

Massachusetts Department of Higher Education

MAIN OFFICE One Ashburton Place, Room 1401
Boston, MA 02108
TEL (617) 994-6950
FAX (617) 727-0955
WEB www.mass.edu

OFFICE of STUDENT FINANCIAL ASSISTANCE 135 Santilli Highway
Everett, MA 02149
TEL (617) 391-6070
FAX (617) 391-6085
WEB www.mass.edu/osfa

Noe Ortega
Commissioner
Chris Gabrieli
Board Chair

Memorandum

To: Njoki K. Williams, Assistant General Counsel, Office of the General Counsel, Massachusetts Community Colleges
From: Constantia Papanikolaou, Chief Legal Counsel, Department of Higher Education
Cc: Commissioner Noe Ortega
Gina Yarborough, General Counsel, Massachusetts Community Colleges
Date: February 18, 2025
Re: Approval of Request for Reinstatement of Board of Higher Education- approved Massachusetts Community Colleges Policy on Affirmative Action, Equal Opportunity and Diversity dated August 1, 2021 in Light of Recent Federal Court Decision and U.S. Department of Education Dear Colleague Letter

As the Board of Higher Education (BHE) has delegated authority concerning the BHE-approved Massachusetts Community Colleges Policy on Affirmative Action, Equal Opportunity and Diversity (“PAA”), which includes its Title IX Sexual Harassment Policy, and may affirm changes necessary for implementation compliance, I have consulted with Commissioner Ortega and am issuing this letter. The Department of Higher Education (DHE) has requested a temporary plan on how to address pending and future complaints of sexual harassment in light of recent federal changes, and I confirm receipt and approval of the February 6, 2025 Massachusetts Community Colleges proposal. Your request proposes a temporary plan to reinstate the 2021 PAA for the purpose of compliance with the January 9, 2025 decision of the U.S. District for the Eastern District of Kentucky (*State University v. Cardona*, 2:24-cv-00072, (E.D. Ky)) vacating the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (2024)); and compliance with the guidance issued in the subsequent February 4, 2025 Dear Colleague Letter from the United States Department of Education Office of Civil Rights, clarifying that enforcement of Title IX will now occur under the 2020 Title IX Final Rule (85 Fed. Reg. 30026 (2020)).

To restate, your proposal, as outlined in your February 6, 2025 request, seeks to reinstate the 2021 PAA in place of the 2024 PAA to comply with requirements under the 2020 Title IX Final Rule. Prior to BHE approval of the Massachusetts Community Colleges’ 2024 PAA (BHE 25-01), the 2021 PAA was likewise approved by the BHE (BHE 22-05) and may therefore be reinstated as outlined in your proposal, namely for legal compliance. Furthermore, we confirm and affirm the February 6, 2025 communication highlighting that all prohibited discriminatory conduct that does not meet the definition of sexual harassment under the 2020 Title IX Final Rule will continue to be addressed under the 2021 PAA as detailed in your memo, under which and consistent with state law, discrimination based on gender identity, gender expression, sex stereotypes, sex characteristics, and sexual orientation are prohibited.

We thank the community colleges for their careful attention to this matter and for their continued collaborative partnership with the BHE and DHE.