




UPDATED POLICY ON AFFIRMATIVE ACTION, EQUAL OPPORTUNITY & DIVERSITY

Massachusetts Community Colleges
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Summary of Key Changes

- “Sexual Harassment” now “Sex-Based Harassment”
- “Grievance procedure” now “complaint process”
- Added definitions for Complainant or Complaining Party, Employee, Informal Resolution, Impermissible Evidence, LGBTQIA+, Natural and Protective Hairstyles, Parental Status, Pregnancy or Related Condition, Sex, Sex Characteristics, Sex Stereotypes, and Supportive Measures
- Changed “responsible employees” to “nonconfidential employees” and expanded on reporting duties
- Combined the complaint process into one process for all complaints
- No live hearings
- Complaints can be filed at any time

SPECIFIC POLICIES

Policy Against Prohibited Conduct

- Commitment to take all possible steps to provide an inclusive and diverse learning, living, and work environment
- The PAA prohibits all conditions and all actions or omissions which deny or effectively deny to any person their rights to equity and security on the basis on their membership in or association with a member of any protected class
- Applies and to be enforced against all members of the College community
- Any form of speech or conduct that is protected by the principles of academic freedom or the First Amendment is not subject to this Policy

Sex-Based Harassment Policy

■ **Complaints of Sex-Based Harassment**

- A Complainant, parent, guardian, or other authorized legal representative, and the Title IX Coordinator may make a Complaint by contacting the Title IX Coordinator
- In the absence or withdrawal of a complaint, the Title IX Coordinator may determine whether to initiate a Complaint using a fact-specific determination, considering the following:
 - Complainant's request not to proceed
 - Complainant's reasonable safety concerns
 - Risk of additional incidents occurring
 - Severity of the alleged Sex-Based Harassment
 - Age and relationship of the parties
 - Scope of the alleged Sex-Based Harassment
 - Availability of evidence
 - Whether the College could end the alleged Sex-Based Harassment without a complaint

Non-Discrimination & Accommodation for Disabilities

- **In employment** – take constructive measures to ensure equal opportunity in all areas including recruitment, selection, upgrading, training and development, compensation, benefits, etc.
- **In education** – periodically examine existing admissions, student support and policies, and practices and facilities
- **Reasonable Accommodations** – requests made to HR for modification or adjustments to an application process, job, work environment, the way in which work is customarily performed, or a course of study
- **Interactive Process** – allow ongoing communication with employee or student, in an effort to provide reasonable accommodations for an individual with a known disability
- **Undue Hardship** – when providing an accommodation would require significant difficulty or expense when considered in relation to factors such as the College's size, financial resources, and the nature and structure of its operation

Reasonable Accommodations

In **employment**, including but not limited to:

- Making existing facilities readily accessible to and usable by persons with disabilities
- Job restructuring
- Modification of work schedules
- Providing additional unpaid leave
- Acquiring or modifying equipment or devices, and
- Providing qualified readers or interpreters

In **education**, including but not limited to:

- In-class aids, such as note takers
- Extended time for examination
- Quiet rooms or alternate locations for testing
- Alternative formats for testing
- Alternative format for textbooks and other course materials, and
- Access to assistive technology

Accommodations for Parental Status, Pregnancy and Related Conditions

Parental Status

- The adoption or implementation of any policy, practice, or procedure concerning the current, potential, or past parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex is a violation

Pregnancy and Related Conditions

- The College prohibits discrimination against students, employees, and applicants based on pregnancy, childbirth, termination of pregnancy, lactation, related medical conditions, or recovery
- The College provides reasonable accommodations for the above conditions, including modification for students, reasonable break time for employees, and clean, private lactation spaces for students and employees
- Title IX Coordinator coordinates specific actions to ensure equal access

Accommodations for Pregnancy and Related Conditions

Accommodations for students

- leave of absence
- clean and private space for lactation that is not a bathroom
- breaks during class
- intermittent absences to attend medical appointments
- changes in schedule
- extensions for course work
- allowing student to sit or stand
- counseling
- changes in physical space or supplies
- elevator access

Accommodations for employees

- break time for lactation
- access to clean and private lactation space
- time off
- modification of equipment or seating
- temporary transfer
- job restructuring
- assistance with manual labor
- modified work schedule

Leave of Absence and Reinstatement

- Voluntary
- Cover (at a minimum) the period of time deemed **medically necessary** by the **student's licensed healthcare provider**
- Upon return, reinstatement to the academic and extracurricular status before the leave
- Can only require a medical release or clearance if you require it for all students in the program following a medical leave of absence

DUTY TO REPORT

Mandatory Reporting of Abuse Under State Law

- College may be obligated to comply with reporting requirements of M.G.L Chapter 119, Section 51A-E when an employee has reason to believe a child (under 18) is suffering physical or emotional injury resulting from abuse including Sex-Based Harassment
- Employee must immediately report the matter to the AAO or Title IX Coordinator
- Department of Children and Families and/or law enforcement are then contacted
- Mandatory reporting for certain occupations where abuse or neglect is suspected of adults age 60+ or children and adults with disabilities

General Responsibility to Report Prohibited Conduct

- Responsibility of all members of the Community College
- Refer/report to AAO or Title IX Coordinator
- Liability – what the College knew and what did it do?

Sex-Based Harassment Reporting

- Three types of employees
 - *Confidential Employee*
 - *Nonconfidential Employee with Authority*
 - *Nonconfidential Employee without Authority*

Confidential Employee

1. Employee whose communications are privileged/confidential under State or Federal law, with respect to information received while functioning within scope of their duties to which privilege/confidentiality applies
 - *Licensed mental health counselors; licensed health care personnel; confidential resource providers; and other employees designated by the College*
2. An employee designated by the College to provide services to persons related to Sex-Based Harassment
3. An employee who is conducting an Institutional Review Board-approved human-subjects research study to gather information about Sex-Based Harassment (only with respect to information received while conducting the study)

Nonconfidential Employees with Authority

- Any College employee who:
 - Has authority to take action to redress Sex-Based Harassment offenses
 - Has been given the duty of reporting these types of allegations to the Title IX Coordinator or official designee, or
 - Could reasonably be believed by a student to have this authority/duty
- Includes but not limited to:
 - College trustees, administrators, deans, department chairs, program coordinators, campus police, club/activity advisors, coaches, and managers or supervisors
- **Duties**
 - these employees must report all allegations involving Sex-Based Harassment to the Title IX Coordinator or official designee as soon as aware
 - May not maintain the anonymity of the reporting party when they receive a complaint

Nonconfidential Employees without Authority

- All other College employees who are not otherwise considered other types of employees as previously defined
 - *Faculty, adjunct instructors and staff, etc.*
- **Duties**
 - Provide contact information of the Title IX Coordinator and information on how to make a complaint of Sex-Based Harassment, or
 - Notify the Title IX Coordinator of information about conduct that reasonably may constitute Sex-Based Harassment
 - May not maintain the anonymity of the reporting party

FILING A COMPLAINT

Who May Initiate a Complaint

- Any current or former student or employee
- A current or former applicant for admission or employment
- A person other than a student or employee if they were participating or attempting to participate in the College's education program or activity
- A parent/legal guardian with the legal right to act on Complainant's behalf

As a reminder:

- Complaints can be filed at any time

APPENDIX A - DISCRIMINATION COMPLAINT FORM

DISCRIMINATION COMPLAINT FORM

The purpose of this form is to record information required to initiate an investigation into an alleged violation of the College's Policy on Affirmative Action (PAA). All reasonable efforts will be made to maintain the confidentiality of the parties involved during the complaint procedure in accordance with the PAA.

Retaliation against a student, employee or any other person in the College for filing a complaint or for cooperating in an investigation of a complaint is strictly prohibited. All parties to a complaint may have an advisor (for union employees this may be a union representative) assist them throughout the process.

Date Filed: _____ Date(s) of Alleged Discrimination: _____

A. Name (Print): _____

B. Check One: Student: _____ Employee: _____ Other: _____

Program/Department: _____

C. Type of Prohibited Conduct (please check applicable category(ies)):

Discrimination Retaliation
 Discriminatory Harassment Sex-Based Harassment

D. Type of alleged discrimination or harassment (please check applicable category(ies)):

Protected Classes:

Race/Color
 National Origin
 Age
 Disability
 Genetic Information
 Religion/Creed
 Veteran Status

Sex-Based Harassment:

Pregnancy or Related Conditions
 Sex
 Gender Identity
 Sexual Orientation
 Sex Characteristics
 Sex Stereotypes
 Other Sex-Based Claim (*quid pro quo* harassment,
 hostile environment harassment, sexual assault,
 dating violence, domestic violence, stalking)

Other: _____

*Please see the PAA for definitions of above terms

PROHIBITED CONDUCT

Prohibited Conduct

1. Discrimination
2. Discriminatory Harassment
3. Retaliation
4. Sex-Based Harassment

Prohibited Conduct – 1. Discrimination

- An intentional or unintentional act which adversely affects employment and/or educational opportunities because of a person's perceived or actual membership in a protected class or association with a member of a protected class
- Disparate impact
 - *Facially neutral in treatment of groups but fall more harshly on one group*
 - *Cannot be justified by business necessity*
- Disparate treatment
 - *Less favorable treatment of an individual*
 - *Based on discriminatory reasons*
- A single act of discrimination may be based on more than one protected class status

Prohibited Conduct – 2. Discriminatory Harassment

- A form of discrimination including verbal and/or physical conduct based on legally protected characteristics and/or perceived or actual membership in a protected class that:
 - Has the purpose or effect of creating an objectively intimidating, hostile, or offensive work or educational environment
 - Has the purpose or effect of unreasonably interfering with an individual's work or learning performance; or
 - Otherwise unreasonably adversely affects an individual's employment or educational opportunities
- Conduct constitutes **hostile environment harassment** when it:
 - a. Is targeted against an individual on the basis of their protected class;
 - b. Is not welcomed by the individual; and
 - c. Is sufficiently severe or pervasive that it alters the conditions of education or employment and creates an environment that a reasonable person would find intimidating, hostile or offensive

Prohibited Conduct – 3. Retaliation

- Retaliation is intimidation, threats, coercion, or discrimination against any person by the College, a student, or an employee or other person authorized by the College to provide aid, benefit, or service under the College's education program or activity
- Retaliation includes taking adverse employment or educational action against a person:
 - a. Who has filed claims, complaints or charges under these procedures, or under applicable local, state or federal statute,
 - b. Who is suspected of having filed such claims, complaints or charges, or
 - c. Who has protested practices alleged to be violative of the non-discrimination policy of the College, the BHE, or local, state or federal regulation or statute
- Requires fact-specific analysis of how the action would affect a reasonable person in Complainant's position

Prohibited Conduct – 4. Sex-Based Harassment

- a) Any discrimination based on sex (male, female, intersex)
- b) *Quid pro quo* harassment
- c) Hostile environment harassment
- d) Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”) Offenses:
 - sexual assault, dating violence, domestic violence, stalking
- e) Massachusetts Campus Sexual Violence Law of 2021

PROTECTED CLASS / CLASSIFICATIONS

Protected Classes

- Age – 40 or older
- Color
- Disability
- Ethnicity
- Gender Identity
- Genetic Information
- LGBTQIA+
- National Origin
- Natural and Protective Hairstyles
- Parental Status
- Persons of Color
- Pregnancy or Related Condition
- Race
- Religion
- Sex Characteristics
- Sexual Orientation
- Sex Stereotypes
- Veteran

Protected Classes Defined

- **Gender Identity** – An individual’s sense of their gender as male, female, a blend of both, or neither, which may or may not be different from their sex assigned at birth. It covers identities including but not limited to gender nonconforming individuals, nonbinary individuals, and transgender individuals
- **Natural and Protective Hairstyles** – All hairstyles covered under the Massachusetts CROWN Act, including but not limited to, braids, locks, twists, Bantu knots, hair coverings and other formations
- **Parental Status** – The status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of physical or mental disability, which includes: (1) Biological parent, (2) An adoptive parent, (3) A foster parent, (4) A stepparent, (5) A legal custodian or guardian, (6) In loco parentis with respect to such person, or (7) Actively seeking legal custody, guardianship, visitation, or adoption of such a person

Protected Classes Defined

- **Pregnancy or Related Conditions** – Pregnancy, childbirth, termination of pregnancy, or lactation; or related medical conditions; or recovery from such conditions
- **Sex Characteristics** – Refers to physiological sex-based characteristics. Discrimination in this category may include discrimination based on a person's anatomy, hormones, chromosomes associated with male or female bodies, or discrimination based on intersex traits
- **Sex Stereotypes** – Fixed or generalized expectations regarding a person's aptitudes, behavior, self-presentation, or other attributes based on sex
- **Sexual Orientation** – Actual or perceived heterosexuality, homosexuality, bisexuality, pansexuality, or asexuality either by orientation or by practice, including but not limited to LGBTQIA+ people

COMPLAINT PROCESS

Complaint Process

- General rules throughout Complaint process:
 - Parties may have an advisor
 - Advisor should provide discrete advice
 - Does not preclude pursuing a complaint in a separate legal forum
 - Grade dispute based on Prohibited Conduct should proceed under this process
 - Preponderance of evidence (more likely than not) standard for all findings

Informal Resolution

- May be offered at any time prior to determining whether alleged conduct occurred
- Made to both parties in writing
- Provide notices to both parties containing (1) allegations, (2) requirements of informal resolution, (3) rights to withdraw from process, (4) agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming complaint, (5) terms of agreement, and (6) disclosure rights
- If terms accepted by parties, they should be reduced to writing, signed by both parties, and document should be retained by AAO or Title IX Coordinator
- Afterward the matter is considered resolved

Complaint Process **STEP 1 - Investigation**

- Complainant may make a written or verbal Complaint with AAO or Title IX Coordinator
 - *see PAA Appendix A “Discrimination Complaint Form”*
 - *verbal complaints reduced to writing and signed by Complainant within 10 days*
- Obtain all evidence
- Notify Respondent within 14 days of determination to investigate, provide with copy
 - *see PAA Appendix B “Notice to Respondent”*
- Respondent has 10 days from receipt of notice to submit a written response
- Conduct investigation within 30 days of receipt of Respondent’s written response
- Recorded meetings with parties and witnesses, advisors may be present
- Issue Report of Preliminary Findings – findings not final
- Parties have 10 days from receipt of Report of Preliminary Findings to submit Rebuttal Statements
- Review Rebuttal Statements and prepare Report of Final Findings and Recommendations to the Designated Decision-Maker for consideration

Complaint Process **STEP 2 – Review and Decision by the Designated Decision-Maker**

- Designated Decision-Maker issues written decision to the parties within 10 days of receipt of Report of Final Findings and Recommendations
- Issues written decision to parties in hand, by certified mail, or at College email address
- Written decision accepts, rejects, or modifies the Report of Final Findings and Recommendations
- If President is Responding party, then the Chair of the College's Board of Trustees shall designate a Board member as a Designated Decision-Maker
- If determination that violation occurred, Designated Decision-Maker shall require the AAO or Title IX Officer to coordinate the provision and implementation of remedies

Complaint Process **STEP 3 – Appeal to President**

- A party may file an appeal with the President within 10 days of receipt of decision, if:
 - Procedural irregularity would change outcome
 - New evidence would change outcome and was not reasonably available at time of determination
 - The Title IX Coordinator, investigator, or decision maker had a conflict of interest or bias that would change the outcome
- President shall issue written decision accepting, rejecting, or modifying the Designated Decision-Maker's decision within 10 days of receiving the appeal
- President's decision final

QUESTIONS