

MCPHS University
PROTECTION FROM SEXUAL HARASSMENT (TITLE IX) POLICY

I. POLICY STATEMENT

MCPHS University (“MCPHS” or the “University”) is committed to maintaining a positive living, learning, and working environment that is free from all forms of Sexual Harassment, which is a form of sex discrimination. The University does not discriminate based on sex, in admission and access to, and treatment and employment in, its education program or activity or while a person is attempting to participate in an education program or activity. For discrimination and harassment that is not of a sexual nature, please refer to the University’s Protection from Discrimination and Harassment Policy.

The University actively complies with the requirements of Title IX of the Educational Amendments of 1972 and pertinent laws, regulations, and executive directives of the Commonwealth of Massachusetts and other applicable state and federal statutes. This Policy defines prohibited sexual misconduct and identifies the procedures that will be utilized to investigate and adjudicate possible violations of this policy. This policy does not preclude application or enforcement of other University policies.

Individuals who violate this Policy are subject to discipline and corrective action, up to and including termination or expulsion.

The University will not tolerate sexual harassment in any form or related retaliation against or by any employee or student. The University recognizes that discrimination and harassment related to a person’s sex can occur in connection with misconduct related to a person’s sexual orientation, gender identity, gender expression, race, color, ethnicity, national origin, religion, age, disability, or other protected classes. Targeting a person based on these characteristics is also a violation of state and federal law and the University’s Protection from Discrimination and Harassment Policy. As appropriate, the University will endeavor to coordinate the investigation and resolution of sexual harassment complaints with the investigation and resolution of complaints of discrimination or harassment based on other protected classes.

There is a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. There is a presumption of innocence throughout the grievance process, with the burden on the university to gather information and to prove that the conduct violated the policy.

Inquiries regarding the University’s compliance with Equal Opportunity and Affirmative Action laws should be directed to Richard J. Lessard, President, at 617.732.2132.

II. REPORTING OBLIGATIONS

Obligations to Report Sexual Harassment. In order to take appropriate corrective action, the university must be aware of sexual harassment, and related retaliation that occurs in university employment, educational programs, and activities. The following individuals have a duty to report whenever they witness, receive notification of, or otherwise have knowledge of an incident of discrimination, harassment, or related retaliation that occurred in the course of University employment, educational programs, or activities.

- All University Officers;
- All Deans, Department Chairs, and Program Directors;
- The Title IX Coordinator;
- All employees with supervisory authority;
- All employees in Human Resources; and
- All employees in Public Safety.

Where to Report. Anyone who believes that they experienced, witnessed, or otherwise have knowledge of sexual harassment **shall** immediately report such behavior to the:

- Title IX Coordinator or;
- Human Resources (for employees); or
- Senior Student Affairs Officer-Dean of Students (for students).

An individual may choose to report sexual harassment to a faculty or staff member. All employees with supervisory authority have a duty to report potential Title IX violations and every employee is encouraged to report and inform the reporting individual that:

- You are not a confidential source; and
- You will report their concerns to the Title IX Coordinator.
Dawn M. Ballou, Title IX Coordinator
179 Longwood Avenue, Boston, MA 02115
617.732.2077 – office
857.337.4117 – cell
Dawn.Ballou@mcphs.edu

When to Report. All reports or complaints shall be made as promptly as possible after the occurrence. For students, while they should expect that faculty and staff would inform the Title IX Coordinator, students are strongly encouraged to contact the Title IX Coordinator or the Dean of Students directly.

Failure to Report is a Violation. A failure to report this information by a mandated reporter is a violation of this policy, except in the case of an individual whose profession and university responsibilities requires them to keep certain communications confidential (e.g., a professional counselor). Such an individual is not required to report confidential communications received while performing those university responsibilities.

Right to File Criminal Complaint. A complainant has the right to file a criminal complaint before, during or after the university's Title IX investigation.

Amnesty Policy. The university encourages the reporting of all concerns regarding sexual harassment. Sometimes individuals are hesitant to report instances of sexual harassment because they fear being charged with other policy violations. Because the university has a paramount interest in protecting the well-being of its community and remedying sexual harassment, other policy violations will be considered, if necessary, separately from allegations under this policy.

Zero-Tolerance for Retaliation. The university will not tolerate retaliation by any employee or student. Retaliation is a serious violation of this policy, as well as of federal, state, and local law. Anyone who believes he or she is a victim of retaliation should report the matter immediately according to the same procedure provided in this policy for making complaints of discrimination, harassment, or sexual assault.

III. PROHIBITED CONDUCT

Sexual Harassment as defined by Title IX. Unwelcome conduct determined by a reasonable person on the basis of sex that is so severe, pervasive, and objectionably offensive that it effectively denies a person equal access to the school's education program or activity; or an employee of the school conditioning the provision of aid, benefit, or service of the school's on an individual's participation in unwelcome sexual conduct (quid pro quo); or sexual assault (as defined by the Clery Act), dating violence, domestic violence, or stalking (as defined by the Violence Against Women the Act (VAWA)). The conduct occurs in the United States and within the University's "education program or activity."

Sexual Assault:

Sexual Assault–Non-consensual Sexual Contact: Behavior including any intentional touching of a sexual nature, however slight, whether clothed or unclothed, with any object or body part by a person against another person that is without Affirmative Consent and/or by force. Examples include, but are not limited to:

- Intentional contact with the breasts, buttocks, groin, or genitals;
- Intentional touching of another with breasts, buttocks, groin, or genitals;
- Compelling someone to touch another person or oneself in a sexual manner; and
- Any intentional bodily contact in a sexual manner.

Sexual Assault–Non-consensual Sexual Intercourse: Behavior including any sexual intercourse, however slight, with any object or body part by a person against another person that is without Affirmative Consent and/or by force. Examples include, but are not limited to:

- Vaginal penetration by a penis, object, tongue or finger;
- Anal penetration by a penis, object, tongue or finger; and
- Oral copulation (mouth-to-genital contact or genital-to-mouth contact).

Sexual Exploitation: When an individual takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and the behavior does not otherwise constitute another form of prohibited conduct as defined by this policy. Examples include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual taking and/or distributing photography, video, or audio-taping of sexual activity;
- Allowing others to observe sexual activities without Consent ;
- Engaging in voyeurism;
- Knowingly transmitting a sexually transmitted infection or human immunodeficiency virus (HIV) to another person;
- Exposing one’s genitals in non-consensual circumstances; and
- Inducing another to expose their genitals.

Domestic Violence: A felony or misdemeanor crime of violence committed against a victim by: a current or former spouse or intimate partner of the victim; a person with whom the victim shares a child in common; a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others; or (B)suffer substantial emotional distress.

Sexual Harassment other than as defined by Title IX: Unwelcome, verbal or physical conduct that is based on sex/gender or is of a sexual nature and that has the purpose or effect of unreasonably interfering with a student’s ability to participate in or benefit from the educational programs or activities and conduct that unreasonably interferes with a person’s work performance or creates an intimidating, hostile or humiliating or offensive work environment. The unwelcome behavior may be based on power differentials (*quid pro quo*) or create a hostile environment.

IV. DEFINITIONS

Actual Knowledge – notice has been given of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of the university who has authority to institute corrective measures on behalf of the university.

Complainant – an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Consent – an agreement given freely to engage in sexual activity without any undue influence of pressure. Consent is a clear yes and not the absence of no. Consent can only be given by someone of sound mind and cannot be given by someone with intellectual disabilities. Consent will not be recognized if a person is asleep or unconscious, frightened, coerced, intimidated, intoxicated, or under the influence of drugs. Either party can withdraw consent at any time. Prior consent does not imply current or future consent; even in the context of an ongoing relationship.

Course of conduct – two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or 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.

Decision Makers – University officials who preside over live hearings and make a determination regarding responsibility with respect to Title IX allegations.

Education Program or Activity – for purposes of Title IX, this includes locations, events, or circumstances over which the university exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university. This includes university networks and technology.

Formal Complaint - a document filed by the complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the university investigate the allegation of sexual harassment.

Informal Resolution – a process available to the parties after the filing of a complaint alleging potential sexual harassment.

Investigators – University officials who investigate allegations of sexual harassment.

Live Hearing – Complainant and respondent through their respective advisors are permitted to ask the other party and any witnesses all relevant questions, including questions challenging credibility by cross-examination. The parties may be located in separate rooms with technology enabling the decision makers and parties to simultaneously see and hear the party or the witness testimony. An audiovisual recording, or transcript, of any live hearing must be made and available to the parties for inspection and review.

Preponderance of the Evidence – the evidentiary standard used to determine responsibility with respect to sexual harassment complaints.

Respondent – an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Supportive Measures - are to be non-disciplinary, non-punitive in nature. Designed to restore or preserve access to the school's education program or activity without unreasonably burdening the other party, protect the safety of all parties and the school's educational environment, and deter sexual harassment. The measures may include but are not limited to counseling, changes to academic schedules and housing, escort services, and no contact orders. Supportive measures will be provided without fee or charge to either party. Equitable treatment of both parties that is impartial but reasonable in light of the circumstances is required. Supportive measures are available before or after the filing of a formal complaint or where no formal complaint has been filed.

Title IX Coordinator – the university official designated to disseminate the Title IX policy, coordinate efforts to comply with the regulations, and adopt and publish grievance procedures.

V. EVALUATION OF THE COMPLAINT

Upon notification of a potential Title IX violation, the Title IX Coordinator will promptly contact the complainant to discuss supportive measures; to consider the complainant's wishes with respect to supportive measures; to inform the complainant of availability of these measures with or without the filing of a formal complaint; and to explain the grievance process and the procedure for filing a formal complaint.

Emergency Removal of a student-respondent may still be appropriate, provided the university does an individualized safety and risk analysis; determines there is an immediate threat to the physical health or safety of students or employees that justifies removal; and, provides notice and an opportunity for the respondent to challenge the decision immediately following removal. Non-student employees may be placed on administrative leaves during investigations.

The complainant or Title IX Coordinator files a document alleging sexual harassment against a respondent and requesting that the university investigate the allegation of sexual harassment, known as a “formal complaint.” A complainant may only file a formal Title IX complaint under this policy if the complainant is participating in or attempting to participate in an education program or activity of the university.

When a formal complaint is filed, the Title IX Coordinator or designee must evaluate the complaint to determine whether the allegations may be investigated and adjudicated under the Title IX Grievance Process or if they should be referred to another university officer for appropriate action, such as investigation and adjudication under the Discrimination and Harassment Investigation Procedures.

1. **Mandatory Dismissal.** If the conduct alleged in the formal complaint, even if proven, would not constitute sexual harassment as defined by Title IX, or did not occur in the university’s education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator must dismiss the formal complaint from the Title IX Grievance Process. Such dismissal does not preclude action under another policy or provision of the university’s code of conduct. Upon dismissal, the Title IX Coordinator must promptly send written notice of the dismissal and reason for the dismissal simultaneously to the parties. Both parties will have a right to appeal the dismissal from the Title IX Grievance Process pursuant to the appeal procedures described below. In circumstances in which the conduct alleged in the dismissed Title IX complaint could constitute sexual harassment not covered by Title IX, sexual exploitation, or a violation of another university policy, the Title IX Coordinator will refer the allegations to the appropriate university officer(s) for consideration. Dismissed allegations of sexual harassment not covered by Title IX and sexual exploitation will be investigated under the Protection from Discrimination and Harassment Policy. Dismissed allegations of sexual assault, domestic violence, dating violence and/or stalking will be investigated in accordance with the Title IX investigation process set forth in Section VI.B. below prior to referral for adjudication through the student Code of Conduct process when the respondent is a student or through the Employee Handbook or the Faculty Manual when the respondent is an employee.
2. **Discretionary Dismissal.** The Title IX Coordinator may dismiss the formal complaint from the Title IX Grievance Process, if at any time during the investigation or hearing: the complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint; the respondent is no longer enrolled or employed by

the university; or circumstances prevent the gathering of evidence sufficient to reach a determination regarding responsibility. Both parties will have a right to appeal the dismissal pursuant to the appeal procedures described below.

VI. THE TITLE IX GRIEVANCE PROCESS

The complainant and respondent are treated equitably while addressing allegations of sexual harassment. Equitable remedies should include supportive measures for the parties that are non-disciplinary, non-punitive in nature and designed to restore or preserve equal access to education programs and activities while addressing the allegations through a fair and unbiased grievance process.

A. THE COMPLAINT

The university has actual knowledge of a potential Title IX violation when notification is given to the Title IX Coordinator or any official who has the authority to institute corrective measures.

Upon notification of a potential Title IX violation, the Title IX Coordinator will promptly contact the complainant to discuss supportive measures; to consider the complainant's wishes with respect to supportive measures; to inform the complainant of availability of these measures with or without the filing of a formal complaint; and to explain the grievance process and the procedure for filing a formal complaint.

Emergency Removal of a student-respondent may still be appropriate, provided the university does an individualized safety and risk analysis; determines there is an immediate threat to the physical health or safety of students or employees that justifies removal; and, provides notice and an opportunity for the respondent to challenge the decision immediately following removal. Non-student employees may be placed on administrative leaves during investigations.

The complainant or Title IX Coordinator file a document alleging sexual harassment against a respondent and requesting that the university investigate the allegation of sexual harassment, known as a "formal complaint." A complainant may only file a formal Title IX complaint under this policy if the complainant is participating in or attempting to participate in an education program or activity of the university.

The university treats the complainant and respondent equitably throughout the grievance process. All university officials involved in the grievance process must not have a conflict of interest or bias for or against either party. The respondent is presumed not to be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The parties are advised as to the range of possible disciplinary sanctions and remedies that the university may implement following any determination of responsibility. The university will determine responsibility based on the

evidentiary standard of Preponderance of the Evidence and both parties are permitted to appeal the final decision.

The university will provide for an informal resolution process such as mediation after the filing of a formal complaint. Informal resolution does not involve a full investigation and adjudication. The informal resolution process may begin at any time prior to a determination regarding responsibility. The university must provide the parties with the written notice as to the allegations and the requirements of the informal resolution process. The parties must voluntarily agree and provide written consent to the Informal resolution process. The parties have the right to withdraw from the informal process and participate in the formal grievance process any time prior to a determination regarding responsibility. Informal resolution is not permitted in cases of harassment of a student by an employee.

B. TITLE IX INVESTIGATION

- 1. Initiating the investigation.** Upon receipt of a formal complaint, the Title IX Coordinator will provide written notice to the parties of the allegations of sexual harassment, including sufficient details known at the time of filing and allowing sufficient time to prepare a response before the initial interview. The details include the identity of the parties, the alleged conduct constituting sexual harassment, the date and location of the alleged conduct. The written notice must contain a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney. The notice must inform the parties of the section of the Student Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- 2. Time frame.** The university will endeavor to complete its investigation in sixty (60) days. However, there may be reasonable delays or extensions as circumstances arise.
- 3. Standard of Proof.** The “preponderance of the evidence” standard shall be applied to sexual harassment complaints. This standard requires a finding that it is more likely than not that sexual harassment occurred in order to assign responsibility to the respondent.
- 4. Gathering information.** The university will conduct prompt and thorough interviews of the complainant, the respondent, and any witnesses. Both parties will have an opportunity to suggest witnesses. The investigator will interview the suggested witnesses unless the investigator determines that the information that the party claims the witness will share is not relevant. The burden of gathering both inculpatory and exculpatory evidence and proof sufficient to reach a determination of responsibility is on the university. The university will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence. The parties are

both allowed to have their advisor of choice present during any grievance proceeding. The university may restrict the extent to which the advisor may participate in the proceedings as long as the restrictions apply equally to both parties. Written notice of the date, time, location, participants, and purpose of all hearings, interviews or meetings must be provided to a party whose participation is invited or expected with sufficient time for the party to prepare to participate. An investigative report will be generated at the end of the investigation. Prior to completion of the investigative report, the Title IX Coordinator will send each party and their advisors any evidence gathered that is directly related to the allegations for their inspection and review with ten (10) days-notice to submit a written response, prior to completion of the final investigative report. The final investigative report is sent to the parties and their advisors ten (10) days prior to the live hearing.

Once the Title IX Coordinator is satisfied that the investigation is completed, the Title IX Coordinator will notify the complainant and the respondent as to the live hearing.

C. Live Hearing

The parties (through their advisors) may make opening statements and the decision makers may question the parties and their witnesses prior to and after any cross-examination.

- 1. Cross-examination.** The decision makers preside over the live hearing, permit each party's advisor to ask the other party, and witnesses all relevant questions. The cross-examination must be conducted directly, orally, and in real time by the advisor and not the party. Either party can request that the live hearing occur virtually with the parties in separate rooms. The technology is to allow the decision makers and parties to simultaneously see and hear the cross-examination of the party or witness. Only relevant questions will be answered. The decision makers make a determination as to relevancy after the question is asked and before the answer given. The university must provide an advisor, without fee, to a party who does not have an advisor present for the live hearing. Parties or witnesses who do not submit to cross-examination will preclude the decision makers from relying on their statements in determining responsibility.
- 2. Recording or Transcript.** The university must create an audiovisual recording or transcript of the live hearing and make it available to the parties for inspection and review.
- 3. Determination Regarding Responsibility.** The decision makers must issue a written determination regarding responsibility simultaneously to the parties using the preponderance of the evidence standard. The written statement must include the allegations constituting sexual harassment, describe the procedural steps taken, the findings of fact supporting the determination, conclusions regarding the application of this Policy and a statement the findings and the rationale, as well as the procedures and basis for appeal.

D. Appeal.

Both respondent and complainant may appeal a determination regarding responsibility and from a dismissal of a formal complaint based on: (1) procedural irregularity that affected the outcome; (2) new evidence not previously available that could affect the outcome; and (3) bias or conflict of interest on the part of a Title IX official that affected the outcome.

The university must maintain records for seven years of all sexual harassment investigations, appeals, informal resolutions, all materials used to train Title IX officials and make such materials available on its website, hearing recordings and transcripts, records of any actions, including supportive measures, taken in response to reports or formal complaint of sexual harassment.

V. COMPLAINTS INVOLVING TWO OR MORE MCPHS UNIVERSITY CAMPUSES

The Title IX Coordinator has oversight for all Title IX cases. When an alleged violation of this policy involves more than one MCPHS University campus, individuals approved by the Title IX Coordinator at the campus with disciplinary authority over the respondent may handle the complaint.

VI. COMPLAINTS BY AND AGAINST UNIVERSITY EMPLOYEES AND STUDENTS ARISING IN AN AFFILIATED ENTITY

University employees and students sometimes work or study at the worksite or program of another organization affiliated with MCPHS. When a violation of this policy is alleged by or against University employees or students in those circumstances, the complaint should immediately be directed to the Title IX Coordinator. The University will follow the designated protocol for all Title IX allegations.

VII. NO LIMITATION ON EXISTING AUTHORITY

No provision of this policy shall be construed as a limitation on the authority of an appointing or disciplinary authority under applicable policies and procedures to initiate appropriate action. If a Title IX investigation is conducted under this policy and no policy violation is found, that finding does not prevent discipline of the respondent for inappropriate or unprofessional conduct under other applicable policies and procedures.

VIII. ANNUAL REPORT

For the purposes of the Clery Report, the Office of Public Safety shall maintain an annual report documenting: (1) the number of reports or complaints received pursuant to this policy; (2) the categories of those involved in the allegations; (3) the number of policy violations found; and

(4) examples of sanctions imposed for policy violations. The annual report does not contain any personally identifying information regarding the complainant or the respondent.

IX. EDUCATION

The University will broadly disseminate this policy, distribute a list of resources available to respond to concerns of Protected Class discrimination, harassment, and related retaliation and develop and present appropriate educational programs for students and employees.

X. STATE AND FEDERAL REMEDIES

In addition to the above, students or employees may file a formal complaint with the U. S. Equal Employment Opportunity Commission (EEOC), the Office of Civil Rights, the U. S. Department of Education or the applicable state or local governmental agencies where they reside. Using the University's complaint process does not prohibit a student or employee from filing a complaint with these agencies.

Equal Employment Opportunity Commission (EEOC)

JFK Federal Building
475 Government Center
Boston, MA 02203
800.669.4000

U. S. Department of Education (DOE)

Office of Civil Rights (OCR)
5 Post Office Square
Eighth Floor
Boston, MA 02109-3921
617.289.0111

Massachusetts Commission Against Discrimination (MCAD)

John McCormack Building	Worcester City Hall
One Ashburton Place	455 Main Street
Sixth Floor, Room 601	Room 101
Boston, MA 02108	Worcester, MA 01608
617.994.6000	508.779.8010

XI. RELATED POLICIES

MCPHS University Protection from Discrimination and Harassment Policy provides that the University expect its employees and students to report discrimination and harassment. MCPHS University Professional Conduct in the Workplace Policy Statement provides that the University expect its employees to respect the dignity of others and show the same respect and concern for all community members.

MCPHS University Student Conduct Policies and Procedures address student conduct that occurs on or as it relates to university property, or at official functions and university-sponsored programs conducted away from the campus. For related complaint, grievance or disciplinary processes see the Student Code of Conduct and Student Discipline System.

This policy complies with Titles VI and VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; The Age Discrimination in Employment Act of 1976; the Equal Pay Act of 1963; sections 503 and 504 of the Rehabilitation Act of 1973; the Vietnam Era Veterans Adjustment Act; the Americans with Disabilities Act.