



## **Title IX Incident – Investigative Policy and Procedure**

### **POLICY 02.01.09**

Effective Date: May 30, 2013

Date Last Revised: November 12, 2015

The following are responsible for the accuracy of the information contained in this document

**Responsible University Officer:**  
Vice Chancellor for Diversity and Inclusion

**Responsible Office:**  
Diversity and Inclusion

**Contact** (508) 856-2179

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### **Policy Statement**

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It is the policy of the University of Massachusetts Worcester (“UMW”) [the University of Massachusetts Medical School (“UMMS”)] to comply with Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. §§ 1681 et seq., and its implementing regulations, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. Sexual violence refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol or due to an intellectual or other disability. A number of acts may fall into the category of sexual violence, including rape, sexual assault, sexual battery, non-consensual video or audio taping of sexual activity, domestic violence, dating violence, stalking incidents and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

The language, terms and requirements of this Policy supersede and supplant any inconsistent or conflicting language in any other UMW policy. The UMW employee to whom claims shall be reported under this Policy and who shall be responsible for administering this Policy is UMW’s Title IX Coordinator – as designated by UMW’s Provost.

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### **Reason for Policy**

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UMW is committed to providing a safe learning environment for all its students. Sexual harassment of students, including sexual violence, interferes with students’ rights to receive an education free from discrimination and, in the case of sexual violence, is a crime. As a recipient of federal funds, UMW is required to comply with Title IX of the Higher Education Amendments of

1972, 20 U.S.C. §§ 1681 et seq. Pursuant to this Code, UMW is required to take action when it learns of an incident of sexual harassment and/or sexual violence, including eliminating the harassment, preventing its recurrence, and addressing its effects. This policy is designed to comply with these requirements, and in so doing, providing a fair process for both the complainant and alleged perpetrator in claims of sexual harassment and sexual violence.

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### **Entities Affected By This Policy**

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This policy applies to the management and process for responding to Title IX incidents of sexual harassment and sexual violence suffered by UMW students by the acts/conduct of other UMW students, UMW employees, or other UMW personnel.

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### **Scope**

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This policy applies to all **Title IX-related incidents of sexual harassment and sexual violence suffered by UMW students** in any UMW academic, educational, extra-curricular, or other UMW-managed program and activity, regardless of whether the alleged conduct occurs on or off UMW property.

The reporting of an incident of sexual harassment and/or sexual violence may be initiated by a Complainant or their representative. In addition, and regardless of whether such a complaint is filed, if UMW, through its employees, knows, or reasonably learns about possible incidents of sexual harassment and/or sexual violence, they must report the harassment/violence to UMW's designated Title IX Coordinator, who will promptly investigate to determine what occurred and take appropriate steps to resolve the situation. The Title IX Coordinator will provide the Complainant and the Accused with a description of medical, pastoral and counseling services available. The Title IX Coordinator will discuss with the Complainant interim and permanent steps UMW will take to stop the harassment, remedy the harassment and prevent recurrences, including specific discussions with the Complainant about academic, extracurricular activities and on-campus dining arrangements of the involved parties to determine if adjustments in schedules are necessary, also explaining that any adjustments made will be designed to minimize the burden on the Complainant's educational program.

To the extent permitted by law, UMW will protect the privacy of all parties involved in its handling of alleged or suspected incidents of sexual harassment and/or sexual violence, but provided it does not interfere with UMW's ability to conduct its investigation and take any corrective action deemed appropriate. Also, in cases involving potential criminal conduct, UMW shall determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.

If the report of sexual harassment and/or sexual violence is initiated by someone other than the Complainant, UMW should inform and obtain the Complainant's consent before beginning the investigation. If the Complainant requests confidentiality or asks that the complaint not be pursued, UMW should take all reasonable steps to investigate and respond to the complaint consistent with such requests. If a Complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, UMW shall inform the Complainant that its

ability to respond to the alleged incident may be limited. If the Complainant continues to ask that their name or other identifiable information not be revealed, UMW will evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. If UMW determines that in responding to that broader responsibility it cannot ensure such confidentiality, UMW shall so inform the Complainant. If UMW is ultimately unable to take disciplinary action against the alleged harasser because the Complainant insists on confidentiality (and UMW has decided to abide by this request), UMW nevertheless should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

UMW will not pursue disciplinary action against (i) a student who claims to be a victim of sexual assault in connection with reporting that assault; or (ii) students named as witnesses. Furthermore, it is a violation of UMW policy for a UMW student to retaliate against either (i) any student making a complaint of sexual harassment and/or sexual violence; or (ii) any person cooperating in an investigation of same. For these purposes, “retaliation” includes intimidation, threats, harassment, and other adverse action threatened or taken against any such Complainant or third party. Any such retaliation should be reported to the Title IX Coordinator and may result in disciplinary action independent of the sanction or interim measures imposed in response to the original allegations.

In addition to Title IX, UMW is also obligated to comply with the Jeanne Clery Disclosure of Campus Security, Policy and Campus Crime Statistics Act (20 U.S.C. 1092 – “Clery Act”), the obligations of which, and UMW’s compliance with such, are addressed in other UMW policies, procedures and guidelines. UMW shall comply with the obligations of both Title IX and the Clery Act. In doing so, the requirements of the Family Educational Rights and Privacy Act (20 U.S.C. 1232g; 34 CFR 99 – “FERPA”) have been amended to allow institutions such as UMW to disclose to the victim of an alleged crime of violence the results of a disciplinary proceeding brought against a student accused of the crime, without the prior consent of the Accused. This disclosure is limited to the alleged victim, who should be informed that the information may not be disclosed to the public generally.

Further, UMW will, upon written request, disclose to the alleged victim of a crime of violence or a non-forcible sex offense, the results of any disciplinary hearing conducted by UMW against the student who is the alleged perpetrator of the crime or offense. If the alleged victim is deceased as a result of the crime or offense, UMW shall provide the results of the disciplinary hearing to the next of kin, if so requested.

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## **Responsibilities**

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UMW’s Provost shall designate a UMW Title IX Coordinator as having primary responsibility for receiving and investigating complaints of sexual harassment and sexual violence, as defined under Title IX. The Title IX Coordinator is responsible for conducting prompt and thorough investigations.

Pursuant to Title IX, and with the Complainant’s consent, mediation may be used to address and potentially resolve some types of **sexual harassment** claims. However, mediation shall not be used as an option to resolve **sexual assault** complaints.

Following its receipt of a report of sexual harassment and/or sexual violence, UMW shall notify the victim of the right to file a criminal complaint with the appropriate law enforcement agency and/or through UMW's Department of Public Safety, and UMW shall not dissuade a victim from doing so – either during or after UMW's internal Title IX investigation.

If a Title IX complaint is made to UMW's Department of Public Safety, that Department will notify the Complainant that in addition to filing a criminal complaint, they also have the right to file a complaint with the school's designated Title IX Coordinator. Further, but only if the Complainant consents, this Department shall report the incident of such sexual harassment and/or sexual violence to the Title IX Coordinator. The administrative investigation conducted by the Title IX Coordinator is distinct from the criminal investigation and flows from UMW's obligation under Title IX to ensure that it provides a safe environment for all students. Accordingly, regardless of the option chosen by the victim, UMW will initiate an administrative investigation under Title IX.

A criminal investigation into allegations of sexual harassment and/or sexual violence does not relieve UMW of its duty under Title IX to resolve complaints promptly and equitably. Although UMW may need to temporarily delay the fact-finding portion of a Title IX investigation while law enforcement authorities are gathering evidence, once notified that these authorities have completed its gathering of evidence (and not necessarily at the conclusion of the investigation or filing of any charges), UMW must promptly resume and complete its fact-finding for the Title IX investigation.

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## **Procedures**

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The procedure for administering and responding to **Title IX-related incidents of sexual harassment and/or sexual violence suffered by UMW students** includes the following five steps:

1. Receipt of a Complaint / Report
2. Investigation
3. Hearing
4. Notification
5. Right to Appeal

### **Step 1: Receipt of a Complaint / Report**

The filing or reporting of a Title IX complaint of sexual harassment and/or sexual violence should be done as soon as possible following the occurrence or receipt of knowledge of the incident in order to maximize UMW's ability to obtain evidence and conduct a thorough, impartial and reliable investigation. Any lengthy delay in submitting such a complaint or report may adversely impact UMW's ability to conduct a thorough investigation.

A formal complaint or report must be filed for UMW to proceed with an investigation. This shall be accomplished by the submission of a written and signed "complaint" or "report" by the Complainant or reporter to the Title IX Coordinator. If the "complaint" or "report" is provided orally to the Title IX Coordinator, it shall be reduced to writing by the Coordinator and then signed

by the Complainant or reporter. This formal complaint/report shall provide as much information as possible and shall include the following:

- Name of the Complainant
- Name of the Accused
- Date(s) and time(s) of the occurrence(s)
- Location of the occurrence(s)
- Detailed description of the occurrence(s)
- Name(s) of other individual(s) who have knowledge of the occurrence(s)
- Remedy or relief being sought
- Any other information the Complainant believes to be relevant

UMW reserves the right to suspend or place on immediate administrative leave (with or without pay) any member of the campus community alleged to have committed a Title IX-related act of sexual harassment and/or sexual violence, or to take any other interim measures UMW deems appropriate, pending the outcome of an investigation and/or disciplinary proceedings. As stated earlier in this Policy, such interim measures may include, but are not limited to, removing a student from campus and/or current classes, modifying course/activity schedules, and issuing a “no contact” order.

## **Step 2: Investigation**

Upon receipt of a sexual **assault** complaint or report, the Title IX Coordinator shall provide to the complainant a written notice describing the options of (i) pursuing a criminal complaint with a law enforcement agency, (ii) pursuing UMW’s investigation and disciplinary process, or (iii) pursuing both options at the same time – also explaining the potential consequences of pursuing both options (i.e. the possible temporary deferral of UMW’s investigation and disciplinary process). The Title IX Coordinator will obtain a written acknowledgement from the Complainant of which option(s) the complainant wishes to pursue – resulting in the following actions:

1. If the complainant elects to pursue a criminal complaint exclusively, the Title IX Coordinator will request the appropriate prosecutor’s office to immediately advise UMW of its decision on whether or not to prosecute such a complaint. The Title IX Coordinator will maintain documentation of the date of the deferral and request to the prosecutor’s office.
2. If the prosecutor’s office declines prosecution, the Title IX Coordinator will provide written notice to the Complainant of the decision of the prosecutor’s office and resume its investigation and disciplinary process as appropriate. The Title IX Coordinator will maintain documentation of the date that the process was resumed.

Once an investigation is commenced, the Accused Party will be notified in writing of the allegations made against him/her, and that an investigation is underway. The Title IX Coordinator shall provide both Parties (Complainant and Accused) separate opportunities to fully discuss the alleged incident in the presence of one (1) advisor or support person. This advisor / support person is defined as any person selected by a Party involved in the Title IX process to advise and/or support them during the process. Such advisors (including attorneys, if so chosen by a Party) may

only act in an advisory capacity and may not speak on behalf of the Party or otherwise participate in any meetings or hearings. The Parties shall have an equal opportunity to provide the name and contact information of any relevant witnesses as well as any other evidence. The Title IX Coordinator shall make a good-faith effort to contact such witnesses and obtain information about the incident. If the Title IX Coordinator learns, or is made aware of the existence of other potentially related documentary evidence, such as police or incident reports, the Coordinator shall make a good-faith effort to obtain same.

The completed investigative report will be provided to the Hearing Committee within sixty (60) days, if not sooner. For good cause, this time deadline may be extended in order to complete a compelling aspect of the investigation or if there has been an unavoidable delay in the ability to complete the investigation.

Police investigations may be useful for fact-gathering; but because the standards for criminal investigation are different, police investigations are not determinative of whether the alleged sexual violence triggers obligations under Title IX. Conduct may constitute unlawful sexual harassment and/or sexual violence under Title IX even if police may not have sufficient evidence of a criminal violation.

Both parties shall have similar and timely access to any information that may be used at the Hearing. Accordingly, the Title IX Coordinator shall advise each party that if they intend to present documents / witnesses at the Hearing, they must provide the Title IX Coordinator, no fewer than ten (10) days prior to the Hearing, with copies of such documents and a list of such witnesses, which documents / information shall be forwarded by the Title IX Coordinator to the other party.

### **Step 3: Hearing**

The Provost shall appoint three members to serve on a Hearing Committee. The appointed committee members shall have no prior involvement with, or relationship to, the allegations or any direct relationship with the Complainant or the Accused. Hearing Committee members shall receive training by the Associate Vice Chancellor of Management (AVCM) or other similarly situated UMW employee (who will also serve as an ex-officio and non-voting member on the Hearing Committee).

At the outset of the Hearing, the designated Title IX Coordinator shall present the case to the Hearing Committee. Committee members may inquire of the Title IX Coordinator any aspect of the investigative report.

During the Hearing the Complainant and the Accused shall have the following rights:

#### **Rights of Complainant**

- The opportunity to be accompanied by one (1) advisor / support person (as this term is defined above).
- The opportunity to testify on one's own behalf.

- The opportunity to present witnesses who can speak about the alleged conduct at issue (subject to the 10-day notice requirement).
- The opportunity to present other documentary evidence on one's own behalf (subject to FERPA and other applicable laws/regulations and the 10-day notice requirement).
- The opportunity to comment on any documents submitted by the Accused.
- The right to be informed of the outcome of the hearing or other proceeding.
- The opportunity to appeal the outcome of the hearing or other proceeding.
- Alternative arrangements will be made for Complainants who do not want to be present in the same room as the Accused during the hearing.

#### Rights of Accused

- The opportunity to be accompanied by one (1) advisor / support person (as this term is defined above).
- The opportunity to testify on one's own behalf.
- The opportunity to present witnesses who can speak about the alleged conduct at issue (subject to the 10-day notice requirement).
- The opportunity to present other documentary evidence on one's own behalf (subject to FERPA and other applicable laws/regulations and the 10-day notice requirement).
- The opportunity to comment on any documents submitted by the Complainant.
- The right to be informed of the outcome of the hearing or other proceeding; and
- The opportunity to appeal the outcome of the hearing or other proceeding.

The Committee may ask questions of the Complainant, the Accused, any witness and the Title IX Coordinator. However, the Complainant and the Accused may not question or cross-examine each other, the Title IX Coordinator, or any witness.

The Department of Education's Office of Civil Rights (OCR) has interpreted Title IX to require schools to evaluate evidence of alleged sexual harassment and sexual violence under the *preponderance of the evidence* legal standard (i.e., it is more likely than not that sexual harassment or sexual violence occurred).

The Hearing Committee shall have the authority to make recommendations for disciplinary actions. The decision by the Hearing Committee is based on a majority vote. Disciplinary actions for UMW students may include, but are not limited to, written warning, suspension and expulsion. Disciplinary actions for UMW employees and other UMW personnel shall be governed by, and consistent with other applicable UMW policies, procedures, guidelines or Agreements.

#### **Step 4: Notification**

Following the hearing, the Committee will provide written notification of the outcome to the Complainant and the Accused (i.e., whether sexual harassment and/or sexual violence was found to have occurred), and if so, what disciplinary action (if any) is being recommended. This written notification of outcome must be delivered within ten (10) days after the conclusion of the hearing, unless there are exigent circumstances and UMW determines that additional time is required. This notice shall be issued concurrently to both parties to the extent possible. The Committee may also

disclose to the Complainant additional information about any sanctions or corrective actions taken against the Accused that relate directly to the Complainant (e.g., a “no contact” order). In no event will the Complainant be required to abide by a nondisclosure agreement that would prevent disclosure of the outcome.

#### **Step 5: Right to Appeal**

Once written notification of the hearing’s outcome has been delivered, both the Complainant and the Accused have the opportunity to appeal the outcome. If the Accused is a UMMS employee or other UMMS personnel who has appeal/grievance rights under another UMMS Policy or Agreement, that other UMMS Policy or Agreement shall apply and not this Section. In all other situations, an appeal must be submitted in writing to the AVCM within ten (10) calendar days of delivery of the outcome. The appeal must set forth, with as much specificity and detail as possible, the grounds upon which the appeal is based. By way of example, the appellee may allege an incomplete or non-thorough investigation and/or that the Hearing Committee’s decision was not supported by the preponderance of evidence. The AVCM will forward the Appeal to the Provost. The Provost will be provided the Investigation report and any supporting materials, any other documentary evidence introduced at the Hearing, and the Hearing Committee’s decision. Neither the Complainant nor the Accused will be entitled to a hearing in connection with the appeal, but the Provost, in his/her discretion, may request written submissions from either party. Both parties shall be informed in writing of the outcome of any appeal within fourteen (14) days of the date by which all requested information is received by the Provost, unless the school determines that additional time is required.

The Provost’s decision is final.

UMW’s AVCM or their designee shall maintain documentation of these proceedings, which may include the Investigation report, written evidence submitted by either party, a list of any witnesses who provided testimony (orally or through written statements) and the decisions of the Hearing Committee and any Appeal.

In the event a Title IX complaint of sexual harassment and/or sexual violence is made against the UMW Chancellor, any Executive Vice Chancellor, Provost, Dean, Vice Chancellor for Diversity and Inclusion, Associate Vice Chancellor for Management, or the Title IX Coordinator, the above “Procedures” shall continue to be followed but with the following exceptions:

1. The filing or reporting of the Title IX complaint of sexual harassment and/or sexual violence shall be made (or referred) to the University of Massachusetts’ Office of General Counsel (OGC).
2. The OGC shall retain outside counsel to conduct the “Investigation.”
3. Excepting the investigation, all other duties of the Title IX Coordinator shall be assumed by the University of Massachusetts’ Chief Human Resources Officer, who will also appoint the three-person Hearing Committee.





4. Any Appeal of the Hearing Committee's "decision" shall be filed with the OGC for transmission to the University of Massachusetts' Director of the Office of Administration and Finance, who shall decide any such Appeal.
5. The OGC shall be available to assist in the management of all these events.

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**Approvals**

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 _____ Robert E. Jenal Executive Vice Chancellor for Administration & Finance	<u>11.13.15</u> Date
 _____ Terence R. Flotte, MD Dean, Provost and Executive Deputy Chancellor	<u>11/13/15</u> Date

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**Forms / Instructions**

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In support of this policy, the following forms are included:

Complaint Form

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**Appendices**

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In support of this policy, the following appendices are included:

**Name**

**Number**