whom a child is shared, or cohabitant (possibly a roommate).

Dating violence is such behavior directed against another person in a social relationship of a romantic or intimate nature, and where the existence of such a relationship is determined based on a consideration of the length and type of relationship and frequency of interaction between the persons involved.

Examples of domestic and dating violence include, but are not limited to:

- hitting, slapping, punching, kicking, pulling hair or other physical misconduct;
- isolating a partner from family and friends;
- destroying a roommate’s personal items; damaging another’s property;
- physically assaulting the child of a partner;
- pursuing sexual activity when a partner is not fully conscious, is not asked, or is afraid to say no, or coercing a partner to have sex without protection;
- threatening to reveal a person’s sexual orientation without the person’s permission;
- exhibiting excessive possessiveness and jealousy;
- constantly belittling or insulting a partner;
- checking a roommate’s cell phone or email account without permission;
- driving recklessly to scare someone;
- harassment directed toward a current or former partner;
- emotional abuse including, but not limited to, controlling what the other person does, where the other person goes, limiting the other person’s contacts with friends, or controlling the other person’s money or assets without their consent;
use of a weapon, or other physical misconduct;
• demanding that a partner dress or act in a certain way; and/or
• threatening violence against the victim and/or victim’s acquaintances, friends, or family members or other threats that put a person in the relationship in fear of imminent harm.

4. Stalking

Engaging in any course of conduct (more than one act) directed at a specific person (directly, indirectly, through a third party or other means) that places that person in reasonable fear for his or her safety or the safety of others including, but not limited to acts in which the stalker directly or indirectly, including through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.

Examples of stalking behaviors include, but are not limited to:

• non-consensual communication in any form whatsoever (e.g., face-to-face, verbal, written, physical, online, telephone, text, email, or instant messages, posts on internet sites, letters, notes, gifts);
• gathering information about an individual from family, friends, co-workers, and/or classmates, or electronic means such as installing spy-ware on a computer or using global positioning systems (GPS);
• threats in any form whatsoever about an individual or their loved ones or someone close to the individual as well as manipulative and controlling behaviors, such as threats to harm oneself;
• damaging, stealing, borrowing, or relocating property, trespassing and vandalism;
• non-consensual touching;
• pursuing, waiting, or showing up uninvited at a workplace, residence, classroom, or other locations frequented by an individual;
• lying to others about the individual;
• repeated unwanted or unsolicited contact or leaving unwanted gifts or items;
• posting disturbing messages or threats online;
• creating, attempting to create, or disseminating unauthorized recordings of another; and
• directing a third party to take any of the above acts.

5. Retaliation

The University prohibit retaliation against any person for making a complaint of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, for assisting in making a complaint, for resisting or openly opposing such conduct, or for otherwise using or participating in the complaint investigation process under the Policy. Persons who file, or participate in the investigation or resolution of, claims or complaints of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation with outside
agencies, law enforcement or otherwise pursuant to any applicable state or federal law, are also protected from retaliation by this Policy.

Prohibited retaliation includes, but is not limited to: threats; intimidation; coercion; reprisals; continued harassment or misconduct; other forms of harassment; slander and libel; and adverse actions related to employment or education. Retaliation can be committed by individuals or groups, including friends, relatives or other associates of the person against whom a complaint is filed. Retaliation, even in the absence of proven sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence or stalking in an underlying complaint, constitutes a violation of this Procedure that is just as serious as the main offense itself.

Retaliation is the interference through intimidation, including threats, coercion, or unlawful discrimination, with the individual’s right or privilege secured under the law (Title IX of the Education Amendments of 1972, Title VII of Civil Rights Act of 1964, the Violence Against Women Act 1994, the Massachusetts anti-discrimination laws, or other laws, or interfering with an individual’s right to make a complaint, testify, assist, or participate in any manner in an investigation, proceeding or hearing.

C. Conduct that is Not Prohibited

The University is committed to protecting, maintaining and encouraging both freedom of expression and full academic freedom of inquiry, teaching, service and research. Nothing in this Procedure shall be construed to penalize a member of the University community for expressing an opinion, theory, or idea in the process of responsible teaching and learning. Any form of speech or conduct, no matter how offensive, unpleasant or even hateful, which is protected by the principles of academic freedom or the U.S. Constitution, is not subject to this Procedure.
III. IF AN OFFENSE OCCURS

The University encourages a person who may have been victimized to talk to someone about what happened to get the support they need. If you believe that you may have been victimized, consider taking the following steps:

a) Initial Steps – Immediate Safety and Preserving Evidence

1. Go to a safe place.
   If an incident occurs, the University encourage victims to report the incident and seek both police and medical assistance. Seeking police or medical assistance does not obligate a victim to make a complaint or take any further action, but the decision to seek medical help and gather evidence allows victims to preserve the full range of available options. The Universities will assist any community member to get to a safe place, provide transportation for medical help and, if requested, contact law enforcement.

   For immediate help, contact:
   Department of Public Safety: 911 or 617-287-1212

2. Preserve Evidence.
   Any person who has experienced sexual violence is encouraged to take steps to preserve evidence of the incident, as doing so may be necessary to provide proof of a crime or to obtain a protection order from the court. After an incident occurs, one should try to refrain from bathing, showering, brushing teeth, drinking, eating, douching or changing clothes until the evidence can be collected. If one changes clothes, one should place each garment in a separate paper (not plastic) bag. If the incident involves any written or electronic communications (e.g., pictures/videos, texts, social media posts, etc.), take care to preserve copies and not delete the originals.

b) Seek Available Medical and Counseling Assistance

1. Seek Confidential Medical Attention.
   Seeking immediate medical attention is strongly encouraged to treat any possible injuries, including internal injuries, or infections. Please note that there are some medical actions that are more effective if taken within a few days after an offense, such as preventative treatment for pregnancy and sexually transmitted infections, evidence collection, and toxicology testing if there are signs that drugs or alcohol facilitated the offense. Generally, one may discuss the incident with licensed medical personnel on a confidential basis.

   a) Confidential On-Campus Medical Resources:
University Health Services, Quinn Administration Building, Second Floor
617-287-5690.
Open Monday-Wednesday 8:30am to 7:00pm and Thursday-Friday 8:30am to 5:00pm.

b) **Confidential Community Medical Resources:**

Sexual Assault Nurse Examiners (SANEs) are specially trained, certified professionals skilled in performing quality forensic medical-legal exams. Here one may find more information about SANE services and where to obtain them:

The following hospitals have sexual assault nurse examiners (S.A.N.E.) who are trained to deliver medical intervention and forensic medical examinations for victims of sexual assault:

- **Beth Israel Deaconess Medical Center**
  - 330 Brookline Avenue, Boston, MA 02215
  - TEL: 617.667.7000 – TTY: 617.632.0790

- **Boston Medical Center**
  - One Boston Medical Center Place, Boston, MA 02118
  - TEL: 617.638.8000 – TTY 1.800.439.2370

- **Brigham and Women's Center**
  - 75 Francis Street, Boston, MA 02115

- **Cambridge Hospital**
  - 1493 Cambridge Street, Cambridge, MA 02139
  - TEL: 617.843.0744

- **Children's Hospital**
  - 300 Longwood Avenue, Boston, MA 02115
  - TEL: 617.355.6000 – TTY: 781.216.2210

- **Massachusetts General Hospital**
  - 55 Fruit Street Boston, MA 02114
  - TEL: 617.726.2000

- **Newton-Wellesley Hospital**
  - 2014 Washington Street, Newton, MA 02462
  - TEL: 617.243.6000 – TTY: 1.800.439.2370

- Please note that there are some medical actions that are more effective if taken within a few days after an offense, such as preventative treatment for pregnancy and sexually transmitted infections, evidence collection, and toxicology testing if there are signs that drugs or alcohol facilitated the offense.

- Generally, you may discuss the incident with licensed medical personnel on a confidential basis. Please see “Section IV. Reporting Options” below for further detail.

3. **Obtain Confidential Counseling and Support.**
Generally, one may discuss the incident with a licensed mental health counselor or a counselor recognized by a religious order or denomination on a confidential basis. These counselors are good options if you want to discuss your situation with someone who can keep your information as confidential as possible while assisting you to determine what additional steps to take, such as obtaining further counseling, seeking medical attention, preserving evidence, and/or reporting to university or law enforcement authorities then or at a later time.

a) **Confidential On-Campus Counseling and Support Resources:**

Students may access the services of the Counseling Center on a confidential basis. For emergencies during hours of operation Mon - Wed 8:30am - 7:00pm and Thurs-Fri 8:30am - 5:00pm, please come directly to the UHS Counseling Center on the second floor of the Quinn Administration Building

- **TEL:** 617.287.5690
- **umb.edu/healthservices/counseling_center**

Employees may seek the confidential services of ComPsych, the University’s Employee Assistance Program (EAP).

- **Call:** 844.393.4983 **TDD:** 800.697.0353
- **guidanceresources.com** - Web ID: UMASS

All community members may access the confidential services of any religious/pastoral counselors on campus.

- **McCormack Hall 3rd Floor Ryan Lounge**
- **Call:** 617-287-5838
- **interfaith.campusmin@umb.edu**

b) **Confidential Community Counseling and Support Resources**

Many off-campus counseling resources are available. These service providers are not required to report any information to the University and will generally maintain one’s confidentiality.

**Greater Boston Area**

- **Boston Area Rape Crisis Center, Cambridge**
  **TEL:** 1.800.841-8371 (24hour hotline) – TTY 617.492.6434

BARCC ha ayudado a miles de mujeres y hombres. Por favor llámanos si necesita ayuda. Estamos aquí para usted. Usted puede llamar nuestra oficina al numero 617.649.1297 o llamar la líne de ayuda de Llamanos y Hablemos al numero 1.800.223.5001

**MA Spanish Language Rape Crisis Center Hotline (Llamanos)**

**TEL:** 1.800.223.5001 (Hotline)
Northeastern Massachusetts

- North Shore Rape Crisis Center, Beverly, TEL: 1.800.922-8772 (Hotline) – TTY: 978.921.8729
- Rape Crisis Services of Greater Lowell TEL: 1.800.542.5212 (Hotline) – TTY: 1.978.452.8723
- YWCA of Greater Lawrence, TEL: 877.509.9922 SA (Hotline) – TTY: 978.686.8840

Central Massachusetts

- Rape Crisis Center of Central Mass., Worcester TEL: 1.800.870.5905 (Hotline) – TTY: 508.852.7600
- Rape Crisis Center of Central Mass., Fitchburg TEL: 1.800.870.5905
- Wayside Victim Services, Milford TEL: 1.800.511.5070 (Hotline) – TTY 508.478.4205
- Voices Against Violence, Framingham, TELL 1.800.5931125 (Hotline) 508.626.8686

Southeastern Massachusetts

- A Safe Place, Nantucket TELL 508.228.2111 (Hotline) – TTY: 508.228.0561
- Independence House, Hyannis TEL: 1.800.439.6507 (Hotline) – TTY: 508.778.6782
- Connect to end violence, Vineyard Haven TEL: 508.696.7233 – TTY 774.549.9659
- Greater New Bedford Women Center, New Bedford TEL: 1.888.839.6636 (Hotline) – TTY508.996.1177
- New Hope, Attleboro TEL: 1.800.323.4673 (Hotline)
- Stanley Street Women Center, Fall River TEL: 508.675.0087 (Hotline) – TTY: 508.673.3328
- Womansplace Crisis Center, Brockton
Western Massachusetts

- Elizabeth Freeman Center, Pittsfield
  TEL: 413.443.0089 (Hotline) – TTY: 413.499.2425

- Everywoman Center, Amherst
  TEL: 413.545.0800 (Hotline) – TTY: 1.888.337.0800

- NELCWIT, Greenfield
  TEL: 413.772.0806 (Hotline)

- YWCA, Springfield
  TEL: 1.800.796.8711

- YWCA of Western Mass, Westfield
  TEL: 1.800.479.6245 (Hotline)

As the above contact information may be subject to change, current contact information on rape crisis centers in Massachusetts can be found at: http://www.mass.gov/eohhs/consumer/physical-health-treatment/health-care-facilities/rape-crisis-centers.html. For more information about programs and services offered by the Commonwealth regarding sexual and domestic violence see: http://www.mass.gov/eohhs/gov/departments/dph/programs/community-health/dvip/violence/sapss/

Other Resources:

- The Department of Justice, Protecting Students From Sexual Assault www.notalone.gov
- National Sexual Assault Hotline (800) 656-4673 (24 hour)
- National Domestic Violence Hotline (800) 799-7233 (24 hour)
- National Suicide Prevention Lifeline (800) 273-8255 (Hotline)
- The National Stalking Resource Center http://www.victimsofcrime.org/our-programs/stalking-resource-center
- RAINN [Rape Abuse & Incest National Network] (800) 656-4673 (Hotline) www.rainn.org (On-Line Chat Live)
- Victim Rights Law Center
  115 Broad Street, 3rd Floor Boston, MA 02110 Phone: 617-399-6720 (legal services for victims of sexual assault)
IV. REPORTING OPTIONS

Confidential (On-Campus and Anonymous), Non-Confidential (On-Campus, Criminal Government, and Third-Party), Make No Report, Other Considerations

Important note: The University strongly encourages persons who believe they may have been victimized to report the incident so the University can respond appropriately. It is important to note that if you discuss or report such an incident to university employees (other than to the medical personnel, counselors or off-campus service providers as described in Section B and C above), the University may be required to investigate under applicable law or when deemed necessary to protect the university community. Please see below for further detail. The University prohibits and will not tolerate retaliation against anyone who makes a report.

Persons who may have been victimized have several options for reporting: Confidential Reports, Non-Confidential Reports and Making No Report. While each option will be described in detail below, as a general rule, if the University receives a report of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation, it must investigate the report. If one is unsure of someone’s duty to report or ability to maintain one’s privacy, one should Click here https://www.umb.edu/titleix before one talks about an alleged incident. This is a list of who is Confidential and Non-Confidential and will be able to explain if they are required to make a report, and they can identify others who can help.

All parties and witnesses to alleged incidents of such prohibited conduct have reasonable expectations of privacy in matters reported and investigated under this Procedure. The University wants all community members to seek the assistance they need without fear that their private information will be shared more broadly than they would like. Federal and state laws, however, impose reporting obligations on certain University employees that, under some circumstances, require those employees to share information about an incident of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation with others at the University. Even when these employees have an obligation to report, they will protect the privacy of the reporter to the greatest extent possible and share information on only a need-to-know basis.

When a person makes a report, a University employee or official will try to ensure that the person is informed of their reporting obligations, and they will direct the person to Confidential Resources to whom one may make a private report. So that one fully understands the ability to make reports and the ability to keep one’s information confidential, please review the following reporting options. If one needs assistance in making a report, please contact the Title IX Coordinator.

A. Confidential Reporting Options

1. Clergy, Pastoral Counselors, and Licensed Mental Health Providers
One may report sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation in confidence to licensed mental health counselors, pastoral counselors or clergy who work for the University.

Except in rare, extreme circumstances, these individuals will share nothing without one’s permission. For example, a University official who works as a clinical provider is legally required to break confidentiality when there appears to be a risk of immediate harm. Also, the University may be required to notify the appropriate authority(s) if it receives a report regarding the abuse (including sexual assault) of a child, elder, or other member of a vulnerable population.

Even if one does not wish to make a complaint, these individuals can help one to obtain support services and provide information about one’s options. However, if someone requests certain protective interim measures from the University, e.g., extension for academic work or changing classes, other university official as necessary may be contacted only for the purpose of providing the requested measures. In such cases, one’s privacy will be maintained to the extent that maintaining confidentiality will not impair the University’s ability to provide the requested measures.

One may also confidentially report sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation to community support resources, which are not required to share information with the University.

2. Privacy Employee

A Privacy Employee is an individual who has privacy responsibilities that supersede their obligations under Title IX. These employees should not disclose a client or patient’s confidence, even to the Title IX Coordinator(s). These individuals include licensed treating physicians (and those persons working under the supervision of these individuals) when acting in their professional role in the provision of services to a patient who is a University student or employee and any University employee providing administrative, operational and/or related support for such treating physician in their performance of such services. One may report sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation in confidence to a Privacy Employee such as licensed medical provider. Except in rare, extreme circumstances, these individuals will share nothing without one’s permission.

3. Anonymous Reporting

One may file an anonymous report (without including one’s personal identification) with the Title IX Coordinator. Anonymous reports will typically be used only for statistical data collection under the Clery Act, will be kept confidential, and will not be used to initiate an investigation or a complaint except: (1) when necessary to comply with applicable law; or (2) to protect the health and safety of the campus community.

B. Non-Confidential Reporting Options

1. Campus Reporting Options
If one wishes to report an incident to the University, one may notify the Title IX Coordinator(s), the Dean of Students. The Department of Public Safety, Responsible Employees or Campus Security Authorities as defined below. Upon receipt of a report, the University will conduct appropriate follow-up to ensure that one has access to support, services, safety measures, and accommodations.

**Department of Public Safety** - One may also request a criminal investigation through the Department of Public Safety, who will assist in contacting the appropriate law enforcement agency that has jurisdiction (see below for more information on Criminal Reporting Options). Campus police officers will share information with University officials and employees who need to know it in order to implement University policies and procedures. Depending on the circumstances, an anonymous public warning may be issued by the Department of Public Safety. Whenever possible, the University will notify one if this will be issued and one’s name and identifying information will not be included.

**Responsible Employees (“RE”)** - The University recognize that one may feel most comfortable disclosing an incident to a university employee that one knows well, such as a resident advisor, coach or faculty member. Pursuant to Title IX, however, certain employees are required, under nearly all circumstances, to report incidents to the Title IX Coordinator. These employees, known as Responsible Employees (“RE”) are those with supervisory responsibilities or the authority to address or remediate sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, or whom a student might reasonably believe has such supervisory responsibility or authority.

The University encourages victims to speak with an RE so that the incident can be investigated and properly resolved. When one makes a report to an RE, one has the right - and should expect - the University to take the report seriously, to undertake a prompt, thorough and fair investigation, and to resolve the matter in accordance with the procedures in this Procedure.

Once an RE receives the report, the University is “on notice” of the incident and the University is then required, under most circumstances, to investigate. If one makes a report to an RE, however, only the people who need to know about the report will be told. Personal information will be shared only as necessary, and consistently with state and federal law: (1) with Investigators, witnesses, and the Respondent; (2) with other University officials to provide interim measures or accommodations; or (3) when required to be disclosed by law.

Whenever possible, REs will disclose their duty to report incidents before someone reveals information about an incident. REs will also inform a person making a report of their option to make a confidential report on campus, and where to obtain support services.

The REs at the University include persons holding the following positions:

- Designated Administrators;
- Campus Police Officers (except as noted);
- Community Ambassadors and Resident Assistants;
Title IX Coordinator/ Deputy Coordinators;
Student Affairs Staff (including student employees);
Athletic Department Staff (including coaches);
Faculty with significant responsibilities over student activities (such as Advisor to
Student Organizations.

**Campus Security Authority (“CSA”)** - Additionally, some University employees are designated as
Campus Security Authorities for the purposes of the Clery Act; these employees must provide
Campus Police with non-identifying statistical victim information regarding all reported incidents of
sexual assault, dating violence, domestic violence and stalking. This statistical information is used by
the University to compile their Annual Security Report, and by Campus Police for purposes of
advising the campus of any potential safety risks or concerns.

Accordingly, unless a University employee or official is identified as a Confidential Employee, most
other University employees and officials who receive reports of incidents of sexual violence, sexual
harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation are
required to report them to the Title IX Coordinator.

2. **Criminal Reporting Options – on campus and off**

Victims may file a criminal complaint with Department of Public Safety and/or the local police
department where the incident occurred. Victims can make a criminal report and a report to the
University; one does not have to choose one or the other. The University encourages victims to
report incidents to the police so that the police can take appropriate measures to help victims and
prevent future crimes. If one would like assistance in filing a report, the Department of Public Safety
will help.

Victims are never required, however, to report an incident to the Department of Public Safety or
local law enforcement. If a victim elects not to make a criminal report, the University will respect
that decision to not report the incident to the police.

If a victim chooses to make a report to campus police, the Department of Public Safety will conduct
an investigation and, if requested, assist the victim in filing criminal charges against the alleged
offender. Campus police can also assist a victim in the process of obtaining protective restraining
orders and abuse prevention orders for relationship/domestic violence. The Department of Public
Safety has specially trained officers to respond to complaints of sexual assault and domestic
violence, and, whenever possible, will make every effort to offer female victims/survivors an
opportunity to have a female officer present during all interviews. The Department of Public Safety
also helps the University to evaluate, investigate and resolve complaints under this Procedure, as
well as assists in protecting the safety of complainants.

Any person who has experienced sexual violence is encouraged to take steps to preserve evidence of
the incident, as doing so may be necessary to provide proof of a crime or to obtain a protection
order from the court. After an incident occurs, one should try to refrain from bathing, showering,
brushing teeth, drinking, eating, douching or changing clothes until the evidence can be collected. If
one changes clothes, one should place each garment in a separate paper (not plastic) bag. If the incident involves any written or electronic communications (e.g., pictures/videos, texts, social media posts, etc.), take care to preserve copies and not delete the originals.

3. **Governmental Reporting Options**

If one wishes to file a complaint of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation outside of the University or in addition to a complaint filed under the University’s Procedures, the following agencies may provide additional resources:

**U.S. Department of Education, Office of Civil Rights (OCR)**

33 Arch Street, 9th Floor, Boston, MA 02119-1424
(617) 289-0111, TDD (877) 521-2172; OCR.Boston@ed.gov

**U.S. Department of Justice, Office on Violence Against Women**

145 Street, NE, Suite 10 W.121, Washington DC 20530; owv.info@usdoj.gov

Persons who have questions or who wish to file a complaint of gender discrimination or sexual harassment under state law may contact the Massachusetts Commission Against Discrimination:

**Boston Office:**
One Ashburton Place, Rm. 601
Boston, MA 02108 (617) 727-3990

**Springfield Office:**
424 Dwight Street, Rm. 220 Springfield, MA 01103 (413) 739-2145

**Worcester Office: Worcester City Hall**
455 Main Street, Rm. 101 Worcester, MA 01608 (508) 799-8010

**New Bedford Office:**
800 Purchase Street, Rm. 501 New Bedford, MA 02740 (508) 990-2390

Employees with complaints, questions or concerns about gender discrimination, sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation may also contact the Equal Employment Opportunity Commission, John F. Kennedy Federal Building, 475 Government Center, Boston, MA 02203, (800) 669-4000, TTY (800) 669-6820

4. **Third Party Reporting**
Anyone may make a report against another member of the campus community or a person affiliated with the University by contacting the Title IX Coordinator, Dean of Students Office, Department of Public Safety, or another Responsible Employee.

5. Unknown/Non-University Offenders

If one does not know the identity of an alleged offender, or if the alleged offender is not a member of the campus community, the University will assist a victim in identifying appropriate resources or local authorities if the victim wishes to file a report. In addition, the University may investigate to the fullest extent possible and take other actions to protect the University community.

C. Make No Report

Victims have the right not to make a report to anyone. The University, however, strongly encourage victims to seek medical attention, counseling and support. Victims are always welcome to file a report at a later date, but please note that a delay in reporting could weaken the evidence necessary to determine whether the accused is found responsible for committing an act of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation.

D. Other Considerations

1. Withdrawal of Complaint

The Complainant may withdraw a complaint at any point during the investigation. The Title IX Coordinator, or designee, however, may determine, in their discretion, that the allegations raised in the complaint warrant further investigation despite the Complainant’s desire to withdraw the complaint.

2. Unknown/Non-University Offenders

If one does not know the identity of an alleged offender, or if the alleged offender is not a member of the campus community, the University will assist a victim in identifying appropriate resources or local authorities if the victim wishes to file a report. In addition, the University may investigate to the fullest extent possible and take other actions to protect the University community.

3. Amnesty/Good Samaritan

Students may be hesitant to report sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation out of concern that they, or witnesses, might be charged with violations of the University’s drug/alcohol policies. While the University does not condone such behavior, a priority is placed on the need to address sexual violence and misconduct. Accordingly, the University may elect not to pursue discipline
against a student who, in good faith, reports, witnesses or possesses personal knowledge of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation.

4. **Timeframe for Reporting**

   The University does not limit the timeframe for filing a complaint under this Procedure. While reports may be made at any time, Complainants are reminded that the more time that passes from the time of the incident, the more difficult it is for the University to obtain information and contact witnesses, and the alleged Respondent may no longer be affiliated with the University.

5. **False Charges**

   The filing of a knowingly false report of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation is a serious offense prohibited by this Procedure. A report made in good faith, however, is not considered false merely because the evidence does not ultimately support the allegation of prohibited conduct. If an investigation reveals that a Complainant knowingly filed false charges, the University shall take appropriate actions and issue sanctions pursuant to other applicable University policies. The imposition of such sanctions does not constitute retaliation under this Procedure.

6. **Independent Investigations**

   At any time, the University, at its discretion, may conduct an investigation independent of, or in addition to, the procedures described in this Procedure. The investigation may involve complaints or allegations of violence, or concerning violations of Title IX, VAWA and/or the Clery Act against the University, or any of its employees or students. Any such independent investigation will comply with the requirements of Title IX, VAWA and/or the Clery Act, as applicable.

7. **Compliance Concerns**

   All are encouraged to report any concerns about the University’s handling of a sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation investigation to the University’s Title IX Coordinator. Individuals may also report concerns about the University’s handling of such investigations to:

   U.S. Department of Education, Office of Civil Rights
   33 Arch Street, 9th Floor Boston, MA 02119
   617-289-0111; TDD: 877-521-2172
V. PRIVACY AND CONFIDENTIALITY

A. Requests for Confidentiality or for No Investigation

Please know that the University may not be able to honor request for confidentiality, or no investigation/disciplinary action occur, when disclosure of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation are made to non-confidential employees. In those cases, the University will weigh the request against its obligation to provide a safe, non-discriminatory environment for its entire community, including the victim, and its obligation to comply with applicable laws.

It is important to understand that the University’s ability to meaningfully investigate an incident and pursue disciplinary action against the alleged perpetrator(s) may be limited if the University honors a confidentiality or no investigation request.

In consultation with the Department of Public Safety and other university personnel as necessary, the Title IX Coordinator will evaluate a request for confidentiality or that investigation/discipline occur by considering a range of factors including, but not limited to, whether:

- there have been other similar complaints about the same alleged perpetrator;
- the alleged perpetrator has a history of arrests or records indicating a history of violence;
- the alleged perpetrator threatened any further violence against the victim or others;
- the misconduct was committed by multiple perpetrators;
- the act was perpetrated with a weapon;
- the alleged perpetrator holds a position of power over the victim;
- the victim is a minor;
- the University possesses no other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence);
- there appears to be a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group; and/or
- other circumstances indicating an increased risk of violence or harm.

The presence of one or more of these factors could lead the University to investigate and/or pursue discipline. The University will inform the victim prior to starting an investigation and will, to the extent possible, share information with only the people responsible for handling the University’s response.

The University may not require a victim to participate in any investigation or disciplinary proceeding. If none of the factors listed above are present, the University will likely honor the victim’s request for confidentiality. It will also take interim measures as necessary to protect and assist the victim. In this circumstance, the University will consider broader remedial action, such as increased monitoring.
supervision or security, increased or targeted education or prevention measures, conducting climate assessments/victimization surveys, and/or revisiting its policies and practices.

In the event that the victim requests that the University inform the alleged perpetrator that the victim asked the University not to investigate or seek discipline, the University will honor this request and inform the alleged perpetrator that the University made the decision to go forward.

1. Privacy for Respondents Who Are Students

A student’s right to privacy is primarily governed by the Family Educational Rights and Privacy Act (“FERPA”), which provides that personally identifiable information maintained by the University in students’ educational records may not be disclosed except with the consent of the student or as otherwise specified by law.

2. Disclosures Made at Public Awareness Events

Public awareness events such as “Take Back the Night,” the Clothesline Project, candlelight vigils, protests, “survivor speak outs” or other forums in which individuals disclose incidents of sexual violence or relationship violence are not considered notice to the University and do not trigger an obligation to investigate any particular incident(s). Such events may, however, inform the University’s education and prevention efforts.

3. Statistical Reporting and Timely Warnings Under the Clery Act

The Clery Act requires the University to maintain a daily log of reports of crimes that occurred on campus, University-controlled property or public property immediately adjacent to campus, including reports of sexual assault, domestic or dating violence and stalking. The University must also publish an Annual Campus Crime Report concerning reported incidents. The University does not include names or other personally identifying information in the daily logs or the Annual Security Reports.

Additionally, when the University becomes aware that an incident has occurred, and there is a potential for bodily harm or danger to members of the campus community, the University will issue a timely warning to the campus. While the University will provide enough information to safeguard the campus community, a victim’s name or other personally identifying information will not be disclosed in the timely warning.
VI. INTERIM MEASURES FOR STUDENTS

The University is committed to supporting victims by providing the necessary crisis intervention, safety and support services, and academic accommodations throughout the investigation and resolution process. The University wants all community members to be safe, to receive appropriate medical attention, and to get the help they need to heal and to continue to access their educational or employment opportunities. The University also wants victims to understand their reporting options and how to access available interim measures.

The University encourages victims of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation to report incidents to the Title IX Coordinator or any Responsible Employee with whom the victim feels comfortable.

Additionally, in some circumstances, a victim may wish to seek an order of protection from a court or appropriate jurisdiction against the alleged perpetrator. In these circumstances, the Department of Public Safety will assist individuals in their attempt to secure these orders. Individuals may also seek restriction of access to the University by non-students when appropriate.

A. Victim is informed of options for interim measures:

- Victims may obtain protective interim measures by either (1) reporting the incident to the Title IX Coordinator or other Responsible Employee and requesting interim measures, or (2) disclosing the incident to a counselor, who in turn can request interim measures on the victim’s behalf from the University.

- Upon receipt of a report or request for protective interim measures, the University will provide the victim, or the victim’s counselor, with a written explanation of the interim measures available, and shall ask which measures are sought. Some possible interim measures are listed below, and the University determines which measures are appropriate for each victim on a case-by-case basis. Not all of the measures listed below will be necessary to keep every victim safe and ensure their equal access to University programs and activities.

  - If the victim or counselor requests an interim measure that is not already provided by the University, it will consider whether the request can be granted. In cases where interim measures affect both the victim and the alleged respondent, the University will minimize the burden on the victim wherever appropriate.

B. The victim may choose interim measure options and still maintain confidentiality:

  - If a victim elects to confidentially disclose an incident to a counselor and also seeks protective interim measures from the University, the counselor may ask the victim to sign a release specifying the information that may be shared with the University.
In accordance with the University’s practice of allowing counselors to seek such measures for victims of trauma without requiring that the nature of the trauma be disclosed, the University will not require a counselor to disclose that sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking or retaliation is the basis for the request.

Additionally, if a victim does not wish for the University to investigate or otherwise notify the alleged Respondent of the reported incident, a counselor may still request protective interim measures on behalf of the victim. In such cases, the Title IX Coordinator will consider whether the University can honor the request for confidentiality or no investigation while still providing a safe and nondiscriminatory environment for the campus.

The University will maintain as confidential any accommodations or protective interim measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the accommodations or protective interim measures.

The University may provide one or more of the following protective measures:

- “no contact/communication” orders;
- escorts to ensure safety while moving between locations on campus;
- changes in academic or work schedules;
- alternative housing, dining and/or office accommodations;
- restrictions from areas of campus;
- medical and/or mental health services;
- assistance in identifying an advocate to help secure additional assistance, such as off-campus and community advocacy, support and services; and/or
- academic accommodations, such as:
  - transferring to another section of a course, lecture or lab;
  - rescheduling an academic assignment or test;
  - arranging for incompletes, a leave of absence, or withdrawal from campus; and
  - preserving eligibility for academic, athletic, or other scholarships, financial aid, internships, study abroad, or foreign student visas.

Interim Administrative Action:

- The Vice Chancellor for Student Affairs, or designee may impose an interim “University Suspension,” an interim “Removal from Housing,” an interim “Loss of Recognition,” and/or other necessary restrictions on a Respondent prior to or during an Administrative Review of the respondent’s alleged violation. Such action may be taken when, based on
the information provided and in the professional judgment of a University official, a threat of harm to persons or property exists, or to protect the safety of any person.

- Interim administrative action is not a sanction. It is taken in an effort to protect the safety and well-being of the complainant, respondent, other members of the University Community, the University, or property. Interim administrative action is preliminary in nature; it is in effect only until an Administrative Review has been completed. However, violations of interim administrative action may result in additional violations and sanctions including University Suspension or University Expulsion or Loss of Recognition.
VII. WRITTEN NOTIFICATION OF RIGHTS, OPTIONS, AVAILABLE RESOURCES, SERVICES AND INFORMATION

The University will provide written information to community members regarding counseling, medical and mental health services, disability accommodations, visa and immigration assistance, and other services available on and off campus. In addition, the University will provide notification to victims of their rights and options set forth in this Procedure, including, but not limited to, options for, protective interim measures, regardless of whether the victim chooses to report the crime to the police or file a complaint with the University.

Complainant Rights: The University will notify Complainants alleging sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation in writing that they have the following rights:

- to an explanation of the options available;
- to referrals to confidential assistance and support services from both on- and off-campus resources, including 24 hour services;
- to a change in on-campus residence and/or an adjustment to their academic schedule if such changes are reasonably available;
- to request that the University impose no contact/communication orders or other interim measures;
- to make a complaint that starts the University’s investigation and resolution processes;
- to a prompt, thorough and equitable investigation and resolution of a complaint;
- to an advisor of one’s choice who will assist and be present at any time during the investigation proceedings, but who may not participate in or otherwise provide representation in any way throughout the process;
- to reasonable accommodations for a documented disability during the process;
- to know, in advance, the names of all persons known to be involved;
- not to have irrelevant sexual history discussed;
- to be present at meetings and review documents;
- to speak and present information on one’s own behalf;
- to submit questions for the Investigator to ask witnesses;
- to know the status of the case at any point during the process;
- to be informed of the outcome of the process in a timely manner;
- to an appeal from the outcome of the process;
- to choose whether or not to initiate a formal investigation of the complaint, unless the University deems it necessary to investigate to protect the safety of the community or in compliance with applicable law; to the confidentiality of the
investigation process to the extent possible (see Privacy and Confidentiality at Section V);

- to file no complaint with the University, but receive support services from the University;
- to file a police report and/or take legal action separate from and/or in addition to the University discipline process;
- to seek and enforce a no contact, restraining or similar court order;
- to be assisted by the University in seeking assistance from or filing a complaint with local law enforcement;
- to not file a complaint or seek assistance from local law enforcement, but receive support services from the University;
- to be free from any behavior that may be construed by the University to be intimidating, harassing or retaliatory; and
- to have the matter handled in accordance with University Policy and Procedure.

**Respondent Rights:** Respondents to claims of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and/or retaliation have the following rights:

- to an explanation of the allegations against them;
- to referrals to confidential assistance and support services from both on- and off-campus resources, including 24 hour services;
- to receive a copy of the complaint filed against them;
- to be presumed not in violation of University policy until a violation is established through the complaint investigation process;
- to the confidentiality of the investigation process to the extent possible (see Privacy and Confidentiality at Section G);
- to an advisor of one’s choice who will assist and be present at any time during the investigation proceedings, but who may not participate in or otherwise provide representation in any way throughout the process;
- to reasonable accommodations for a documented disability during the process;
- to know, in advance, the names of all persons known to be involved;
- not to have irrelevant sexual history discussed;
- to be present at meetings and review documents;
- to speak and present information on one’s own behalf;
- to submit questions for the Administrative Investigator to ask witnesses;
- to know the status of the case at any point during the investigation and resolution process;
- to be informed of the outcome of the process in a timely manner;
- to an appeal from the outcome of the process;
- to be free from any behavior that may be construed by the University to be intimidating, harassing or retaliatory; and
- to have the matter handled in accordance with University Policy.
Note: In some circumstances, a complaint alleging an act of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation may also allege conduct that may constitute a potential violation of other University conduct policies. To avoid duplicative efforts, the University may undertake a joint investigation of the conduct. Based on the findings of the joint investigation, the Respondent may be subject to disciplinary action for violations of the procedures and/or the Student Code of Conduct, as well as other policy or procedure violations.
VIII. INVESTIGATION AND RESOLUTION PROCEDURES

Investigations of complaints are necessary to determine:

- whether a complaint alleges a violation of this Procedure or the Student Code of Conduct;
- whether prohibited conduct has occurred;
- whether there is an ongoing risk of harm for further prohibited conduct and, if so, what steps must be taken to prevent its recurrence;
- whether interim protective measures should be in place for the safety of the Complainant or the community, or to redress the effects of prohibited conduct;
- whether the conduct warrants disciplinary action; and
- whether local or system-wide changes to policies, practices or training should be considered and implemented by the University.

This Procedure has been designed to provide prompt, thorough, fair and impartial processes from investigation to final result. The proceedings pursuant to this Procedure will be conducted transparently and consistently with the University’s policies. The formal rules of process or evidence, such as those applied in criminal or civil courts, are not used under this Procedure.

The complaint investigation and resolution process is comprised of two processes, the Informal Resolution Procedure and the Formal Investigation Procedure, which are detailed below.

Deviations from the Informal Resolution Procedure or Formal Investigation Procedure shall not necessarily invalidate a decision, unless significant prejudice may result to a party or the University.

Note: While this Procedure identifies certain University officers and employees who have particular roles and duties, the University may designate other officers or employees to perform specific roles and/or duties set forth in this Procedure.

A. Informal Resolution Procedure

Where appropriate, the parties to a dispute may attempt to reach an informal resolution of the potential violation. The University encourages involved parties to request the intervention of the University to assist in an informal resolution by contacting the Title IX Coordinator(s).

In conference with the Title IX Coordinator and/or others as necessary, the Title IX Coordinator or the Title IX Coordinator’s designee will assess the request for informal resolution against the severity of allegations and the potential risk of a hostile environment or safety concern for other campus community members. If an informal resolution is appropriate, the Title IX Coordinator will notify the
parties. The University will not ask a Complainant to resolve a problem with a Respondent without the involvement of the Title IX Coordinator or designee.

The Title IX Coordinator or designee will facilitate a dialog with the parties in an attempt to reach a resolution. At no time prior to the resolution of the matter shall either party question or confront the other, or engage a third party to do so, outside the presence of the Title IX Coordinator or designee.

The matter will be deemed resolved when all parties expressly agree to an outcome that is acceptable to them and to the University. Every attempt will be made to conclude the Informal Resolution Process in a prompt manner.

A Complainant is not required to use the Informal Resolution Procedure before initiating the Formal Investigation Procedure. A party may withdraw from the Informal Resolution Procedure and initiate the Formal Investigation Procedure at any time.

B. Formal Investigation Procedure

1. Submission of Complaint and Initial Review

When a person believes that they have been harassed, discriminated or retaliated against, stalked or subjected to violence in violation of this Procedure and/or the Student Code of Conduct, they may file a written complaint, preferably using the Complaint Form (https://www.umb.edu/life_on_campus/dean_of_students/maxientreportingforms)

Students are encouraged to file complaints directly with the Office of the Dean of Students, Title IX Coordinator, but complaints may also be filed with other offices, such as the Office of Diversity, Equity, and Inclusion. Any student complaint that is initially filed with other offices will be reported to the Title IX Coordinator.

In certain circumstances, the University may initiate this Procedure without the filing of a written complaint or the active participation of a Complainant. Complaints may be generated upon receipt of a report by a Complainant or by a third-party reporter, such as, but not limited to, a friend, spouse, family member, advisor, parent or coworker.

A complaint must be filed by the Complainant or a University official, and the complaint must be in the words of the Complainant or the University official. Complaints should contain all known facts pertaining to the alleged violation, the names of any known witnesses and others with knowledge of the allegations, and an identification of any documents or other evidence.

The Title IX Coordinator or designee will determine if the complaint falls within the jurisdiction of this Procedure. The University will implement any necessary and/or appropriate interim protective measures, or monitor and/or revise any measures already in place. If the University determines that the complaint is not properly filed pursuant to this Procedure, it will provide written notice to the Complainant (or third party reporter).
2. Investigation Process

If a complaint has been properly filed, or the University otherwise determines that an investigation is necessary, the University will assign the matter to an Investigator. The University may also designate other trained and knowledgeable University officials to assist with the investigation. Under circumstances where the University deems it necessary or appropriate, the University may also appoint an external investigator.

- Student-on-Student complaints will be adjudicated according to the process outlined within the Student Code of Conduct.
  https://www.umb.edu/life_on_campus/policies/community/code

- All other matters will be adjudicated according the process outlined in polices found here:
  https://www.umb.edu/odei/policies
IX. EDUCATION AND PREVENTION PROGRAMS

As part of the University’s commitment to providing working, living and learning environments free from sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, this Procedure shall be disseminated widely to the campus community through publications, new employee and student orientations, physical posting in places where students and employees are likely to see it, and other appropriate communications. A copy of this Procedure shall be prominently posted on each University’s website.

The University provides sustained and comprehensive training to the campus community concerning: (1) prevention and awareness programs that address rape, acquaintance rape, domestic and dating violence, sexual assault, and stalking; (2) the provisions of the University’s Non-Discrimination and Harassment Policy; and (3) the University’s Complaint and Investigation Procedures for alleged violations of the Non-Discrimination and Harassment Policy (“EO Procedure”). Additionally, the University provides all new or incoming students and employees primary prevention and awareness programs that promote awareness of rape, acquaintance rape, domestic and dating violence, sexual assault, and stalking.

The University has implemented primary and on-going prevention and awareness programs for students and employees focused on sexual violence, domestic and dating violence and stalking, and the promotion of positive and healthy behaviors that foster mutually respectful relationships and sexuality. The University shall make preventative educational materials available to all community members to promote compliance and familiarity with this Procedure.

In addition, the University provides annual training to its Title IX Coordinators and Deputy Coordinators, Investigators, review and appellate body members, Responsible Employees, Campus Police, and all others involved with the administration of this Procedure.

In the training programs for students and employees, the University will address the following:

- The University’s prohibition of sexual assault, domestic violence, dating violence and stalking.
- The University’s procedures for addressing complaints of sexual assault, domestic violence, dating violence and stalking.
- The Massachusetts’ legal definitions of the crimes of sexual assault, domestic violence, dating violence and stalking.
- The legal definition of “consent” in reference to sexual activity in Massachusetts.
- The rights and remedies of students and employees under Title IX.
Practical information about identifying, preventing, and reporting sexual violence and sexual harassment. The reporting options available to victims, on and off campus.

The confidential resources available to the victims, on and off campus.

How to obtain accommodations and/or interim protective measures.

How the University analyzes complaints.

Positive options for bystander intervention that an individual may take to prevent harm or intervene in risky situation.

The role of alcohol and drugs and student safety.

How employees should respond to reports of sexual violence, sexual and gender-based harassment, domestic and dating violence, and stalking; employees’ duty to make reports to the University and how to make such reports.

The University’s prohibition against retaliation.

In addition, the University provides annual training to its Title IX Coordinators, Investigators, review and appellate body members, Responsible Employees, Campus Police, and all others involved with the administration of these procedures on the topics listed above, as well as the following:

- The obligations of Responsible Employees when interacting with students or employees making reports of sexual violence, sexual and gender-based harassment, domestic and dating violence, and stalking.
- The obligations of Responsible Employees to forward reports to the University.
- The dynamics of sexual violence and the unique toll it can take on self-blaming and traumatized individuals.
- Understanding how sexual violence occurs, how it is perpetrated, and how victims naturally respond during and after assault.
- Issues related to sexual violence, domestic violence, dating violence and stalking
- The requirements of these Procedures.
- How to conduct an investigation in a manner that protects the safety of victims and promotes accountability.
- How to conduct prompt, fair, impartial and thorough investigations.

Furthermore, the University pledges to routinely:

- evaluate current policies, procedures, and practices;
ensure appropriate training of all persons charged with administering this Procedure and/or involved in the complaint investigation and resolution process;

- evaluate who is designated an RE for Title IX reporting purposes and/or CSA for Clery Act reporting purposes, and disseminate and publish applicable list of REs and CSAs;
- ensure appropriate training of REs and CSAs;
- evaluate campus climate assessment survey data;
- provide education and prevention programming for students and employees; and
- evaluate physical security needs on campus.

III. Massachusetts Definitions

Alleged incidents of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation are determined by the language of this Procedure rather than by the provisions of the criminal laws of Massachusetts. However, community members who believe they have been the victim of a crime may choose to pursue a criminal investigation through local law enforcement. In those instances, the criminal laws will apply. Here are the definitions of Massachusetts crimes related to the conduct prohibited by this Policy:

1. **Sexual Assault** - Massachusetts uses the term “rape.” The definition encompasses (1) the penetration of any orifice by any body part or object (2) by force (or threat) and (3) without consent. Rape also includes instances where the victim is incapacitated (“wholly insensible so as to be incapable of consenting”) and the perpetrator is aware or should have known of the incapacitation. Relatedly, under M.G.L. c. 268, § 40, a person who knows that an individual is a victim of an aggravated rape and is at the scene of the crime, must report the crime to law enforcement as soon as is reasonably practicable.

   http://www.malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section22; http://masscases.com/cases/sjc/450/450mass583.html

2. **Domestic Violence** - Section 1 of M.G.L. c. 209A defines domestic abuse as “the occurrence of one or more of the following acts between family or household members: (a) attempting to cause or causing physical harm; (b) placing another in fear of imminent serious physical harm; (c) causing another to engage involuntarily in sexual relations by force, threat or duress.”

   http://www.malegislature.gov/Laws/GeneralLaws/PartII/TitleIII/Chapter209A

For the purposes of Chapter 209A, “family or household members” are defined as persons who (a) are or were married to one another; (b) are or were residing together in the same household; (c) are or were related by blood or marriage; (d) have a child in common regardless of whether they have ever married or lived together; or (e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts’ consideration of the following factors: (1) the length of the relationship; (2)
Section 13M of M.G.L. c. 265 prohibits assault and/or assault and battery against family or household members, which is defined as: “persons who: (i) are or were married to one another, (ii) have a child in common regardless of whether they have ever married or lived together or (iii) are or have been in a substantive dating or engagement relationship.”

Section 15D of M.G.L. c. 265 prohibits the strangulation or suffocation of another person.

3. **Dating Violence** - While Massachusetts does not have a law concerning dating violence, conduct may constitute an assault or assault and battery under M.G.L. c. 265, § 13A. An assault or an assault and battery: (i) upon another and [the perpetrator] by such assault and battery causes serious bodily injury; (ii) upon another who is pregnant at the time of such assault and battery, [the perpetrator] knowing or having reason to know that the person is pregnant; or (iii) upon another who [the perpetrator] knows has an outstanding temporary or permanent vacate, restraining or no-contact order or judgment issued pursuant to [applicable law], in effect against him at the time of such assault or assault and battery.”

In determining whether Section 13M applies to a particular relationship, the courts shall consider the following factors: “(1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time that has elapsed since the termination of the relationship.”
been terminated by either person, the length of time that has elapsed since the termination of the relationship.”
https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section13m

Section 15D of M.G.L. c. 265 prohibits the strangulation or suffocation of another person.
https://malegislature.gov/Laws/SessionLaws/Acts/2014/Chapter260

4. **Stalking** - Section 43 of M.G.L. c. 265 defines “stalking” as “(1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily harm.”
http://www.malegislature.gov/Laws/GeneralLaws/PartIII/TitleI/Chapter265/Section43

5. **Consent** - There is no definition of the term “consent” in the Massachusetts General Laws. Massachusetts courts use the term “against his/her will” which means without consent. Cases have held that consent cannot be compelled or induced by force or threats, and consent is not present when the victim is incapacitated. In other words, consent requires a voluntary agreement demonstrated by words or actions, by a person with sufficient mental capacity to make a conscious choice to do something proposed by another, free of duress. Commonwealth v. Lopez, 433 Mass. 722 (2001), Commonwealth v. Lefkowitz, 20 Mass. App. Ct. 513 (1985); see also:
http://www.malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter265/Section22