

**EQUAL OPPORTUNITY,
DIVERSITY AND AFFIRMATIVE ACTION PLAN**

BRIDGEWATER STATE UNIVERSITY

FITCHBURG STATE UNIVERSITY

FRAMINGHAM STATE UNIVERSITY

MASSACHUSETTS COLLEGE OF ART AND DESIGN

MASSACHUSETTS COLLEGE OF LIBERAL ARTS

MASSACHUSETTS MARITIME ACADEMY

SALEM STATE UNIVERSITY

WESTFIELD STATE UNIVERSITY

WORCESTER STATE UNIVERSITY

EFFECTIVE: NOVEMBER 2013

TABLE OF CONTENTS

| | | |
|------------|--|----|
| I. | INTRODUCTION | 1 |
| II. | POLICY STATEMENT OF NON-DISCRIMINATION AND DIVERSITY | 1 |
| III. | POLICY AWARENESS PROCEDURES | 4 |
| IV. | RESPONSIBILITY FOR IMPLEMENTATION OF EQUAL OPPORTUNITY, DIVERSITY AND AFFIRMATIVE ACTION | 6 |
| V. | AFFIRMATIVE ACTION HIRING PROCEDURES | 6 |
| VI. | POLICY AGAINST DISCRIMINATION, DISCRIMINATORY HARASSMENT AND RETALIATION | 8 |
| VII. | POLICY AGAINST SEXUAL HARASSMENT (INCLUDING SEXUAL ASSAULT & VIOLENCE) | 16 |
| VIII. | POLICIES FOR REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES | 24 |
| IX. | CONTRACTING AND PURCHASING | 27 |
| X. | CONCLUSION | 29 |
| APPENDICES | | |
| 1. | POSITION DESCRIPTION: EQUAL OPPORTUNITY OFFICER | 30 |
| 2. | DISCRIMINATION COMPLAINT PROCEDURES | 32 |
| 3. | TITLE IX COMPLAINT PROCEDURES | 44 |
| 4. | GUIDELINES FOR CAMPUS POLICIES AGAINST DISCRIMINATION, DISCRIMINATION HARASSMENT AND RETALIATION | 56 |
| 5. | ADVISORY COMMITTEE FOR EQUAL OPPORTUNITY, DIVERSITY AND AFFIRMATIVE ACTION | 58 |

I. INTRODUCTION

Together, Bridgewater State University, Fitchburg State University, Framingham State University, Massachusetts College of Art and Design, Massachusetts College of Liberal Arts, Massachusetts Maritime Academy, Salem State University, Westfield State University and Worcester State University (collectively, “the State Universities”) have carefully developed and outlined the major elements of this Equal Opportunity, Diversity and Affirmative Action Plan with the understanding that a successful plan requires more than knowledge of the laws, regulations and current government requirements.

This Equal Opportunity, Diversity and Affirmative Action Plan (“the Plan”) demands vision to fully comprehend what challenges the State Universities face in preparing our students for their post-commencement lives. With this Plan, the State Universities continue to take a step beyond and, both collectively and individually, commit themselves to the valuing of human dignity, and to the appreciation of the necessity of providing all members of the University community an experience which equips them to relate to all persons and groups in the increasingly global and diverse world in which we all live and work.

In addition to this Plan, the individual Universities may develop individualized and supplemental campus plans that give more particular effect to the provisions of this Plan and that reflect consistently with this Plan and the mission, vision and strategic plans for their individual communities.

II. POLICY STATEMENT OF NON-DISCRIMINATION AND DIVERSITY

INTRODUCTION

The Board of Higher Education of the Commonwealth of Massachusetts (“BHE”) is responsible, pursuant to Chapter 15A of the General Laws of the Commonwealth of Massachusetts, for the overall governance of the public higher education system, which includes the State Universities. The BHE and the Boards of Trustees of the individual State Universities maintain and promote a policy of non-discrimination on the basis of race, color, creed, religion, national origin, gender, age, disability, sexual orientation, gender identity, gender expression, genetic information, marital status, and veteran status.

This policy incorporates by reference, and where applicable, the requirements of: Titles VI and VII of the Civil Rights Act of 1964; Title VI of the Civil Rights Act of 1968; Titles I and II of the Civil Rights Act of 1991; Title IX of the Education Amendments of 1972 and its regulations found at 34 C.F.R. part 106¹; the Equal Pay Act of 1963; Civil Rights Restoration Act of 1988; Sections 503 and 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990, as amended; Section 402 of the Vietnam-era Veterans Readjustment Act of 1974, Uniformed Services Employment and Reemployment Rights Act; the Age Discrimination Act of

¹Section 106.13 of the Title IX regulations provides: “This part does not apply to an educational institution whose primary purpose is the training of individuals for a military service of the United States or for the merchant marine.” 34 C.F.R. § 106.13. Massachusetts Maritime Academy will voluntarily comply with the provisions of this Plan that incorporate the requirements of, or make reference to compliance with, Title IX.

1975; the Age Discrimination in Employment Act of 1967, as amended; the Family and Medical Leave Act of 1993; the Genetic Information Nondiscrimination Act of 2008; the reauthorized Violence Against Women Act, Pub. Law No. 113-4 (2013); Federal Executive Order 11246 of 1965, as amended by Executive Order 11375 of 1967; Federal Executive Order 12900 of 1994; Federal Executive Order 13145 of 2000; Federal Executive Order 13160 of 2000; Federal Executive Order 13166 of 2000; Massachusetts Civil Rights Act; Massachusetts General Laws Chapters 151B, 151C, and Chapter 149; St.2011, c. 199 (H3810), An Act Relative to Gender Identity; directives of the BHE, the Boards of Trustees of the State Universities and the Commonwealth of Massachusetts; and other applicable local, state and federal constitutions, statutes, regulations and executive orders.

Non-discrimination requires the elimination of all existing discriminatory conditions, whether purposeful or inadvertent. The State Universities continually examine all policies and procedures to be sure that they do not, if implemented as stated, operate to the detriment of any person on the basis of race, color, creed, religion, national origin, gender, sexual orientation, gender identity, gender expression, genetic information, marital status, age, disability or veteran status. The Universities shall require that the practices of those responsible in matters of employment and education, including all supervisors and faculty, are non-discriminatory. Should any of the Universities discover discrimination in treatment or effect in any employment, educational or service decision, action, inaction or practice within the University, all appropriate, corrective and/or disciplinary actions shall be taken under the direction of the President of the University, subject to any applicable collective bargaining agreement or other policy or procedure of the University.

The State Universities are committed to a policy of equal opportunity, non-discrimination, diversity and affirmative action. The Universities are committed to providing an educational, working and living environment for students, employees and other members of the campus community which values the diverse backgrounds of all people. The Universities are committed to assuring that the “college experience” is one that challenges, empowers, supports and prepares its students to live in, work in, and value our increasingly global and diverse world. The Universities believe that the diversity of socioeconomic, cultural, racial and religious backgrounds of members of each University community enriches the institution and its various constituencies. The Universities will not tolerate behavior based on bigotry, which has the effect of discriminating unlawfully against any member of the University community.

The State Universities provide equal access to educational, co-curricular and employment opportunities at the University for all applicants, students and employees regardless of race, color, creed, religion, national origin, gender, sexual orientation, gender identity, gender expression, genetic information, marital status, age, disability or veteran status in compliance with all applicable laws, regulations and policies. All benefits, privileges and opportunities offered by the Universities are available to students, employees and other persons having dealings with the institution on a non-discriminatory basis within the framework of applicable laws, rules, regulations and collective bargaining agreements. The Universities are committed to taking a pro-active affirmative action posture with respect to the recruitment, selection and promotion of students and employees.

The intent of this Equal Opportunity, Diversity and Affirmative Action Plan is to responsibly recognize and, to whatever extent possible, resolve the effects of past societal discrimination and the impact which that discrimination has had, not only on the victims of such discrimination, but on the total academic, educational and societal system as well. It is not intended, and should not be used, to discriminate against any applicant, employee or student because of race, color, creed, religion, national origin, gender, sexual orientation, gender identity, gender expression, genetic information, marital status, age, disability or veteran status. In response to this recognition, the Universities, through their Boards of Trustees and Presidents, fully endorse the course of action set forth in this Plan and shall oversee and monitor its implementation under the auspices of each University's Equal Opportunity Officer and assigned personnel.

SCOPE OF PLAN

Equal opportunity, diversity and affirmative action programs shall be viewed as an integral part of the mission and purpose of the State Universities. This Plan, by its very nature, shall affect and impact not only personnel and admissions policies, but also relevant procedures and practices, which contribute to the academic and educational experiences of our students, and the employment opportunities throughout the Universities.

DEFINITIONS

Definitions of terms relevant to discrimination, discriminatory harassment and retaliation, and other terms used in the administration and enforcement of this Plan, are found in Section VI.

DURATION OF PLAN

This Plan shall take effect as soon as it is approved by the BHE and the individual Boards of Trustees for the Universities, and shall remain in effect for the period determined by those Boards.

ENFORCEMENT

The Equal Opportunity Officer will have the primary authority for the implementation, development and enforcement of the policies, programs and procedures contained in the Plan. He or she bears the responsibility for the preparation and execution of all affirmative action policies and programs. Details regarding the Equal Opportunity Officer's specific duties and responsibilities can be found at Appendix 1.

INQUIRIES

Inquiries concerning the State Universities' compliance with equal opportunity, diversity and affirmative action programs may be referred to each University's Equal Opportunity Officer.

AMENDMENT OF PLAN

This Plan may be amended from time to time in accordance with such procedures as the Council of Presidents, with the approval of the BHE, may prescribe.

MONITORING AND GOALS

By and through this Plan, the State Universities commit themselves to a policy of equal opportunity, diversity, affirmative action and non-discrimination in all aspects of campus life.

The Universities shall endeavor to increase the representation of qualified women, veterans, persons with disabilities and minorities in their workforces. To this end, the Universities shall continually examine and monitor their affirmative action and equal opportunity policies, procedures and practices for the purpose of determining the degree to which their workforces are reflective of the demographics of the Commonwealth's labor market. To the extent that this review reveals areas of deficiency or shortcomings, the Universities will make reasonable and good faith efforts, consistent with requirements of the law, to address and improve such deficiencies or shortcomings.

The Universities realize that the development and implementation of specific policy and programmatic efforts is essential to the establishment of a pro-active, system-wide Plan. The Universities further realize, however, that policies and programs of equal opportunity, diversity, affirmative action and non-discrimination are only as effective as the commitment to them at the local level. Accordingly, each University shall determine and implement for itself the projects, programs, defined strategies, structured activities or other tactical steps to achieve the equal opportunity, diversity, affirmative action and non-discrimination goals of this Plan on its individual campus.

On an annual basis, each University will review the progress being made toward the achievement of its compliance with this Plan and its equal opportunity, diversity, affirmative action and non-discrimination goals.

III. POLICY AWARENESS PROCEDURES

DISSEMINATION

At the commencement of each academic year, all policy statements regarding equal opportunity, non-discrimination, diversity and affirmative action at the State Universities will be distributed, either electronically or in hard copy or in both formats, as follows:

- to every office at each University, including the Human Resources Office and the Office of the Equal Opportunity Officer;
- to each University's Library;
- to all students, either in the relevant Student Handbook, Course Catalog or by e-mail distribution;
- to all employees, either in a relevant publication or by e-mail distribution;
- posted to all relevant sections of the Universities' websites; and
- copies will be made available to the campus community and to the public upon request.

Periodic meetings and workshops will be held with various segments of the campus community to assist their understanding of the Universities' commitment to equal opportunity, non-discrimination, diversity and affirmative action.

Copies of all policy statements regarding equal opportunity, non-discrimination, diversity and affirmative action will also be provided to students who enroll mid-year and to all new employees upon their hire.

POSTING

The Universities' Policy Statement on Non-Discrimination, Diversity and Affirmative Action will be posted in areas customarily used for public announcements and on the Universities' websites. Prospective employees and applicants for admission will be informed of this Policy Statement in all advertisements posted both on and off campus.

RECRUITING

All employment recruiting sources used by the Universities will be informed of their commitment to equal opportunity, non-discrimination, diversity and affirmative action. Listings of current openings will be sent on a regular basis to appropriate sources for the recruitment and referral of applicants who are persons of color, women, Vietnam era or disabled veterans, persons with disabilities, and persons of diverse religions and national origins.

In addition, notices of position openings will be posted on campus and on the Human Resources sections of the Universities' individual websites, so that all current employees are aware of opportunities for promotion or transfer.

CONTRACTORS AND VENDORS

The Universities will notify all contractors, sub-contractors and vendors of the Universities' responsibilities and commitments to equal opportunity, non-discrimination, diversity and affirmative action.

ADVERTISING

Selection for and participation in the State Universities' employment is without regard to race, color, creed, religion, national origin, gender, sexual orientation, gender identity, genetic information, marital status, age, disability or veteran status. An Affirmative Action, Equal Opportunity and Non-Discrimination/Diversity statement will be placed in all appropriate University operational publications and advertisements.

COMMUNITY RELATIONS

The State Universities will cooperate and work with local, state and federal government agencies and community groups, as well as national minority, multicultural, multiracial, disability, women's and veteran's organizations and other national groups that have equal employment opportunity objectives, for the purpose of developing significant access to equal opportunity for

persons of color, women, Vietnam era or disabled veterans, persons with disabilities, and persons of diverse religions and national origins.

IV. RESPONSIBILITY FOR THE IMPLEMENTATION OF THE EQUAL OPPORTUNITY DIVERSITY AND AFFIRMATIVE ACTION PLAN AND RELATED PROGRAMS, POLICIES AND PROCEDURES

The final authority and ultimate responsibility for the implementation of the Equal Opportunity, Diversity and Affirmative Action Plan rests with the Presidents of the State Universities. The Equal Opportunity Officer on each campus, however, has the responsibility for the overall development, administration and monitoring of all policies, procedures and programs pertinent to the implementation of this Plan. The Equal Opportunity Officer commonly reports to the President and bears the responsibility for the preparation and execution of all affirmative action policies and programs. Details regarding the Equal Opportunity Officer's specific duties and responsibilities can be found at Appendix 1.

All Vice Presidents, Deans, Directors, Program Coordinators, Department Chairs, and other supervisory personnel will be accountable for ensuring that equal opportunity, non-discrimination, diversity and affirmative action are integrally tied to all actions and decisions for which they are responsible and which fall within the scope of the Plan. A statement concerning such accountability will be added to all appropriate position descriptions. It shall be considered a regular function of faculty, librarians, administrators and supervisory staff that they are aware of goals and consult with the Equal Opportunity Officer prior to and in the course of those actions which may impact on the implementation of this Plan. In the event that a supervisor and/or the Equal Opportunity Officer identify problem areas that are impeding a University's efforts to meet its goals, they shall develop an action plan designed to move the University toward successful attainment of its objectives.

V. AFFIRMATIVE ACTION HIRING PROCEDURES

The procedures set forth in this Plan take into consideration both organizational limitations and opportunities with respect to current and future employees. The Plan calls upon all staff to engage in a major effort in order to fulfill the objectives of equal opportunity for all persons at all levels of employment, in compliance with all applicable collective bargaining agreements. Each Equal Opportunity Officer will monitor the employment policies of the University with respect to the areas of recruitment and appointment to vacant positions to assure compliance with the objectives of this Plan. The areas to be monitored should include, but not be limited to, pre-recruitment procedures, recruitment, selection, appointments (permanent, acting, emergency and temporary), salary and benefits, and shall include employees of continuing education, grant funded programs and other appropriate areas.

AUTOMATED APPLICANT TRACKING

To reduce time and costs, the State Universities may use computerized or electronic systems that automate many of the processes associated with the employment application process. Such systems provide to employers customized on-line employment applications, the ability to pre-

screen candidates, web-based distribution of applications to hiring managers, automatic notification to applicants regarding the status of their application, and information to applicants regarding new positions matching their skills and interest areas.

If the Universities implement an automated applicant tracking system, the University will comply with the Final Rule regarding internet applicants published by the Office of Federal Contract Compliance Programs (“OFCCP”), the federal agency that monitors the Universities’ compliance with federal affirmative action requirements under Executive Order 11246. Under the Final Rule, the Universities are required to: follow OFCCP’s definition of an “internet applicant;” retain certain electronic records; identify and collect, where possible, data regarding the race, gender, and ethnicity of each job applicant; and identify whether an application was received via the internet and other electronic means. OFFCP’s Final Rule applies when:

- an individual submits an expression of interest in employment through the internet or related electronic technologies (including, but not limited to, e-mail, resume databases, job banks or the Universities’ websites);
- the University considers the individual for employment in a particular position;
- the individual’s expression of interest indicates that the individual possesses the basic qualifications for the position; and
- prior to receiving an offer of employment from the University, the individual at no point in the University’s selection process removes him or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.

Under the Final Rule, the Universities may limit their solicitation of race, ethnicity and gender status data to applicants falling under the above criteria. The Universities, however, must retain records relating to expressions of interest submitted via the internet or related data technologies for any job seeker “considered” for a particular position, regardless of whether the job seeker meets the other criteria in the Final Rule. In other words, federal recordkeeping compliance is required whether the Universities use internal or external resume databases.

Additionally, any automated applicant tracking system implemented by the Universities will comply with the requirements of the Americans with Disabilities Act of 1990, as amended (“ADA”), Sections 503 and 504 of the Rehabilitation Act of 1973 (“Rehabilitation Act”) and Massachusetts General Laws Chapter 151B, for providing those with disabilities access to the system. Equal access to the system will be provided for applicants with disabilities, including the provision of alternative formats or access, such as JAWS or zoom text. The Universities will provide technical support as well as information for persons with disabilities to contact the Universities to discuss their specific electronic application needs.

INSTITUTIONAL COMPLAINT PROCEDURES

The State Universities have established specific internal complaint procedures to help resolve claims and complaints of discrimination, discriminatory harassment and retaliation on their

campuses. The Universities' Discrimination Complaint Procedures and, where applicable, Title IX Complaint Procedures, also serve as a system of review and resolution for claims of discrimination in hiring. These Procedures specifically address claims and complaints of failure to accommodate persons with disabilities as prescribed by the ADA, the Rehabilitation Act, and Massachusetts General Laws Chapter 151B.

Any applicant for employment who believes that he or she has been a victim of discrimination in hiring may initiate a claim as outlined in the Discrimination Complaint Procedures or Title IX Complaint Procedures, which are set forth in full at Appendices 2 and 3, respectively. Further advice or information regarding these institutional complaint procedures may be obtained by contacting the Equal Opportunity Officer of any State University.

VI. POLICY AGAINST DISCRIMINATION, DISCRIMINATORY HARASSMENT AND RETALIATION

INTRODUCTION

The mission of the State Universities is to educate, train and prepare our students to live and work in our increasingly global and diverse workforce. The Universities are committed to taking all possible steps to provide an inclusive and diverse learning, living and working environment that values cultural tolerance and looks with disfavor on intolerance and bigotry. Any condition or force that impedes the fullest utilization of the human and intellectual resources available represents a force of destructive consequences for the development of our Commonwealth and ultimately, our nation.

DEFINITIONS

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

1. Protected Classes. Characteristics or groups of persons protected from discrimination by law, including:
 - a. Race. Discrimination laws do not contain a definition of "race," but are interpreted to prohibit discrimination on the basis of ancestry or physical or cultural characteristics associated with a certain race, such as skin color, hair texture or styles, or certain facial features, and on the basis of stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. All individuals, including persons of more than one race and the following racial classifications, are protected from discrimination:

Black: All persons having origins in any of the Black racial groups of Africa including, but not limited to, African-Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.

White (not of Hispanic origin): Persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Hispanic/Latino: All persons of Mexican, Puerto Rican, Cuban, Central, Latin or South American or other Spanish culture or origin, regardless of race.

Asian or Pacific Islander: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands, including, for example, the areas of China, India, Japan, Korea, the Philippine Islands and Samoa.

American Indian or Alaskan Native: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

- b. Color. Variations in skin tone among persons of the same race.
- c. Religion. “Religion” and “creed” have the same or equivalent meaning: all religious and spiritual observances, practices, and sincerely held beliefs.
- d. National Origin. A “national origin group” or “ethnic group” is a group sharing a common language, culture, ancestry, and/or other similar social characteristics.
- e. Persons of Color. Members of the following racial classifications: Black, American Indian/Native Alaskan, Asian/Pacific Islander, and Hispanic/Latino.
- f. Age. For employment purposes, persons 40 years of age or older. For the purposes of access to and participation in University programs and services, all persons of all ages are protected on the basis of age.
- g. Disability. A person with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.
- h. Gender. A person’s sex, either male or female.
- i. Gender Identity. Gender identity is a term that covers a multitude of sexual identities including, but not limited to, transgender individuals, who are persons whose gender identity or gender presentation falls outside of stereotypical gender norms.
- j. Gender Expression. Gender expression is a term that refers to the ways in which individuals manifest or express masculinity or femininity. It refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions.
- k. Sexual Orientation. Actual or perceived heterosexuality, homosexuality or bisexuality, either by orientation or by practice.

- l. Genetic Information. Any written, recorded individually identifiable result of a genetic test or explanation of such a result or family history pertaining to the presence, absence, variation, alteration, or modification of a human gene or genes.
 - m. Marital/Parental Status. A person's status as single, married, parent or non-parent, where discrimination on these bases has disparately impacted against those of different protected classes, including gender and sexual orientation.
 - n. Vietnam Era Veteran Status. A person who served on active duty for a period of more than 180 days between February 28, 1961, and May 7, 1975, in the Republic of Vietnam or between August 5, 1964, and May 7, 1975, in other regions, and who was not dishonorably discharged.
 - o. Specially Disabled Veteran Status. A person entitled to disability compensation under law administered by the Veteran's Administration for disability rated at 30 percent or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.
2. Discrimination. An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's membership in a protected class or association with a member(s) of a protected class. Discrimination may be classified as either disparate impact (the result of an employment policy, practice, or procedure that, in practical application, but in the absence of a legitimate business function, has less favorable consequences for a protected class than for the dominant group), or disparate treatment (employment practices, such as tests or educational requirements, that are fair and neutral on their face, but which are applied or administered in an unequal manner).

A single act of discrimination or discriminatory harassment may be based on more than one protected class status. For example, discrimination based on anti-Semitism may relate to religion, national origin, or both; discrimination against a pregnant woman might be based on sex, marital status, or both; discrimination against a transgender individual might be based on sex or sexual orientation.

3. Discriminatory harassment. A form of unlawful discrimination including verbal and/or physical conduct based on legally protected characteristics and/or membership in a protected class that:
 - a. has the purpose or effect of creating an objectively intimidating, hostile or offensive work or educational environment;
 - b. has the purpose or effect of unreasonably interfering with an individual's work or educational opportunities; or
 - c. otherwise unreasonably adversely affects an individual's employment or educational opportunities.

For purposes of this Plan, conduct constitutes hostile environment harassment when it:

- a. is targeted against an individual(s) on the basis of his or her membership in a protected class;
- b. is not welcomed by the individual(s); and
- c. is sufficiently severe or pervasive that it alters the conditions of educational or employment and creates an environment that a reasonable person would find intimidating, hostile or offensive.

The determination of whether an environment is “hostile” is based on the totality of the circumstances. These circumstances could include the frequency of the conduct, its severity, and whether it is threatening or humiliating. Simple teasing, offhand comments and isolated incidents (unless extremely serious) will not amount to hostile environment harassment under this Plan.

For emphasis, conduct that is not based on a person’s membership in a protected class is not considered hostile under this Plan.

4. Retaliation. Taking adverse employment or educational action against a person who files claims, complaints or charges under these procedures, or under applicable local, state or federal statute, who is suspected of having filed such claims, complaints or charges, who has assisted or participated in an investigation or resolution of such claims, complaints or charges, or who has protested practices alleged to be violative of the non-discrimination policy of the University, the BHE, or local, state or federal regulation or statute. Retaliation, even in the absence of provable discrimination in the original complaint or charge, constitutes as serious a violation of this Plan as proved discrimination under the original claim, complaint or charge.

PROHIBITED CONDUCT

The Policy prohibits all conditions and all actions or omissions, including all acts of discrimination, discriminatory harassment and retaliation, which deny or have the effect of denying to any person their rights to equity and security on the basis of their membership in or association with a member(s) of any protected class. This Policy reaffirms the values of civility, pluralism and pre-eminence of individual human dignity as preconditions to the achievement of an academic community, which recognizes and utilizes the resources of all people.

In order to promote an atmosphere in which diversity is valued and the worth of individuals is recognized, the Universities will distribute policy statements and conduct educational programs to combat discrimination, discriminatory harassment and retaliation.

The prohibited conduct contained in this Policy shall apply to and be enforced against all members of the University community, including, but not limited to, faculty, librarians, administrators, staff, students, vendors, contractors and all others having dealings with the institution.

1. Examples of discrimination, all of which are prohibited by this Policy, include, but are not limited to:
 - a. Differences in salaries or other benefits that are paid to one or more men or women if the differences are not based on a bona fide occupational qualification.
 - b. Differences in terms, conditions and privileges of employment (including, but not limited to hiring, promotion, reassignment, termination, salary, salary increases, discipline, granting of tenure, selection for awards, etc.) on a prohibited basis.
 - c. Unlawful disparity of treatment in educational programs and related support services on the basis of membership in a legally protected class.
 - d. Developing position descriptions or qualifications, which, without lawful justification, are so specific as to have a disparate exclusionary impact on a group of individuals because of their membership in a protected class.
 - e. Singling out, treating or causing to treat persons of one protected class differently from others because of assumptions about or stereotypes of the intellectual ability, interest, or aptitudes of persons of those aforementioned groups.
 - f. Limiting access to housing, or participation in athletic, social, cultural or other activities to students because of membership in a protected class not based on a bona fide requirement or distinction.
 - g. Failing or refusing to hire or promote a person because of their age.
 - h. Classifying a position or positions as unsuitable for persons of certain religions.
 - i. Forcing employees or students to participate or not participate in a religious activity as a condition of their employment or education.
 - j. Excluding members of a certain race or national origin from a category of positions or from a department or division.
 - k. Restricting the number of Vietnam era veterans or qualified persons with disabilities in a category of positions or in a department or division.
 - l. Using information on marital or parental status for employment decisions where the use of such information has a disparate impact on persons of one gender or sexual orientation.
 - m. Advising students of similar interests and backgrounds differently because of their gender or gender identity.

- n. Diverting a discussion of a student's or employee's work toward a discussion of his or her physical attributes or appearances.
 - o. Forcing female students to sit in the back of the class on the stereotyped assumption that each of them has a lower aptitude for learning that particular subject than male students.
 - p. Placing unreasonable expectations upon students of particular races or national origins on the basis of stereotyped assumptions that members of those protected classes have a better aptitude for certain academic subjects than students not of those races or national origins.
2. Examples of discriminatory harassment, all of which are prohibited by this Policy, include, but are not limited to:
- a. Physically harassing another individual or group because of that person's or persons' membership in a protected class by assaulting, touching, patting, pinching, grabbing, staring, leering at them, making lewd gestures, invading their personal space, blocking their normal movement, or other physical interference.
 - b. Encouraging others to physically or verbally abuse an individual (or group of individuals) because of that person or persons' membership in a protected class.
 - c. Threatening to harm an individual or group because of that person or persons' membership in a protected class.
 - d. Directing epithets, slurs, derogatory comments, unwelcome jokes or stories at an individual or group because of that person or persons' membership in a protected class.
 - e. Displaying hostile, derogatory and/or intimidating symbols/objects, such as offensive posters, cartoons, bulletins, drawings, photographs, magazines, written articles or stories, screen savers, or electronic communications, to an individual or group because of that person or persons' membership in a protected class.
3. Examples of retaliation, all of which are prohibited by this Policy, include, but are not limited to:
- a. Terminating an employee for expressing an intent to file or for filing a charge of discrimination.
 - b. Refusing to hire an employee for the employee's pursuit of a discrimination charge against a former employer.

- c. Denying a promotion to an employee for complaining to anyone about alleged discrimination or harassment.
- d. Refusing tenure to a faculty member for filing a complaint of discrimination or harassment pursuant to the Discrimination Complaint Procedures.
- e. Issuing an unjustified negative evaluation to an employee for testifying in a legal proceeding concerning a complaint of discrimination or harassment.
- f. Assigning a student an unearned poor grade for requesting a reasonable course accommodation based on religion.
- g. Assigning a student an unearned failing grade for cooperating with an internal investigation of alleged discriminatory practices or a complaint of discrimination or harassment.
- h. Refusing to admit a student for requesting a reasonable accommodation based on disability in the admission process.
- i. Refusing to hire a job applicant for requesting a reasonable accommodation based on disability in the application process.

Members of the academic community should not assume that any of the forms of speech described above are protected by the principles of academic freedom or the First Amendment to the United States Constitution.

CONDUCT THAT IS NOT PROHIBITED

The Universities are committed to protecting, maintaining and encouraging both freedom of expression and full academic freedom of inquiry, teaching, service, and research. Nothing in this Policy 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. Accordingly, any form of speech or conduct that is protected by the principles of academic freedom or the First Amendment to the United States Constitution is not subject to this Policy.

INSTITUTIONAL COMPLAINT PROCEDURES

1. Discrimination Complaint Procedures and Title IX Complaint Procedures

The State Universities have established specific internal complaint procedures to help resolve claims and complaints of discrimination, discriminatory harassment, and retaliation on their campuses. The Universities' Discrimination Complaint Procedures and Title IX Complaint Procedures also serve as a system of review and resolution for claims of discrimination, discriminatory harassment, and retaliation on any of the above-mentioned protected bases.

With the exception of a student who seeks to file a complaint against another student, any member of the University community or any applicant for admission or employment who believes that he or she has been a victim of discrimination, discriminatory harassment or

retaliation may initiate a claim as outlined in the University's Discrimination Complaint Procedures or Title IX Complaint Procedures. A student who believes that he or she has been a victim of discrimination, discriminatory harassment or retaliation by a member of the campus community other than another student may file a complaint through the Discrimination Complaint Procedures or Title IX Complaint Procedures.

Further advice or information may be obtained by contacting the Equal Opportunity Officer on each campus. The Discrimination Complaint Procedures and Title IX Complaint Procedures are contained in full at Appendices 2 and 3, respectively.

2. Student Conduct Process

Any student who believes that he or she has been a victim of discrimination, discriminatory harassment or retaliation by another student must pursue a complaint through the individual campus's Student Conduct Process. Information about the applicable Conduct Process and Student Code of Conduct can be obtained by contacting the Student Affairs office or Dean of Students office on each campus.

If the respective Student Conduct Officer believes that a student's complaint against another student is more appropriately handled through the Discrimination Complaint Procedures or Title IX Complaint Procedures, the Student Conduct Officer may recommend that the complaining student be referred to the Equal Opportunity Officer and/or Title IX Coordinator for information about filing a complaint through the Discrimination Complaint Procedures or Title IX Complaint Procedures.

3. Standard of Review for all Internal Complaints

All internal complaints of discrimination, discriminatory harassment or retaliation will be evaluated under the preponderance of the evidence standard. Under this standard, conclusions must be "more likely than not." Accordingly, a fact-finder must find that it is more likely than not that an individual violated the Policy Against Discrimination, Discriminatory Harassment and Retaliation or the Sexual Harassment Policy.

DUTY TO COOPERATE

Every faculty member, librarian, administrator, staff member and University employee has a duty to cooperate fully and unconditionally in an investigation conducted pursuant to the Discrimination Complaint Procedures, subject to the provisions of any relevant collective bargaining agreements. This duty includes, among other things, speaking with the Equal Opportunity Officer or other investigator and voluntarily providing all documentation that relate to the claim being investigated. The failure and/or refusal of any employee to cooperate in an investigation may result in disciplinary action up to and including termination.

DUTY TO REPORT

No member of the University community, including a faculty member, who receives a complaint of discrimination, discriminatory harassment or retaliation can ignore it; he or she should give to the person making the complaint as much assistance in bringing it to the attention of the Equal

Opportunity Officer as is reasonably appropriate given his or her position at the University and relationship with the person making the complaint.

In terms of complaints of sexual harassment, sexual assault and/or sexual violence, each member of the campus community must make a report of any complaint received by him or her by any other member of the campus community to the University's Title IX Coordinator. Likewise, any member having reliable knowledge of an incident or incidents of sexual harassment, sexual assault and/or sexual violence must report that knowledge to the University's Title IX Coordinator.

In terms of complaints of discrimination, discriminatory harassment or retaliation on the basis of grounds other than sexual harassment, sexual assault and/or sexual violence, any trustee, administrator, department chair, program coordinator, manager or supervisor who receives such a complaint from a student or other member of the University community is obligated to report the complaint to the Equal Opportunity Officer as soon as he or she becomes aware of it. Likewise, any member of the campus community is encouraged to report to the Equal Opportunity Officer any conduct of which they have direct knowledge and which they in good faith believe constitutes discrimination, discriminatory harassment or retaliation in violation of this Policy.

Any member of the University community who has a question about his or her responsibilities under this Policy should contact the Equal Opportunity Officer.

FALSE CHARGES

Filing a false charge of unlawful discrimination, discriminatory harassment or retaliation is a serious offense. If an investigation reveals that a complainant knowingly filed false charges, the University may take appropriate actions and issue sanctions pursuant to other applicable University policies, including any applicable collective bargaining agreement. The imposition of such sanctions does not constitute retaliation under this Plan.

VII. POLICY AGAINST SEXUAL HARASSMENT (INCLUDING SEXUAL ASSAULT & SEXUAL VIOLENCE)

INTRODUCTION

The State Universities prohibit any member of the University community, male or female, from sexually harassing another employee, student or other person having dealings with the Universities. The Universities are committed to providing a working, living and learning environment that is free from all forms of sexually abusive, harassing, coercive or violent conduct. This Policy seeks to protect the rights of all members of the University community and other persons having dealings with the Universities, to be treated with respect and dignity.

Sexual harassment is a form of behavior that fundamentally undermines the integrity of academic and employment relationships. Sexual assault and sexual violence are considered forms of sexual harassment. Such behaviors are of particular concern within educational

institutions where all members of the community, including students, faculty, librarians, staff and administrators, are connected by strong bonds of intellectual interdependence and trust. Sexual harassment constitutes sex discrimination as defined by Title VII of the Civil Rights Act of 1964, Title IX of the Higher Education Amendments of 1972, and Chapters 151B and 151C of the Massachusetts General Laws.

Pursuant to the Violence Against Women Act, the Universities also prohibit all forms of domestic violence, dating violence, sexual assault and stalking.

DEFINITION

The State Universities, in response to the issue of sexual harassment, provide the following definition, which applies to any individual of either sex who participates in the University community as a student, faculty member, teaching assistant, resident assistant, librarian, administrator, staff member, vendor, contractor, patron, visitor or other person having dealings with the institution:

Sexual harassment consists of unwelcome verbal, non-verbal and/or physical behavior of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; and/or (2) 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 (3) such 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.

Sexual harassment incidents can involve a male harasser and a female victim, a female harasser and a male victim, or members of the same gender. Sexual harassment can also take place on the basis of gender identity or sexual orientation.

Sexual harassment explicitly includes rape, sexual assault, and all other forms of sexual violence.

EXAMPLES OF SEXUAL HARASSMENT

Behaviors that, either alone or in combination, may constitute sexual harassment under this Policy include, but are not limited to, the following:

1. verbal harassment or abuse on the basis of sex;
2. direct or indirect propositions of a sexual nature;
3. repeated unsolicited propositions for dates and/or sexual intercourse;
4. demands for sexual favors accompanied by implied or overt threats or that submission to sexual advances may favorably affect employment, work status, promotion, grades, or letters of recommendation, or that rejection of sexual advances may produce a negative effect;

5. subtle pressure for sexual activity, one element of which may be conduct such as repeated or unwanted staring;
6. sexual slurs, sexual innuendos, and other comments about an individual or group's clothing, body, weight, body shape, size or figure;
7. continuous idle chatter of a sexual nature and graphic sexual descriptions;
8. discussing one's sexual activities, practices or experiences;
9. asking another person about their sexual activities, practices or experiences;
10. offensive and persistent "risqué" jokes or jesting and kidding about sex or gender-specific traits;
11. suggestive or insulting sounds such as whistling, wolf-calls, or kissing sounds;
12. sexually provocative compliments about a person's clothes or the way their clothes fit;
13. comments or questions about the sensuality, sexuality, gender identity or sexual orientation of a person, or his or her spouse or significant other;
14. pseudo-medical advice such as "you might be feeling bad because you didn't get enough;"
15. telephone calls of a sexual nature;
16. "staged whispers" or mimicking of a sexual nature about the way a person walks, talks, sits, etc.;
17. distribution or display of objects, written or graphic materials that are of a sexual nature, such as cartoons, pictorial erotica, nude photographs or posters (such as a nude magazine centerfolds) for no legitimate academic purpose;
18. invading another's "personal space;"
19. sexual looks such as leering and ogling with suggestive overtones;
20. lewd gestures, such as hand or sign language to denote sexual activity, licking lips or teeth, or holding or eating food provocatively;
21. continuous "pet" name calling, such as "baby," "sweetie" or "honey";
22. referring to men in general as "dogs" or "swine" or to women as "bitches" or "chicks;"
23. persistent and unwelcome flirting;

24. attempted or actual kissing or fondling;
25. unnecessary touching, patting, pinching or physical touching of any kind that is sexual in nature; and/or
26. physical sexual assault, coerced sexual intercourse, attempted rape, rape or other forms of sexual violence.

A pattern of any of the above-listed behaviors that would tend to bring discomfort or humiliation to a reasonable person at whom the behaviors were directed may constitute sexual harassment.

A single incident of physical conduct on the basis of sex or sexual violence may constitute sexual harassment.

Members of the University community should not assume that any of the forms of speech described above are protected by the principles of academic freedom or the First Amendment to the United States Constitution.

HOSTILE ENVIRONMENT

When a University fails to take adequate steps to address sexual harassment, a hostile environment may be created, and the University may be liable under Title IX for its lack of response. Title IX applies to all members of the University community, including students and employees.

A hostile environment exists when the sexual 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 school's program based on sex. If the University knows or reasonably should have known about sexual harassment that creates a hostile environment, Title IX requires the University to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects. If the University does not do so, it violates Title IX. As a result, it is extremely important that all employees report potential sexual harassment, including sexual assault, rape and sexual violence, of which they are aware to the Equal Opportunity Officer and/or Title IX Coordinator.

CONSENT

Sexual harassment may occur if one party engages in sexual activity with another party without consent.² Consent must include explicit communication and mutual approval of the sexual activities in which the parties are involved. For consent, individuals involved in the sexual activity must willingly and knowingly engage in the activity. As a result, consent cannot be given due to physical force, intimidating behavior, threats, or coercion. Engaging in sexual activity with someone through force, intimidation, threats, or coercion is a violation of this Policy. Further, consent cannot be given by an individual who is incapacitated. For example, consent cannot be given by those incapacitated by alcohol or drugs, or by individuals who are

² There is no statutory definition of consent in Massachusetts.

unconscious. Knowingly engaging in sexual activity with someone who is incapacitated or who otherwise cannot give explicit consent is a violation of this Policy.

CONSENSUAL RELATIONSHIPS

Under this Policy, consenting romantic and sexual relationships between faculty and student, librarian and student, administrator and student, classified staff member and student or supervisor and employee are deemed unprofessional. Because such relationships interfere with or impair required professional responsibilities and relationships, they are looked upon with disfavor and are strongly discouraged under this Policy.

The respective Codes of Ethics for most professional associations forbid professional-client sexual relationships. In this context, and for purposes of this Policy, the professor-student relationship is properly regarded as one of professional and client. The respect and trust accorded a professor by a student, as well as the power exercised by the professor in giving praise or blame, grades, recommendations for further study and employment, and other benefits or opportunities diminish the student's actual freedom of choice such that relationships thought to be consensual may in fact be the product of implicit coercion. Many elements of the administrator-student, librarian-student, classified staff member-student and the supervisor-employee relationship are similar to those of the professor-student relationship because of a similar imbalance of power and a similar need for trust. For purposes of this Policy, therefore, these relationships are also discouraged and looked upon with disfavor.

Faculty, librarians, administrators, classified staff members and supervisors are warned against the dangers of apparently consensual relationships. A faculty member, librarian, administrator, or classified staff member who enters into a romantic or sexual relationship with a student, or a supervisor who enters into such a relationship with an employee, where a power differential exists, must realize that, if a charge of sexual harassment is subsequently lodged, it will be exceedingly difficult to disprove the claim on the grounds of mutual consent. Because that is so, it should be understood that relationships of this kind pose serious professional risks to any who enter into them.

ROLES OF THE EQUAL OPPORTUNITY OFFICER AND THE TITLE IX COORDINATOR(S)

Each University employs a Title IX Coordinator. Some campuses may also employ deputy Title IX Coordinators, each of whom is responsible for a different segment(s) of the campus community. On many campuses, the Equal Opportunity Officer also serves as the Title IX Coordinator. Each University publishes the identities of and contact information for its Equal Opportunity Officer and Title IX Coordinator(s) on its websites and in both student and employee publications.

The Equal Opportunity Officer is responsible for providing University-wide leadership to promote equal opportunity, diversity and affirmative action on campus. The Equal Opportunity Officer works closely with the President, vice presidents, department chairs, program coordinators, and directors in the implementation, monitoring and evaluation of the Plan, including this Policy on sexual harassment.

Title IX Coordinators are responsible for the implementation of Title IX and for coordinating the University's compliance with Title IX in all areas. Their responsibilities include: (1) monitoring of the publication and dissemination of the University's policies against gender discrimination and sexual harassment; (2) tracking and monitoring incidents of gender discrimination and sexual harassment; (3) ensuring that the University responds effectively to complaints; and (4) monitoring complaint investigations.

The Title IX Coordinators are knowledgeable about, and will provide information on, the University's policies against gender discrimination and sexual harassment, and all options for complaint resolution.

NOTICE OF POSSIBLE SEXUAL HARASSMENT

A University is put on notice of possible sexual harassment when: (1) an individual files a complaint using the Title IX Complaint Procedures; (2) a student files a complaint using the applicable Student Conduct Process on campus; (3) an individual files a complaint or makes a report to a campus police department; (4) an individual makes a complaint to an outside agency or a court, and that complaint is served upon the University; and/or (5) any employee (*i.e.* administrator, faculty member librarian or staff member) is aware of possible sexual harassment. Once on notice of possible sexual harassment, a University has responsibilities under Title IX, which are outlined in detail below.

TITLE IX RESPONSIBILITIES ONCE ON NOTICE OF POSSIBLE SEXUAL HARASSMENT

A. Reporting

No member of the University community who receives a complaint of sexual harassment or who has knowledge of behavior that violates this Policy can ignore it.

Any trustee, administrator, department chair, program coordinator, manager, supervisor, faculty member, staff member, or other employee ("Responsible Individual") who receives a complaint of sexual harassment (including sexual assault and sexual violence) or retaliation from a student, other member of the University community, or an individual otherwise participating in a University program is obligated to report the complaint to the Title IX Coordinator or Equal Opportunity Officer immediately.

Similarly, all members of the University community who have knowledge of behavior that they, in good faith, believe constitutes sexual harassment in violation of this Policy are encouraged to report that behavior to Title IX Coordinator or Equal Opportunity Officer immediately.

It is not the Responsible Individual's responsibility to assess liability or to determine whether unwanted sexual behavior constitutes sexual harassment under this Policy. Rather, the Responsible Individual must report immediately knowledge of any unwanted sexual conduct to the Title IX Coordinator or Equal Opportunity Officer immediately.

Any member of the University community who has a question about his or her responsibilities under this Policy should contact the Title IX Coordinator or Equal Opportunity Officer.

B. Interim Measures

Once a University is on notice of any form of sexual harassment, it is required to investigate. Additionally, the University must take any appropriate interim measures prior to the start and/or conclusion of the investigation. These interim measures must ensure the safety of the complainant/alleged victim until the complaint is resolved. Such measures may include, but are not limited to: (1) moving the alleged perpetrator to another work space or residence hall; (2) ensuring that the alleged victim and alleged perpetrator are not in class together; (3) the imposition of a “no contact” order; (4) the imposition of a temporary leave of absence with pay; and/or (5) providing counseling.

C. Investigation

Once a University is on notice of any form of sexual harassment, it must promptly begin an investigation. This investigation must occur even if a concurrent investigation is being conducted by an outside law enforcement agency. Although the University’s investigations may be delayed temporarily due to fact-finding by that law enforcement agency, once the fact-finding has concluded, the University must resume its investigations. The law enforcement fact-finding should not take more than between three and ten days.

The University must and will conduct an investigation whenever it is aware, through the grievance procedures or any other way, of any form of sexual harassment. The duration and nature of such investigations will vary based on the information provided by the complainant or the Responsible Individual.

In determining whether the alleged conduct constitutes a violation of this Policy, a University will look at the entire record and the circumstances, such as the nature of the sexual conduct, the context in which the alleged incidents occurred, the severity and/or pervasiveness of the conduct, and the impact on the alleged victim’s employment and educational environment, and will make a decision on a case-by-case basis using the preponderance of the evidence standard.

Both parties will be provided with a general notice of the outcome of the investigation.

D. Prompt and Corrective Action

Whenever the University determines that a violation of this Policy has occurred, the University will take prompt and corrective action, including appropriate disciplinary action with regard to the perpetrator, and steps to address the effects of the harassment for the victim. For example, the University might provide students or employees impacted by sexual harassment counseling, medical services, tutoring, or escort services to ensure safety. In addition, the University may take steps to ensure that the victim and perpetrator are not in the same work space or classes.

INSTITUTIONAL MEASURES TO CONFRONT SEXUAL HARASSMENT

The Universities are committed to promoting, to the greatest degree possible, an environment free from sexual harassment. To this end, the Universities will take the following steps:

1. distribute this Policy to all segments of the University community on an annual basis by electronic mail and by hard copy to every office at each University, including the Library;
2. post this Policy on all relevant sections of the Universities' website;
3. include this Policy in the relevant Student Handbook, Course Catalog, Employee Handbook and like publications;
4. provide a copy of this Policy to all new employees; and
5. conduct educational programs for the University community regarding the causes, character and consequences of sexual harassment as well as the steps available to stop such practices on the campus.

INSTITUTIONAL TITLE IX COMPLAINT PROCEDURES

1. Title IX Complaint Procedures

The Universities have established specific internal complaint procedures to help resolve claims and complaints of sex discrimination, sexual harassment, sexual assault and violence, domestic violence and stalking on their campuses. The Title IX Complaint Procedures serve as a system of review and resolution for complaints of sex discrimination and sexual harassment in hiring, employment and education.

With the exception of a student who seeks to file a complaint against another student, any member of the University community or any applicant for admission or employment who believes that he or she has been a victim of sex discrimination, any form of sexual harassment, domestic violence or stalking may initiate a formal complaint as outlined in the Title IX Complaint Procedures, which are located at Appendix 3. A student who believes that he or she has been a victim of sex discrimination, any form of sexual harassment, domestic violence or stalking by a member of the campus community other than another student may file a complaint through the Title IX Complaint Procedures.

Further advice or information may be obtained by contacting the Equal Opportunity Officer and/or Title IX Coordinator on the individual campus.

2. Student Conduct Process

Any student who believes that he or she has been a victim of sex discrimination, any form of sexual harassment, domestic violence or stalking by another student must pursue a complaint through the individual campus's Student Conduct Process. Information about the applicable Conduct Process and Student Code of Conduct can be obtained by contacting the Student Affairs office or Dean of Students office on each campus.

If the respective Student Conduct Officer believes that a student's complaint against another student is more appropriately handled through the Title IX Complaint Procedures, the Student Conduct Officer may recommend that the complaining student be referred to the Equal

Opportunity Officer and/or Title IX Coordinator for information about filing a complaint through the Title IX Complaint Procedures.

3. Campus Police Department

In addition to the Title IX Complaint Procedures and Student Conduct Process listed above, any member of the University community who believes that he or she has been a victim of sexual assault or violence, domestic violence or stalking may contact each campus's Police Department for assistance and information about pursuing criminal charges.

4. Standard of Review for all Internal Complaints

All internal complaints of sex discrimination, sexual harassment, domestic violence and stalking will be evaluated under the preponderance of the evidence standard. Under this standard, conclusions must be "more likely than not." Accordingly, fact-finder must find that it is more likely than not that an individual violated the Sexual Harassment Policy.

VIII. POLICIES FOR REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

The State Universities are committed to providing equal access to employment and educational opportunities for otherwise qualified persons with disabilities. The State Universities recognize that individuals with disabilities may need reasonable accommodations to have equally effective opportunities to participate in or benefit from educational programs, services, activities and employment.

DEFINITIONS

For the purposes of this Policy, the following definitions shall apply:

1. Individual with a Disability. An individual with a disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of impairment, or is regarded as having such an impairment.

Major life activities are activities that an average person can perform with little or no difficulty, such as: walking, breathing, seeing, hearing, speaking, learning, working, caring for oneself, performing manual tasks, reading, eating, concentrating, sleeping, standing, communicating, lifting, reaching, sitting, bending, and interacting with others.

Additionally, the ADA has been amended to include the "operation of a major bodily function" as a major life activity. An individual with a condition that substantially limits any of the following bodily functions can possibly have a disability under this Plan: immune, respiratory, circulatory, cardiovascular, hematological, lymphatic, digestive, endocrine systems; special sense organs and skin; normal cell growth;

genitourinary; bowel; bladder; musculoskeletal; neurological; and/or operation of individual organ within the body system, including the brain.

2. Qualified Individual with a Disability. A qualified employee or applicant with a disability is someone who satisfies the skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position. A qualified student with a disability is someone who possesses the skills necessary to complete the essential academic requirements of a course and/or degree program, with or without reasonable accommodation.

The essential functions of a position are those job duties that are primary or intrinsic, not marginal or incidental, to a given position. Job duties are the tasks that must be accomplished, not the manner in which they are accomplished.

The essential academic requirements of a course and/or degree program are the knowledge and skills that must be acquired and demonstrated in order for a student to successfully meet the learning objectives of the course or degree program.

3. Reasonable Accommodation. Modifications or adjustments to an application process, job, work environment, the way in which work is customarily performed, or a course of study that permit a qualified individual with a disability to perform the essential functions of a position or to enjoy the benefits and privileges of employment or education equally with persons without disabilities.

Reasonable accommodations in employment may include, but are not limited to: making existing facilities used by employees 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. The Universities are not required to lower production standards to make an accommodation and are not obligated to provide personal use items, such as eyeglasses or hearing aids.

Reasonable accommodations in education may include, but are not limited to: in-class aids, such as note takers; extended time for examination; quiet rooms or alternate locations for testing; alternatively formatted testing; alternatively formatted textbooks and other course materials; and/or access to assistive technology. Possible course reductions or substitutions on the basis of a disability will be carefully evaluated. Students with disabilities must meet the essential requirements of all academic degree programs.

4. Undue Hardship. The Universities are required to make reasonable accommodations to qualified individuals with disabilities unless doing so would impose an undue hardship on the operation of the Universities' business. Undue hardship means an action that requires significant difficulty or expense when considered in relation to factors such as the University's overall size, financial resources, and the nature and structure of its operation.

5. Interactive Process. State and federal laws define the “interactive process” as an on-going communication between an institution and an individual with a known disability in an effort to provide reasonable accommodation. Both the individual and the institution must engage in the interactive process. The individual and the institution must communicate directly with each other to determine essential information, and neither party can delay or interfere with the process. In order to be effective, the process should include the individual, the individual’s supervisor (if relevant in the employment context), and the individual’s health care provider.

EDUCATION OF PERSONS WITH DISABILITIES

The State Universities will examine all existing admissions, student support and other student life policies, practices and facilities to assure that they do not disparately treat or impact otherwise qualified persons with disabilities. Where such disparity is found, it will be corrected as quickly and completely as is reasonable under existing financial constraints.

In accordance with the requirements of state and federal law, the State Universities will provide necessary reasonable accommodations, auxiliary aids and academic adjustments (including support services) to otherwise qualified students with disabilities to assure equal access to its programs, facilities and services. Reasonable accommodations will also be afforded to applicants for admission who have disabilities to enable them to adequately pursue all opportunities for enrollment in the Universities’ programs of study.

EMPLOYMENT OF PERSONS WITH DISABILITIES

The State Universities will examine all existing employment policies, practices and facilities to assure that they do not disparately treat or adversely impact otherwise qualified persons with disabilities. Where such disparity is found, it will be corrected as quickly and completely as is reasonable under existing financial constraints.

In accordance with the requirements of state and federal law, and through the interactive process, the State Universities will afford reasonable accommodations to any otherwise qualified employee with a disability to enable the employee to perform the essential functions of the job. Reasonable accommodations will also be afforded to applicants for employment who have disabilities to enable them to adequately pursue a candidacy for any available positions.

PROCESS BY WHICH TO REQUEST ACCOMMODATIONS

Any member of the University community seeking reasonable accommodation for a disability may contact the Equal Opportunity Officer and/or the Title II/Section 504 Coordinator for more information.

Additionally, a student seeking reasonable accommodations, auxiliary aids and/or academic adjustments for a disability must contact the appropriate Office of Disability Services on his or campus to obtain such services.

INSTITUTIONAL COMPLAINT PROCEDURES

The State Universities have established specific internal complaint procedures to help resolve claims and complaints of discrimination, discriminatory harassment, and retaliation on their campus. These procedures will also specifically address claims and complaints of failure to accommodate or to provide appropriate auxiliary aids and academic adjustments for a person with disabilities as prescribed by the ADA, the Rehabilitation Act, and Massachusetts General Laws Chapters 151B and 151C. The Discrimination Complaint Procedures serve as a system of review and resolution for claims of disability discrimination.

With the exception of a student who seeks to file a complaint against another student, any member of the University community or any applicant for admission or employment who believes that he or she has been a victim of disability discrimination may initiate a claim as outlined in the Discrimination Complaint Procedures, the full text of which is located at Appendix 2.

Any student who believes that he or she has been a victim of disability discrimination by another student must pursue a complaint through the individual campus's Student Conduct Process. Information about the applicable Conduct Process and Student Code of Conduct can be obtained by contacting the Student Affairs office or Dean of Students office on each campus. A student who believes that he or she has been a victim of disability discrimination by a member of the campus community other than another student may file a complaint through the DCP.

Further advice or information may be obtained by contacting the Equal Opportunity Officer and/or the Title II/Section 504 Coordinator of each University.

IX. CONTRACTING AND PURCHASING

EQUAL OPPORTUNITY VENDORS

When selecting contractors, suppliers, and vendors of goods and services, including goods and services secured in connection with construction projects, the State Universities will offer equal opportunity to all qualified persons and entities and will not discriminate on the basis of race, creed, religion, color, national origin, gender, sexual orientation, gender identity, gender expression genetic information, age, disability, veteran or marital status.

The Universities shall seek to locate and shall encourage the use of minority and female contractors, subcontractors, vendors, and suppliers. The Universities will identify businesses primarily operated by members of such protected classes with the help of agencies such as the State Office of Minority Business Assistance in order to encourage bids and proposals from potential contractors, vendors and suppliers.

EQUAL EMPLOYMENT OPPORTUNITY

The Universities adhere to and enforce the non-discrimination clause contained in Section 202 of Executive Order 11246, as amended. Pursuant hereto and pursuant to their own policies against discrimination, the Universities requires that all persons and entities with which they contract for the provision of goods and services shall provide equal opportunity for all persons without regard

to race, color, religion, creed, gender, national origin, sexual orientation, gender identity, gender expression, genetic information, disability, age, or veteran or marital status.

The Universities further adhere to and enforce a policy of requiring that all persons and entities with which they contract for the provision of goods and services shall provide equal employment opportunity without regard to race, color, religion, creed, gender, or national origin, sexual orientation, gender identity, gender expression, genetic information, disability, age, or veteran or marital status.

CONTRACTOR COMPLIANCE

Prior to the awarding of any contract, the Universities shall require that the contractor provide written assurance of its compliance with applicable state and federal laws and regulations, including the provisions of this Policy, prohibiting discrimination in employment.

The Universities shall require that every contract made on or after July 1, 1996, for the purchase of goods and services contain the following provisions.

“During the performance of this Agreement, the Contractor agrees as follows:

1. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, religion, color, gender, sexual orientation, age, disability, veteran status, marital status, or national origin.
2. The Contractor will comply with the provisions of the Governor’s Code of Fair Practices, with Chapter 151B of the General Laws of Massachusetts, with the Americans with Disabilities Act and with all other applicable state and federal laws barring discrimination in employment, and with Section VI of the Massachusetts State Universities’ Equal Opportunity, Diversity and Affirmative Action Plan.
3. In the performance of this Agreement, the Contractor shall take affirmative action to employ minority and female subcontractors, vendors and suppliers.
4. The University may at any time require the Contractor to supply it with such data, as it shall reasonably require for purposes of determining whether the Contractor is adhering to the above-described prohibitions against discrimination in employment.
5. In the event that the Contractor shall have failed to comply with the requirements contained in any of foregoing clauses 1, 2, 3 and 4, the University may enforce such compliance by withholding part or all of any payment then due until such time as the Contractor complies with any such requirement, and/or by cancelling, terminating or suspending the whole or any party of this Agreement. Nothing herein contained shall bar the University from pursuing such other lawful recourse as it may have to

enforce compliance with the above-described requirements and to recover damages for their breach.”

The Universities reserve the right to disqualify as a contractor any person or entity that fails to adhere to the prohibitions against the discrimination, discriminatory harassment and retaliation in employment that are contained in Section VI of this Plan.

CONTRACTOR CONDUCT

All contractors, vendors and suppliers of goods and services shall be required, during any period when they or their agents or employees are present at the Universities, to adhere to standards of conduct that are consistent with this Policy, and all such contractors, vendors and suppliers, their agents and employees shall refrain from acts or conduct that constitute harassment of any person by reason of such person’s race, color, creed, religion, national origin, gender, sexual orientation, gender identity, gender expression, genetic information, marital status, age, disability or veteran status. The Universities shall require every contractor, vendor, and supplier to instruct its agents and employees concerning the requirements of this paragraph, and to take actions including disciplinary actions, to correct any violation thereof.

INSTITUTIONAL COMPLAINT PROCEDURES

The Universities have established specific internal complaint procedures to help resolve claims and complaints of discrimination, discriminatory harassment, and retaliation on their campuses. The Universities’ Discrimination Complaint Procedures and Title IX Complaint Procedures also serve as a system of review and resolution for claims and complaints of discrimination, discriminatory harassment, and retaliation on the basis of any person’s membership in a protected class as set forth in the Universities’ Policy Against Discrimination, Discriminatory Harassment, and Retaliation at Section VI of this Plan. Any member or the University community or any applicant for employment or admission who believes that he or she has been a victim of discrimination, discriminatory harassment or retaliation by a vendor or contractor may initiate a complaint, depending on the nature of the prohibited conduct, as outlined in either the Discrimination Complaint Procedures contained in Appendix 2 or the Title IX Complaint Procedures at Appendix 3. Further advice or information may be obtained by contacting the Equal Opportunity Officer and/or Title IX Coordinator on each State University campus.

X. CONCLUSION

In developing and presenting this Plan for approval to the BHE, the State Universities have committed themselves to institutional change in order to provide maximum access to a college education and college experience which equips all of our students to live and work in our diverse world. The State Universities believe that access to affordable higher education is an integral part of their mission.

With this Plan, the State Universities commit themselves not only to providing each student and employee a safe, yet exciting academic and living environment, where each member of the community is valued as an individual, whose racial, cultural, religious, gender, orientation, age, disability or socioeconomic status make her or him a valued member of a diverse community of

pluralism, but in doing so, to fully prepare our students for the great diversity of the larger world. If this Plan is fully implemented, we will have moved beyond merely prohibiting the violation of human dignity and civility to the fulfillment of our mission of providing accessible higher education to the increasingly diverse population of the Commonwealth.

We commit ourselves to this effort.

APPENDIX 1

POSITION DESCRIPTION: EQUAL OPPORTUNITY OFFICER

GENERAL STATEMENT OF DUTIES

The Equal Opportunity Officer is responsible for providing campus-wide leadership to promote equal opportunity, diversity and affirmative action on campus. The Equal Opportunity Officer works closely with the President, Vice Presidents, Department Chairs, Program Coordinators and Directors in the implementation, monitoring and evaluation of the Universities' Equal Opportunity, Diversity Plan and Affirmative Action Plan. He or she works with faculty and student organizations to introduce a variety of multicultural issues across the curriculum and across the campus. He or she is the ombudsman for all complaints of discrimination, including discriminatory harassment, and retaliation.

The Equal Opportunity Officer may also serve as the Title II/Section 504 Coordinator. Similarly, he or she may be the primary Title IX Coordinator for each University, although the individual campuses may designate one or more additional Deputy Coordinators to assist with Title IX compliance.

SUPERVISION: Reports directly to the President or the President's designee.

SUPERVISION EXERCISED: Exercises supervision over assigned professional and non-professional staff.

RESPONSIBILITIES:

1. Provides leadership in planning and organizing events and programs to increase the awareness of diversity on campus.
2. Develops plans and policies to recruit and employ members of protected classes through affirmative action and equal employment opportunity programs.
3. Responsible for monitoring, implementing and evaluating recruitment to insure a policy of non-discrimination, affirmative action, equal employment/educational opportunity and diversity.
4. Serves as an ex-officio member of faculty hiring committees.
5. Works closely with the Vice Presidents, Directors, Program Coordinators and Department Heads to develop and implement program initiatives designed to increase diversity among faculty, staff and students.
6. Plans and develops policies and procedures regarding the implementation of the ADA and the Rehabilitation Act.

7. Responsible for investigating all complaints of discrimination, discriminatory harassment, and retaliation filed pursuant to the Universities' Discrimination Complaint Procedures and the Sexual Harassment, Sexual Assault and Sexual Violence Complaint. Responsible for communicating all relevant information to appropriate personnel or students on campus regarding the investigation process.
8. May act as a representative of the University on claims presented to state and federal agencies.
9. Reviews all University policies for potential discriminatory impact.
10. Communicates information on laws, regulations and policies on affirmative action and equal opportunity to members of the University community.
11. Exercises sign-off authority on all personnel actions.
12. Assumes additional support duties assigned by the President.

QUALIFICATIONS:

1. Possesses academic credentials and/or professional experience suitable to fulfill the duties and responsibilities of the position.

Preferred: Masters degree or equivalent.

Minimum: Bachelors degree with at least ten (10) years of professional experience in affirmative action, equal employment opportunity and diversity.

2. Possesses knowledge of higher education principles, practices and procedures.
3. Possesses experience in developing and implementing policies and procedures regarding affirmative action, equal employment opportunity and diversity.
4. Possesses professional competence as an administrator, as evidenced by professional growth and recognition thereof by professional colleagues.

*This Position Description is illustrative and not necessarily exhaustive.

APPENDIX 2

DISCRIMINATION COMPLAINT PROCEDURES

Note: Individuals with complaints of sexual harassment (including sexual assault and sexual violence), sex discrimination (including discrimination on the basis of sexual orientation, gender identity and gender expression), domestic violence or stalking may file a complaint pursuant to the Title IX Complaint Procedures found at Appendix 3.

INTRODUCTION

It is the policy of the State Universities to provide each student, employee, and other person having dealings with the institutions an atmosphere free from discrimination, discriminatory harassment and retaliation.

The Universities have promulgated these Discrimination Complaint Procedures (“DCP” or “Procedures”)³ to address and resolve complaints of prohibited discrimination and discriminatory harassment on the basis of race, color, creed, religion, national origin, age, disability, marital status, genetic information or veteran status as expeditiously as possible and within the requirements of state and federal law. Furthermore, these procedures address and resolve complaints of retaliation on the basis of filing a complaint of discrimination, participating in an investigation of such a complaint or protesting a discriminatory practice.

With the exception of a student who seeks to file a complaint against another student, any member of the University community or any applicant for admission or employment who believes that he or she has been a victim of discrimination, discriminatory harassment or retaliation may file a complaint under the DCP, or may file a charge directly with the state or federal agency having jurisdiction over discrimination complaints. Information and assistance on any of these options is available from Office of the Equal Opportunity Officer on each campus.

Any student who believes that he or she has been a victim of discrimination, discriminatory harassment or retaliation by another student must pursue a complaint through the individual campus’s Student Conduct Process. Information about the applicable Conduct Process and Student Code of Conduct can be obtained by contacting the Student Affairs office or Dean of Students office on each campus.

A student who believes that he or she has been a victim of discrimination, discriminatory harassment or retaliation by a member of the campus community other than another student may file a complaint through the DCP.

A person named as a respondent to a complaint under the DCP and a person who has knowledge about incidents surrounding allegations contained in the complaint, must respond promptly and

³ Please note: This is the procedure developed for use by all of the State Universities. Individual Universities may effect changes that are necessary to properly reflect the organizational structure of each campus. No such changes shall be inconsistent with the procedures described herein.

completely to all requests for information that are initiated by the Equal Opportunity Officer's office or other officer designated by the University to investigate complaints under the DCP, the Senior Area Administrator, or the President.

APPLICATION

The DCP may be utilized by any person, including any University employee, student, or applicant for employment or admission, who believes that he or she has been discriminated against, discriminatorily harassed or retaliated against by the University, by an employee or student of the University, or by other persons having dealings with the institution, on the basis of race, color, creed, religion, national origin, age, disability, marital status, genetic information or veteran status, as defined in Section VI of this Plan.

The DCP may be used to address alleged discriminatory acts or acts of discriminatory harassment or retaliation that violate the policies and regulatory procedures set by the Boards of Trustees of the State Universities, the BHE, or the requirements of any applicable federal or state constitution, statute, regulation or Executive Order.

The University will promptly respond to all complaints of discrimination, discriminatory harassment and retaliation, with the intention to fully, quickly and adequately resolve the claim/complaint on an internal basis and to prohibit further occurrences.

At any time, individuals have the right to file charges of discrimination, discriminatory harassment or retaliation with the appropriate government agency with or without first utilizing the DCP. Such agencies include:

Office for Civil Rights
Boston Office
U.S. Department of Education
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
Phone: 617-289-0111
Fax: (617) 289-0150
Email: OCR.Boston@ed.gov
Timeframe: Must file within 180 calendar days of alleged incident.

U.S. Equal Employment Opportunity Commission
John F. Kennedy Federal Building, Rm. 475
Government Center
Boston, Massachusetts 02203-0506
617-565-3200
TTY: 617-565-3204
Timeframe: Must file within 300 calendar days of alleged incident.

Massachusetts Commission Against Discrimination
One Ashburton Place, Room. 601
Boston, Massachusetts 02108
617-727-3990 (x588 for TTY)
Timeframe: Must file within 300 calendar days of alleged incident.

Massachusetts Commission Against Discrimination
436 Dwight Street
Second Floor, Room 220
Springfield, MA 01103
(413) 739-2145
Timeframe: Must file within 300 calendar days of alleged incident.

TIME CALCULATIONS

These Procedures are designed to promote the adequate, prompt and impartial investigation and resolution of complaints. The various steps of the DCP contain time limits that are measured in “working days.” For purposes of the DCP, the definition of the term “working days” shall be days when the administrative offices of the University are regularly open for business. Holidays, weekends, snow days and other days when the University is closed for any other reasons will not be counted. In making a determination concerning the extension of time limits under these procedures, the Equal Opportunity Officer or other officer charged with the investigation of complaints under the DCP, the Senior Area Administrator and/or the President will apply a standard of reasonableness, having regard, when appropriate, to academic recesses and semester breaks.

ACCEPTANCE OF COMPLAINTS

Neither the receipt of a complaint nor the written acknowledgment of receipt by the designated office of the University will be deemed to be an admission of any violation of law or policy by any of the named parties or by the institution.

COMPLAINT PROCEDURES

A. Complaint Mediation

A person wishing to explore the possibility of resolving a complaint through mediation should request a meeting with the Equal Opportunity Officer or other designated office within a reasonable time. Mediation is a process by which both parties, the complainant and the respondent, agree to seek informal resolution of the complaint. In mediation, the Equal Opportunity Officer or other designated officer serves as a facilitator between the parties.

While mediation under these Procedures is a confidential process, a complainant may not mediate a complaint on any anonymous basis.

Because it is beneficial to all parties to mediate complaints promptly, complaints should ordinarily be brought to the attention of the Equal Opportunity Officer or other designated office within **sixty (60) working days** following the occurrence of the events forming the basis for the

complaint. In individual cases, circumstances may make that difficult or impractical. Whenever a claim has been initiated more than 60 days following the occurrence of such events, the Equal Opportunity Officer or other designated officer will determine whether the claim has been initiated within a reasonable time.

Whenever a complaint of discrimination is brought to the attention of the Equal Opportunity Officer or other designated officer, s/he will provide assistance in:

1. explaining the avenues of internal and external recourse that are available;
2. providing information about the applicable federal and state laws and regulations;
3. informing the complainant of the right to file charges with the appropriate government agency at any time, as well as the need to meet applicable time requirements for such filing;
4. explaining the University's mediation process;
5. explaining the University's formal complaint process;
6. determining whether the mediation procedures are applicable; and
7. either mediating the complaint or referring the complainant to the formal complaint procedures.

Mediation is a confidential process. Each party must maintain the confidentiality of mediation, and neither party nor the University may rely on any information obtained through mediation in any subsequent investigation or procedure.

The facilitator does not have the authority to impose a settlement on the parties. Both parties must agree to any settlement or resolution of the complaint.

If mediation results in a mutually agreeable settlement, the Equal Opportunity Officer or other designated office will provide a copy of any written agreement of settlement to the parties, if the agreement has been reduced to writing, and issue a Statement of Closure to the parties.

If mediation does not result in a mutually agreeable settlement or resolution, the complainant has the option of pursuing a formal complaint in accordance with the procedures set forth as follows.

A complainant is not required to mediate a complaint before filing a formal complaint. Complainants are free to proceed directly to the formal complaint process without first attempting to mediate the complaint.

B. Formal Complaints

The formal complaint process is provided to allow employees, students and persons having dealings with the institution an avenue to address complaints of discrimination, discriminatory

harassment and retaliation on the basis of on the basis of race, color, creed, religion, national origin, age, disability, marital status, genetic information or veteran status as defined in Section VI of this Plan. The three steps of the formal complaint process are provided to allow for adequate appeal rights of the parties.

Resolution of a formal complaint, however, is possible at any step of the procedure through the written agreement of the parties and with the approval of the Equal Opportunity Officer or other designated officer at the institution.

If the Equal Opportunity Officer or other designated officer, the Senior Area Administrator or the President believes that he or she is unable to make an objective judgment when a complaint filed under any step of the formal complaint process comes before him/her, then s/he will so advise the parties and the other two institutional officers and will appoint a designee to serve as a replacement.

1. Step I: Equal Opportunity Officer

a. Written Complaint Required. The complainant shall file a Discrimination Complaint Form, accompanied by any pertinent supporting documentation, with the Equal Opportunity Officer or other designated office. The complaint must contain, as essential elements, the signature of the complainant, the date signed, the prohibited basis on which the complaint is filed, and the alleged act(s) of discrimination, discriminatory harassment and/or retaliation. The names of any witnesses and any appropriate documents should be attached to the complaint form. A sample complaint form can be found at the end of these Procedures.

b. Time Frame to File the Complaint. A complaint shall normally be filed:

within **sixty (60) working days** from the date upon which the complainant had knowledge or should have had knowledge of the alleged act(s) of discrimination, discriminatory harassment or retaliation if the complainant has not first utilized the mediation process;

OR

within **twenty (20) days following the completion of the mediation process**, if utilized.

Where, however, the act complained of is one of a continuing nature, has a continuing effect, or, in the judgment of the Equal Opportunity Officer or other designated officer warrants proceeding, the time limit may be reasonably extended.

c. Investigation. The Equal Opportunity Officer or other designated officer will promptly consider the complaint and will, within thirty (30) working days of the filing thereof:

- (1) Determine whether the complaint has been filed in accordance with the provisions of the DCP;
 - (2) Determine whether the complaint alleges discrimination or discriminatory harassment on the basis of race, color, creed, religion, national origin, age, disability, veteran status, marital status, or genetic information, or retaliation in violation of the Universities' Policy Against Discrimination, Discriminatory Harassment and Retaliation as set forth in Section VI of Universities' Equal Opportunity, Diversity and Affirmative Action Plan.
 - (3) Investigate the complaint by taking, at a minimum, the following steps:
 - (a) providing a copy of the formal complaint to the person accused;
 - (b) requesting and considering the response of the person accused;
 - (c) providing a copy of that response to the complainant if the accused provides a written response to the complaint;
 - (d) reviewing relevant University policies and documents;
 - (e) interviewing of the persons identified by either party as ones having information pertinent to the allegations;
 - (f) collecting further evidence relevant to the investigation;
 - (g) presenting the evidence to each party and considering any rebuttal; and
 - (h) any such other steps as the Equal Opportunity Officer or designated officer believes are necessary.
- d. Determination Based on Preponderance of the Evidence. On the basis of the documentation, interviews, and other relevant information gathered through the investigation, the Equal Opportunity Officer or designated officer will make a determination regarding whether it is more likely than not that the person accused violated University policy.
- e. Written Statement of Findings and Recommendation. If a resolution is not reached, the Equal Opportunity Officer or designated officer will provide a Statement of Findings and Recommendation to the parties, the Senior Area Administrator and the President. The Statement of Findings and Recommendation shall include a statement regarding the parties' rights of appeal, the time frame in which to commence an appeal and the process to commence an appeal.

The Statement of Findings and Recommendation will be sent to the complainant and the accused on the same day.

If the Equal Opportunity Officer or designated officer determines that more than thirty (30) days are needed to complete his/her investigation and issue the Statement of Findings and Recommendation, s/he will notify the parties in writing of the anticipated completion date of this Step.

- f. Appeal Rights. If, upon receipt of the Statement of Findings and Recommendation, either party takes exception, he or she may appeal to Step II, by notifying the Equal Opportunity Officer (or other designated officer issuing the Statement of Findings and Recommendation) via a written Letter of Appeal and stating the basis of the Appeal within **ten (10) working days** of her/his receipt of the Statement of Findings and Recommendation. In such cases, a copy of the entire Step I record and the Letter of Appeal will be transmitted to the Senior Area Administrator, with a copy to the President.
- g. When No Appeal is Taken. If no appeal has been filed, the Equal Opportunity Officer or other designated officer will pursue one of the following courses at the end of the ten (10) day period:

If no finding of violation has been made and/or no remedy has been recommended, the designated officer will issue a Statement of Closure to the parties, with a copy to the Senior Area Administrator and the President.

OR

If a finding of violation has been made, and if a remedy has been requested or recommended which must be affected by the Senior Area Administrator or the President, the designated officer will issue a Statement of Resolution and a Recommendation to Effect Remedy to the parties, the Senior Area Administrator and the President.

2. Step II – Senior Area Administrator

Unless otherwise determined by the President, the Senior Area Administrator responsible for hearing appeals at Step II is the person who has overall responsibility for the supervision of the individual accused in the complaint at the time of the filing of the complaint, and who reports to the President. If the accused's supervisor is the President, the President will appoint a designee to serve in her/his stead. In some cases, the Senior Area Administrator may choose to appoint another high level administrator to serve as designee. For complaints arising between students in both the Day University and the Divisions of Graduate Education and Continuing Education and Special Programs, the President will designate the person/persons to serve as the Senior Area Administrator to hear appeals under Step II of these procedures.

The Senior Area Administrator or designee will promptly consider the complaint and will, within thirty (30) working days of the receipt of the Step I record and the appeal:

- a. Determination of Correct Filing of Appeal. Determine whether the complaint and the Step II appeal have been filed in accordance with the provisions of the DCP.

- b. Review Records. Take the steps necessary to review the record and the appeal, investigate the complaint further if deemed necessary, make a preliminary determination on the matter and informally discuss it with both parties.
- c. Offer a Hearing. Offer the non-prevailing party the opportunity for a hearing. Such hearing must be requested within ten (10) days of the offer. If the party requests such hearing, each of the parties will be accorded the following:
 - (1) The right to receive written charges in advance of the hearing. The written charge is typically the complaint filed at Step I, but could include additional documentation as the Senior Area Administrator deems necessary or appropriate.
 - (2) The right to have an advisor present to serve in an advisory role. No party is permitted legal representation at the hearing.
 - (3) The right to have a response heard and considered.
 - (4) The right to present documentary and testimonial evidence.
 - (5) The right to pose to the Senior Area Administrator questions for the persons giving testimonial evidence. All questioning should be performed through the Senior Area Administrator; no party may question another person directly.
 - (6) The right to rebut documentary and testimonial evidence.
 - (7) The right to receive a written decision, which is a Statement of Findings and Proposed Remedy.
- h. Statement of Findings and Proposed Remedy if No Hearing. If the non-prevailing party does not request a hearing, the Senior Area Administer will document his/her determination, using the preponderance of the evidence standard, in a Statement of Findings and Proposed Remedy. The Statement of Findings and Recommendation shall include a statement regarding the parties' rights of appeal, the time frame in which to commence an appeal and the process to commence an appeal.

The Statement of Findings and Recommendation will be sent to the complainant and the accused on the same day.

If the Senior Area Administrator determines that more than thirty (30) days are necessary to complete his or her review at Step II, s/he will notify the parties of the anticipated completion date.

- i. Statement of Findings and Proposed Remedy Following a Hearing. If a hearing is held, the Senior Area Administer will document his/her determination in a Statement of Findings and Proposed Remedy. The Statement of Findings and

Recommendation shall include a statement regarding the parties' rights of appeal, the time frame in which to commence an appeal and the process to commence an appeal.

The Statement of Findings and Recommendation will be sent to the complainant and the accused on the same day.

If the Senior Area Administrator determines that more than forty-five (45) days are necessary his or her review at Step II following the hearing, s/he will notify the parties of the anticipated completion date.

- d. Appeal. If, upon receipt of the Senior Area Administrator's Statement of Findings and Proposed Remedy, either party takes exception, he or she may appeal to Step III, stating the basis of the appeal in writing, by notifying the Senior Area Administrator and the Equal Opportunity Officer or other designated Step I officer via a Letter of Appeal within **ten (10) working days** of receipt of the Statement of Findings and Proposed Remedy. In such cases, the Senior Area Administrator will transmit a copy of the entire Step I and Step II records, and the Letter of Appeal to the President.
- e. Steps if No Appeal. If no appeal has been filed, the Senior Area Administrator will pursue one of the following courses at the end of the ten (10) day period with which either party is able to appeal:

If no finding of violation has been made and/or no remedy has been recommended, the Senior Area Administrator will issue a Statement of Closure to the parties, with a copy to the designated person and the President.

OR

If a finding of violation has been made and, if a remedy has been proposed which can be affected by the Senior Area Administrator, s/he will give effect to such remedy and will issue a Statement of Resolution to the parties, with a copy to the Equal Opportunity Officer or other designated Step I officer.

OR

If a finding of violation has been made and, if a remedy has been proposed which must be affected by the President, the Senior Area Administrator will issue a Statement of Resolution and a Recommendation to Effect Proposed Remedy to the parties, with a copy to the President and the Equal Opportunity Officer or other designated Step I officer.

3. Step III – President

Unless the President is personally charged under these procedures, in which case the procedures under the Complaints Against Institutional Officers section of these procedures will apply, or disqualifies her/himself, the President will be the sole Step III Appeal Officer.

The President will promptly consider the complaint and will, within twenty (20) working days of receipt of the Step I and Step II records and the Letter of Appeal, take the following steps:

- a. Determination of Correct Filing of Appeal. Determine whether the complaint and the Step III appeal have been filed in accordance with the DCP.
- b. Review Record. Take the steps necessary to review the record of the two preceding steps and the appeal.
- c. Remand, if Necessary. At his/her discretion, remand the case to the Senior Area Administrator or the Equal Opportunity Officer or other designated Step I officer for the purpose of further investigation or hearing.
- d. Final Determination. Make a final determination on the complaint of discrimination using the preponderance of the evidence standard, and take whatever action he or she deems appropriate to the situation. A Notice of Final Resolution will be issued by the President to the parties, the Senior Area Administrator and the Equal Opportunity Officer or other designated Step I officer.

If the President determines that more than twenty (20) days are necessary, s/he will notify the parties of the anticipated completion date.

The President will be the final adjudicator under these procedures. Her/his decision will be binding with full recognition that, at any time, the complainant has the right to file charges with appropriate local, state and/or federal agencies.

D. Application of Time Limits

In the event that a complaint has not been resolved within sixty (60) days following its filing at any step, either party may elect to have the matter considered at the next step of these procedures.

E. Complaints Against Institutional Officers

If a complaint is directed against a Senior Area Administrator or the Equal Opportunity Officer or other designated Step I officer, the functions assigned to that person by these procedures will transfer to the President or her/his designee.

Complaints directed against the President will be filed with the Chairperson of the Board of Trustees.

F. Retaliatory Action Prohibited

The University prohibits retaliatory action taken against persons who file claims, complaints or charges under these procedures, or under applicable local, state or federal statute, who are suspected of having filed such claims, complaints or charges, who have assisted or participated in an investigation or resolution of such claims, complaints or charges, or who have protested

practices alleged to be violative of the non-discrimination policy of the University, the BHE, or local, state or federal regulation or statute. Such retaliation is recognizable under these procedures as well as under state and federal law. Retaliation, even in the absence of provable discrimination in the original complaint or charge, constitutes a violation as serious as proved discrimination under the original claim, complaint or charge. Any person who believes he or she has been retaliated against in this manner is encouraged to immediately file a claim or complaint under these procedures.

G. Remedial Actions

Should a Policy violation be found to exist in any employment, educational or service decision, action, inaction or practice within the University, all appropriate corrective and/or disciplinary actions will be taken under the direction of the President, subject to any applicable collective bargaining agreement or other policies or procedures of the University.

H. Recordkeeping

A record of any claim or complaint submitted for consideration in accordance with these Discrimination Complaint Procedures will be kept on file in the University's Affirmative Action/Equal Opportunity/Diversity Office. This record will include a record of all steps of these procedures and will be the only file so maintained. The information contained in such files will be considered confidential and will be accessed/used only for purposes of the enforcement of non-discrimination policies and by appropriate staff.

1. For a claim filed under the Mediation process, the record will contain at a minimum:
 - a. a brief description of the claim, its allegations and the manner in which it was resolved; and
 - b. a copy of any signed mediation agreement.
2. For a complaint filed under the Formal Complaint process, the record will contain at a minimum:
 - a. a copy of the complaint;
 - b. a copy of any written response to the complaint from the accused;
 - c. copies of all witness statements;
 - d. any documentary evidence or written statements presented by the parties;
 - e. copies of any letters of appeal;
 - f. copies copy of the final disposition/resolution at each Step; and
 - g. documentation of the transmittal of the final disposition/resolution at each Step to the parties.

[SAMPLE]

DISCRIMINATION COMPLAINT FORM

Name: _____

Address: _____

Phone Number: _____

E-mail Address: _____

Person against whom the allegation is made: _____

Basis of alleged discrimination and/or harassment (circle one or more as appropriate):
race, color, creed, religion, national origin, age, disability, genetic information, marital status, or veteran status.

Basis of alleged retaliation (e.g., filing of an earlier complaint).

Please describe below the alleged discriminatory, discriminatorily harassing and/or retaliatory acts (attach additional pages, as well as list of witnesses and any appropriate documents as necessary):

I affirm that the above complaint with attached ____ pages is true to the best of my knowledge, information and belief. I understand that a copy of this document may be disclosed to the person(s) against whom this complaint is made, to his or her representatives and to appropriate administrative personnel.

I understand that, depending on the nature of my complaint, I may have the right to file this complaint with the Massachusetts Commission Against Discrimination, the U.S. Equal Employment Opportunity Commission, or the Office for Civil Rights at the U.S. Department of Education. I acknowledge that I have been advised of the appropriate agency and the necessary time frames to file any such complaint.

Signature of Complainant

Date

APPENDIX 3

TITLE IX COMPLAINT PROCEDURES FOR COMPLAINTS OF SEX DISCRIMINATION, SEXUAL HARASSMENT, SEXUAL ASSAULT AND VIOLENCE, STALKING AND DOMESTIC VIOLENCE

INTRODUCTION

It is the policy of the State Universities to provide each student, employee, and other person having dealings with the institutions an environment free from sex discrimination, sexual harassment, sexual assault and violence, stalking, domestic violence and retaliation. Complete definitions of these terms can be found in Sections VI and VII of this Equal Opportunity, Diversity and Affirmative Action Plan, and are available on the websites of the individual Universities, as well as upon request.

A person named as a respondent to a complaint under these procedures and a person who has knowledge about incidents surrounding allegations contained in the complaint, must respond promptly and completely to all requests for information that are initiated by the Equal Opportunity Officer's office or other officer designated by the University to investigate complaints under this procedure, the Senior Area Administrator, or the President.

APPLICATION

The Universities have promulgated these Title IX Complaint Procedures to address and resolve complaints of sex discrimination, sexual harassment, sexual assault and violence, and retaliation in as expeditiously as possible and within the requirements the policies and regulatory procedures set by the Boards of Trustees of the State Universities, the BHE, or the requirements of any applicable federal or state constitution, statute, regulation or Executive Order.

These Title IX Complaint Procedures may also be used to address complaints of domestic violence⁴, dating violence⁵, sexual assault⁶ and stalking⁷, as prohibited by the Universities pursuant to the Violence Against Women Act.

⁴In Massachusetts, "domestic violence" refers to abuse committed by a member of a family, a household, or an intimate partner against another member of the family, household, or against the intimate partner. "Abuse", the occurrence of one or more of the following acts: (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. "Family or household members" are 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) having 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 in consideration of 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 elapsed since the termination of the relationship. Mass. Gen. Laws c. 209A, § 1.

⁵ There is no specific statutory definition or crime of "dating violence" in Massachusetts other than what might exist under the ambit of Mass. Gen. Laws c. 209A.

The following Title IX Complaint Procedures may therefore be utilized by any person, including any University employee, student, applicant for employment or admission, or visitor to the University campus who believes that he or she treated improperly on one the bases set forth above, by an employee or student of the University, or by other persons having dealings with the institution, or retaliated against for filing a related discrimination complaint or participating in an investigation related to such a complaint.

The Universities will respond promptly and equitably to all claims or complaints filed pursuant to these Title IX Complaint Procedures, with the intention to adequately, promptly, and impartially resolve the complaint on an internal basis and to prevent any recurrence, and to correct any discriminatory effects. If any behavior violative of the Universities' policies is found, the Universities will take steps necessary to stop that behavior, prevent its recurrence, and remedy its effects on those impacted.

With the exception of a student who seeks to file a complaint against another student, any member of the University community or any applicant for admission or employment who believes that he or she has been a victim of sex discrimination, any form of sexual harassment, domestic violence or stalking may initiate a formal complaint as outlined in the Title IX Complaint Procedures, which are located at Appendix 3.

Any student who believes that he or she has been a victim of sex discrimination, any form of sexual harassment, domestic violence or stalking by another student must pursue a complaint through the individual campus's Student Conduct Process. Information about the applicable Conduct Process and Student Code of Conduct can be obtained by contacting the Student Affairs office or Dean of Students office on each campus.

A student who believes that he or she has been a victim of sex discrimination, any form of sexual harassment, domestic violence or stalking by a member of the campus community other than another student may file a complaint through the Title IX Complaint Procedures.

At any time, individuals have the right to file charges of unlawful discrimination with the appropriate government agency with or without first utilizing these Discrimination Complaint Procedures. Such agencies include:

⁶ Sexual assault is charged as indecent assault and battery in Massachusetts. It is defined as a crime that occurs when the offender, without the victim's consent, intentionally has physical contact of a sexual nature with the victim. Mass. Gen. Laws c. 265, § 13H.

⁷ In Massachusetts, stalking is a willful and malicious 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, or the making of a threat with the intent to place the person in imminent fear of death or bodily injury. Mass. Gen. Laws c. 266, § 43.

Office for Civil Rights
Boston Office
U.S. Department of Education
5 Post Office Square, 8th Floor
Boston, MA 02109-3921
Phone: 617-289-0111
Fax: (617) 289-0150
Email: OCR.Boston@ed.gov
Timeframe: Must file within 180 calendar days of alleged incident.

U.S. Equal Employment Opportunity Commission
John F. Kennedy Federal Building, Room. 475
Government Center
Boston, MA 02203-0506
617-565-3200
TTY: 617-565-3204
Timeframe: Must file within 300 calendar days of alleged incident.

Massachusetts Commission Against Discrimination
One Ashburton Place, Room. 601
Boston, MA 02108
617-727-3990 (x588 for TTY)
Timeframe: Must file within 300 calendar days of alleged incident.

Massachusetts Commission Against Discrimination
436 Dwight Street
Second Floor, Room 220
Springfield, MA 01103
(413) 739-2145
Timeframe: Must file within 300 calendar days of alleged incident.

INITIATING THE COMPLAINT PROCEDURE

A. Time Calculations

The Title IX Complaint Procedures are designed to promote the adequate, prompt, and impartial investigation and resolution of complaints.

Unless otherwise noted, the various steps of these procedures contain time limits that are measured in “working days.” For purposes of these procedures, the definition of the term “working days” shall be days when the administrative offices of the University are regularly open for business. Holidays, weekends, snow days, and other days when the University is closed for any other reasons will not be counted. In making a determination concerning the extension of time limits under these procedures, the Equal Opportunity Officer or other officer charged with the investigation of complaints under these procedures, the Senior Area Administrator

and/or the President will apply a standard of reasonableness, having regard, when appropriate, to academic recesses and semester breaks.

B. Role of Equal Opportunity Officer

Whenever an individual brings a potential case of sexual harassment, sexual assault or sexual violence to the attention of the Equal Opportunity Officer or other designated officer, s/he will provide assistance to the alleged victim by:

1. providing to the Complainant a copy of the Title IX Complaint Procedures and any other relevant documents, such as the Universities' Policy Against Sexual Harassment, Policy Against Discrimination, Discriminatory Harassment and Retaliation, or Equal Opportunity, Diversity and Affirmative Action Plan;
2. explaining the avenues of internal and external recourse that are available;
3. providing information about the applicable federal and state laws and regulations;
4. informing the complainant of the right to file charges with the police and/or the appropriate government agency, as well as the need to meet applicable time requirements for such filing;
5. providing the complainant, if requested and/or depending on the factual nature of the complaint, with information about his or her options for, and available assistance in, changing his or her working, academic or living situations, if such accommodations are reasonably available, regardless of whether the complainant chooses to make a report to campus police or local law enforcement;
6. explaining the University's Title IX Complaint Procedures;
7. providing the complainant with the contact information for the Title IX Coordinator(s)
8. providing the complainant, depending on the factual nature of the complaint, and/or upon request, with the contact information for counseling, health, mental health, victim advocacy and/or other services available for victims both on-campus and in the local community; and
9. providing assistance, if necessary, with regard to the complainant's completion of the Discrimination Complaint Form.

C. Acceptance of Complaints

Neither the receipt of a complaint nor the written acknowledgment of receipt by the designated office of the University will be deemed to be an admission of any violation of law or policy by any of the named parties or by the institution.

D. Confidentiality

Note that the University's responsibility is to ensure the safety of all students and employees on campus. Therefore, the University cannot guarantee that confidentiality can be maintained if such confidentiality would negatively impact the safety of others. The University will take steps to keep information as private as possible, but cannot guarantee confidentiality. Students seeking confidentiality may speak with medical professionals or clergy.

COMPLAINT PROCEDURES

The complaint procedures are provided to allow for a prompt and equitable resolution of allegations of sexual harassment, sexual assault, sexual violence, sex discrimination and/or retaliation as defined by the University's Policy. Note that the University cannot unnecessarily delay investigation of possible sexual assault or violence due to a corresponding criminal process or investigation by local law enforcement agency. Although the University's investigations may be delayed temporarily due to police fact-finding, once such fact-finding has concluded, the University must resume its investigations. The police fact-finding should not take more than between three and ten days.

Timeframe for Filing a Complaint

A person wishing to explore the possibility of resolving a complaint should request a meeting with the Equal Opportunity Officer or other designated office within a reasonable time. An individual filing a complaint or requesting mediation should do so within the timeframes below.

A formal complaint shall normally be filed **within sixty (60) working days** from the date upon which the complainant had knowledge or should have had knowledge of the alleged act(s) of which he or she complains. Where, however, the act complained of is one of a continuing nature, has a continuing effect, or, in the judgment of the designated person warrants proceeding, the time limit may be reasonably extended.

If the Equal Opportunity Officer or other designated officer, the Senior Area Administrator or the President believes that he or she is unable to make an objective judgment when a complaint filed under these procedures comes before him/her, then s/he will so advise the parties and the other two institutional officers, and will appoint a designee to serve as a replacement.

In the event that a complaint has not been resolved within sixty (60) days following its filing at any of the three steps below, either party may elect to have the matter considered at the next step of these Procedures

Step I: Equal Opportunity Officer or Designated Officer

The complainant shall file a Discrimination Complaint Form, accompanied by any pertinent supporting documentation, with the Equal Opportunity Officer or other designated officer. The complaint must contain, as essential elements, the signature of the complainant, the date signed, the prohibited basis on which the complaint is filed, and the alleged act(s) of sexual harassment, sex discrimination, sexual assault, sexual violence and/or retaliation. The names of any

witnesses and any appropriate documents should be attached to the complaint form. A sample complaint form can be found at the end of these Procedures.

The Equal Opportunity Officer or other designated officer will promptly consider the complaint and will, within thirty (30) working days of the filing thereof, follow the steps below:

A. Determination of Proper Filing. Determine whether the complaint has been filed in accordance with the provisions of these Complaint Procedures, and determine whether complaint alleges a violation of the Universities' Policy Against Sexual Harassment in Section VII of Universities' Equal Opportunity, Diversity and Affirmative Action Plan.

B. Investigation. Investigate the complaint by taking, at a minimum, the following steps:

1. providing a copy of the written complaint to the person accused;
2. requesting and reviewing the response of the person accused;
3. providing a copy of that response to the complainant if the accused provides a written response to the complaint;
4. reviewing relevant University policies and documents, and reviewing documents both parties;
5. interviewing persons identified by both parties as ones having information pertinent to the allegations;
6. interviewing other persons having information pertinent to the allegations;
7. collecting further evidence relevant to the investigation;
8. presenting the evidence to each party and considering any rebuttal; and
9. any such other steps as the Equal Opportunity Officer or designated officer believes are necessary.

C. Determination Based on Preponderance of the Evidence. On the basis of the documentation, interviews, and other relevant information gathered through the investigation, the Equal Opportunity Officer or designated officer will make a determination regarding whether the person accused violated University policy, using the preponderance of the evidence.

D. Statement of Findings and Recommendation. The Equal Opportunity Officer or designated officer will provide a written Statement of Findings and Recommendations to the parties, the Senior Area Administrator and the President. This Statement of Findings and Recommendation will be sent to the complainant and the accused on the same day.

If the Equal Opportunity Officer or other designated office determines that more than thirty (30) days are needed to complete Step I, s/he will notify the parties of the anticipated completion date of this Step.

E. Appeal Rights. If, upon receipt of the Statement of Findings and Recommendation, either party takes exception, he or she may appeal to Step II, by notifying the Equal Opportunity Officer (or other designated officer issuing the Statement of Findings and Recommendation) via a written Letter of Appeal and stating the basis of the Appeal within **ten (10) working days** of her/his receipt of the Statement of Findings and Recommendation. In such cases, a copy of the entire Step I record and the Letter of Appeal will be transmitted to the Senior Area Administrator, with a copy to the President.

F. When No Appeal is Taken. If no appeal has been filed, the Equal Opportunity Officer or other designated officer will pursue one of the following courses at the end of the ten (10) day period:

If no finding of violation has been made and/or no remedy has been recommended, the designated officer will issue a Statement of Closure to the parties, with a copy to the Senior Area Administrator and the President.

OR

If a finding of violation has been made, and if a remedy has been requested or recommended which must be affected by the Senior Area Administrator or the President, the designated officer will issue a Statement of Resolution and a Recommendation to Effect Remedy to the parties, the Senior Area Administrator and the President.

Step II: Senior Area Administrator or Designated Officer

Unless otherwise determined by the President, the Senior Area Administrator responsible for hearing appeals at Step II is the person who has overall responsibility for the supervision of the individual accused in the complaint at the time of the filing of the complaint, and who reports to the President. If the accused's supervisor is the President, the President will appoint a designee to serve in her/his stead. In some cases, the Senior Area Administrator may choose to appoint another high level administrator to serve as designee. For complaints arising between students in both the Day University and the Divisions of Graduate Education and Continuing Education and Special Programs, the President will designate the person/persons to serve as the Senior Area Administrator to hear appeals under Step II of these procedures.

The Senior Area Administrator or designee will promptly consider the complaint and will, within thirty (30) working days of the receipt of the Step I record and the appeal, follow the steps below:

A. Determination of Correct Filing. Determine whether the complaint and the Step II appeal have been filed in accordance with the provisions of these Complaint Procedures.

B. Review Records. Take the steps necessary to review the record and the appeal, investigate the complaint further if deemed necessary, make a preliminary determination on the matter and informally discuss it with both parties.

C. Offer of Hearing. Offer the non-prevailing party the opportunity for a hearing. Such hearing must be requested within ten (10) days of the offer. If the party requests such hearing, each of the parties will be accorded the following:

1. The right to receive written charges in advance of the hearing. The written charge is typically the complaint filed at Step I, but could include additional documentation as the Senior Area Administrator deems necessary or appropriate.
2. The right to have an advisor present to serve in an advisory role. No party is permitted legal representation at the hearing.
3. The right to have a response heard and considered.
4. The right to present documentary and testimonial evidence.
5. The right to pose to the Senior Area Administrator questions for the persons giving testimonial evidence. All questioning should be performed through the Senior Area Administrator; no party may question another person directly.
6. The right to rebut documentary and testimonial evidence.
7. The right to receive a written decision, which is a Statement of Findings and Proposed Remedy.

D. Statement of Findings and Proposed Remedy if No Hearing. If the non-prevailing party does not request a hearing, the Senior Area Administer will document his/her determination, using the preponderance of the evidence standard, in a Statement of Findings and Proposed Remedy. If the Senior Area Administrator determines that more than thirty (30) days are necessary, s/he will notify the parties of the anticipated completion date.

E. Statement of Findings and Proposed Remedy Following a Hearing. If a hearing is held, the Senior Area Administer will document his/her determination in a Statement of Findings and Proposed Remedy. If the Senior Area Administrator determines that more than forty-five (45) days are necessary, s/he will notify the parties of the anticipated completion date.

F. Appeal. If, upon receipt of the Senior Area Administrator's Statement of Findings and Proposed Remedy, either party takes exception, he or she may appeal to Step III, stating the basis of the appeal in writing, by notifying the Senior Area Administrator and the Equal Opportunity Officer or other designated Step I officer via a Letter of Appeal within ten (10) working days of receipt of the Statement of Findings and Proposed Remedy. In such cases, the Senior Area Administrator will transmit a copy of the entire Step I and Step II records, and the Letter of Appeal to the President.

G. Steps if No Appeal. If no appeal has been filed, the Senior Area Administrator will pursue one of the following courses at the end of the ten (10) day period with which either party is able to appeal:

If no finding of violation has been made and/or no remedy has been recommended, the Senior Area Administrator will issue a Statement of Closure to the parties, with a copy to the designated person and the President.

OR

If a finding of violation has been made and, if a remedy has been proposed which can be affected by the Senior Area Administrator, s/he will give effect to such remedy and will issue a Statement of Resolution to the parties, with a copy to the Equal Opportunity Officer or other designated Step I officer.

OR

If a finding of violation has been made and, if a remedy has been proposed which must be affected by the President, the Senior Area Administrator will issue a Statement of Resolution and a Recommendation to Effect Proposed Remedy to the parties, with a copy to the President and the Equal Opportunity Officer or other designated Step I officer.

Step III: The President

Unless the President is personally charged under these procedures, in which case the procedures under the Complaints Against Institutional Officers section of these procedures will apply, or disqualifies her/himself, the President will be the sole Step III Appeal Officer.

The President will promptly consider the complaint and will, within twenty (20) working days of receipt of the Step I and Step II records and the Letter of Appeal, take the following steps:

- A. Determination of Correct Filing. Determine whether the complaint and the Step III appeal have been filed in accordance with these procedures.
- B. Review Record. Take the steps necessary to review the record of the two preceding steps and the appeal.
- C. Remand, if Necessary. At his/her discretion, remand the case to the Senior Area Administrator or the Equal Opportunity Officer or other designated Step I officer for the purpose of further investigation or hearing.
- D. Final Determination. Make a final determination on the complaint of discrimination, using the preponderance of the evidence standard, and take whatever action he or she deems appropriate to the situation. A Notice of Final Resolution will be issued by the President to the parties, the Senior Area Administrator and the Equal Opportunity Officer or other designated Step I officer.

If the President determines that more than twenty (20) days are necessary, s/he will notify the parties of the anticipated completion date.

The President will be the final adjudicator under these procedures. Her/his decision will be binding with full recognition that, at any time, the complainant has the right to file charges with appropriate local, state and/or federal agencies.

COMPLAINTS AGAINST INSTITUTIONAL OFFICERS

If a complaint is directed against a Senior Area Administrator or the Equal Opportunity Officer or other designated Step I officer, the functions assigned to that person by these procedures will transfer to the President or her/his designee. Complaints directed against the President will be filed with the Chairperson of the Board of Trustees.

REMEDIAL ACTIONS

Should a Policy violation found to exist in any employment, educational or service decision, action, inaction, or practice within the University, all appropriate corrective and/or disciplinary actions will be taken under the direction of the President, subject to any applicable collective bargaining agreement or other policies or procedures of the University.

If the University finds that a violation of its Policy Against Sexual Harassment has occurred, it will take steps to prevent its recurrence and remedy its effects on those impacted. Possible remedies include, but are not limited to, the following:

1. providing an escort to ensure that the complainant can move safely between classes and activities;
2. ensuring that the complainant and perpetrator do not work in the same office or attend the same classes;
3. moving the complainant or perpetrator to a different office or residence hall;
4. providing counseling and/or medical services;
5. providing academic support services, such as tutoring; and
6. when necessary, providing remedies for the broader community, including trainings on sexual harassment for students, faculty, and state members.

RETALIATORY ACTION PROHIBITED

The University prohibits retaliatory action taken against persons who file claims, complaints, or charges under these Complaint Procedures, or under applicable local, state or federal statute, who are suspected of having filed such claims, complaints or charges, who have assisted or participated in an investigation or resolution of such claims, complaints or charges, or who have protested practices alleged to be violative of the sexual harassment policy of the University, the BHE, or local, state or federal regulation or statute. Such retaliation is recognizable under these procedures as well as under state and federal law. Retaliation, even in the absence of provable discrimination in the original complaint or charge, constitutes a violation as serious as proved discrimination under the original claim, complaint, or charge. Any person who believes he or

she has been retaliated against in this manner is encouraged to immediately file a claim or complaint under these procedures. The University will handle such complaints promptly and equitably.

RECORDKEEPING

A record of any claim or complaint submitted for consideration in accordance with these Complaint Procedures will be kept on file in the office of the Equal Opportunity Officer. This record will include a record of all steps of these procedures and will be the only file so maintained. The information contained in such files will be considered confidential and will be accessed/used only for purposes of the enforcement of non-discrimination policies and by appropriate staff.

The record will contain at a minimum:

1. a copy of the complaint;
2. a copy of any written response to the complaint from the accused;
3. copies of all witness statements;
4. any documentary evidence or written statements presented by the parties;
5. copies of any letters of appeal;
6. copies copy of the final disposition/resolution at each Step; and
7. documentation of the transmittal of the final disposition/resolution at each Step to the parties.

[SAMPLE]

TITLE IX COMPLAINT FORM

Name: _____

Address: _____

Phone Number: _____

E-mail Address: _____

Person against whom the allegation is made: _____

Basis of alleged complaint (circle one or more as appropriate): sex discrimination, sexual harassment, sexual assault, sexual violence, domestic violence, stalking.

Basis of alleged retaliation (e.g., filing of an earlier complaint).

Please describe below the alleged discriminatory, discriminatorily harassing and/or retaliatory acts (attach additional pages, as well as list of witnesses and any appropriate documents as necessary):

I affirm that the above complaint with attached ____ pages is true to the best of my knowledge, information and belief. I understand that a copy of this document may be disclosed to the person(s) against whom this complaint is made, to his or her representatives and to appropriate administrative personnel.

I understand that, depending on the nature of my complaint, I may have the right to file this complaint with the Massachusetts Commission Against Discrimination, the U.S. Equal Employment Opportunity Commission, or the Office for Civil Rights at the U.S. Department of Education. I acknowledge that I have been advised of the appropriate agency and the necessary time frames to file any such complaint.

Signature of Complainant

Date

APPENDIX 4

GUIDELINES FOR CAMPUS POLICIES AGAINST DISCRIMINATION, DISCRIMINATORY HARASSMENT AND RETALIATION

The State Universities have promulgated a policy prohibiting discrimination and harassment based on race, color, religion, creed, national origin, age, disability, gender, sexual orientation, gender identity, gender expression, genetic information, and veteran and marital status, and affirming their collective commitment to a diverse learning and living environment where intolerance and bigotry are looked upon with disfavor. With this Policy, the Universities call upon the individual campuses to develop environments that embrace the accords of civility and human dignity as preconditions to the establishment of a community and that achieve optimum utilization of its human and intellectual resources.

These Guidelines are established in order to provide guidance to the individual campuses in their effort to develop and implement a campus policy consistent with the State Universities' policy. The Guidelines consist of two components, required elements and suggested activities.

REQUIRED ELEMENTS

All individual University policies against discrimination and discriminatory harassment on the basis of membership in a protected class, particularly including those policies addressing discrimination and/or discriminatory harassment based on race, religion, and national origin, must contain certain elements, including:

1. A firm, unequivocal statement condemning discrimination and embracing multicultural/multiracial pluralism.
2. Procedures for the periodic and wide dissemination and publicity of the written policy.
3. A program of educational activities designed to enlighten faculty, librarians, administrators, staff and students with regard to:
 - developing an appreciation for diversity and pluralism;
 - developing greater awareness of the multiple ways in which racial, religious or cultural insensitivity and hostility may be manifested;
 - understanding ways in which the dominant society manifests and perpetuates racism; and
 - learning ways in which to prevent and combat racial, religious and cultural insensitivity and intolerance.
4. Determination of strategies and efforts to be undertaken for the purpose of institutional analysis to reveal institutional factors which give rise to racism and other forms of intolerance, insensitivity and discriminatory actions against members of

- protected classes. Remedial actions will be developed for all revealed institutional factors.
5. Incorporation of the spirit of this Policy into the official campus code of conduct for students.
 6. Specific procedures of recording reported incidents of racial, cultural or religious harassment or violence, events and related confrontations. Confidentiality will be afforded any reporting individual wishing to remain anonymous, but will be offered only insofar as it does not violate the rights of the respondents or charged parties.

SUGGESTED ACTIVITIES

Each University must determine the specific programs and activities it will carry out in the process of implementing the policy objectives. These activities should include those that would address deterrence, education, institutional analysis, monitoring, resource development, counseling, and sanctions for unlawful and/or prohibited behavior. What follows below represents many suggested activities, which the Universities might consider undertaking in addition to those required above. This list is not intended to represent an exhaustive set of activities.

1. Develop approaches to incorporate racial and cultural sensitivity training as a component of staff and faculty development efforts;
2. Apprise incoming students of the policy and expected standards of behavior during orientation sessions;
3. Include a synopsis of the policy with all letters of acceptance sent to students;
4. Incorporate information on the policy during all student and employee recruitment efforts - these activities help make a college more attractive to students and employees interested in a safe environment;
5. Encourage and support research and scholarly activity which examines cultural diversity, racism, and strategies for combating racism;
6. Develop residential unit programs for promoting living and learning environments that foster interracial and intercultural awareness and sensitivity - films, speakers, workshops and forums within the dormitories help facilitate these promotions; and
7. Develop mechanisms to assist the institution in monitoring the racial climate at the University and identify areas needing remedial attention.

APPENDIX 5

ADVISORY COMMITTEE FOR EQUAL OPPORTUNITY, DIVERSITY AND AFFIRMATIVE ACTION

The President of each University shall appoint an Equal Opportunity, Diversity and Affirmative Action Advisory Committee. This Committee shall consist of members representing the respective campus constituencies of administration, faculty and librarians, and staff, and should attempt to include students. The Committee shall include appropriate representation of persons of color, women and persons with disabilities. Each President shall consult with his or her Equal Opportunity Officer with respect to these appointments. The Equal Opportunity Officer of each University shall be an ex-officio member of the Committee.

PURPOSE

The purposes of the Advisory Committee are:

1. to serve as an advisory group to the President;
2. to make recommendations to the President as well as to respective campus and governance committees concerning effective implementation of the Universities' Equal Opportunity, Diversity and Affirmative Action Plan;
3. to evaluate institutional compliance with respect to all equal opportunity, diversity, and affirmative action programs and to recommend appropriate strategies to the President; and
4. to keep informed as to federal and state laws and regulations as well as institutional policies impacting equal opportunity, diversity, and affirmative action.

RESPONSIBILITIES

The responsibilities of the Advisory Committee include, but are not limited to, the following:

1. to establish its own rules of order with respect to election of officers, meeting times, quorum restrictions, etc.;
2. to furnish a report of its activities and recommendations to the President upon her/his request, but at least annually;
3. if the Equal Opportunity Officer deems it appropriate, to appoint a member to sit on a search committee as a non-voting member to assure that the search committee complies with affirmative action/equal opportunity policies and regulations; and
4. each University will develop its own policies with respect to additional functions or tasks which may be assigned to this Committee and with respect to Committee members sitting on search committees.