



Fitchburg State University Police Department

Subject: PROHIBITION OF UNLAWFUL HARASSMENT		General Order 4.1.2
Reference: IACLEA: 4.1.2 MPAC: 26.1.3		
Effective Date: April 14, 2020	Review Date: February 8, 2022	
By Order of: Michael J. Cloutier, Chief of Police		

PURPOSE:

This directive exists to familiarize employees with applicable legal guidelines. It provides those who believe that they are victims of harassment, sexual harassment, or discrimination with a procedure for making the employer and authorities aware of the allegation and providing for an attempt to remedy the situation. In some cases criminal prosecution where appropriate.

POLICY:

The Fitchburg State University Police Department shall promote and maintain a working environment free from harassment, sexual harassment, and discrimination.

Investigators of sexual harassment complaints will provide victims with current reference information for reporting to additional entities if they so desire. The Department recognizes, supports, and encourages adherence to applicable University policies, State, and Federal laws.

DEFINITIONS

A. 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 (facially neutral practices that fall more harshly on one group than another and cannot be justified by business necessity) or disparate treatment (treatment of an individual that is less

favorable than treatment of others based on discriminatory reasons). A single act of discrimination 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 or parental status, or both; discrimination against a transgender individual might be based on sex or sexual orientation.

B. Harassment:

Any conduct that denigrates or shows hostility towards an individual or individuals because of his/her race, color, religion, creed, national origin, sex, sexual orientation, ancestry, age, mental or physical disability, political belief or affiliation, veteran status, gender identity and expression, genetic information, or other such category protected under law that:

1. Has the purpose or effect of creating an intimidating, humiliating, hostile or offensive work environment; or
2. Has the purpose of unreasonably interfering with an individual's work performance.

C. Sexual Harassment:

Unwelcome sexual contacts such as sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such actions:

1. Are explicitly or implicitly made terms of employment or the basis for employment decisions;
2. Have the purpose or effect of interfering with work performance; or
3. Have the purpose or effect of creating an intimidating, hostile, humiliating, or sexually offensive work environment.
4. Under Title IX guidelines, harassment is considered to be conduct that creates an impermissible hostile environment that interferes with one's ability to participate in a school program.

NOTE: It is not necessary to meet the threshold of sexual harassment, as defined by law, to be considered a violation of this directive. Massachusetts General Laws, Chapter 151B § 3A, regards harassment as "unlawful discrimination because of race, color, religious creed, national origin, ancestry or sex."

D. Harassment may include, but is not limited to:

1. Repeated unwanted sexual flirtations, advances, or propositions;
2. Continued or repeated verbal abuse or innuendo of a sexual nature;
3. Uninvited physical contact such as touching, hugging, patting, brushing, or pinching;

4. Verbal comments of a sexual nature about an individual's body or sexual terms used to describe an individual;
5. Display of pictures, posters, or cartoons that a reasonable person would find offensive or sexually suggestive;
6. Continued or repeated jokes, language, epithets, or remarks of a sexual nature;
7. Prolonged staring or leering;
8. Making obscene gestures or suggestive or insulting sounds;
9. Demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment or academic status or promises of preferential treatment;
10. Indecent exposure.

Although many of these situations may not rise to the level of criminal activity based on Massachusetts General Law, they still require police to inform the complainant (if a student or employee) of their right to report the incident(s) to the Title IX Coordinator.

E. Sexual Harassment Victims

1. Victims of sexual harassment can be:
 - a. Of the same or different gender as the harasser;
 - b. A third person who is not the intended target of the harassment.
2. The harasser can be:
 - a. Of either gender;
 - b. Any employee, student, vendors, or contractors.

PROCEDURE

The Fitchburg State University Police Department prohibits any sexual or other unlawful harassment. Harassment includes creating an intimidating, hostile, or offensive work environment.

- A. All allegations made of such activity will be promptly reported to the Chief of Police who will notify and seek guidance from the Office of Human Resources. If referred back to the Police Department by Human Resources for investigation, the allegation will be thoroughly investigated by the department according to **General Order 4.2.1 Compliant Investigations**.
- B. A full list of unlawful behavior, definitions, reporting options, and rights can be found in the ***University's Equal Opportunity, Diversity, and Affirmative Action Plan***, which is

available to the entire university community through the Office of Human Resources, and as part of the University's Annual Security Report.

- C. Individuals who are victimized by harassment, sexual harassment, or discrimination should be informed of the various remedies available to them, which includes the filing of a complaint with:
1. the Police Department,
 2. the Dean of Students Office (for undergraduates),
 3. the Title IX Coordinator
 4. the Office of Human Resources
 5. State and Federal administrative agencies, and/or State and Federal courts.

Liability and Sanctions

- A. Any employee found to have engaged in harassment, sexual harassment, or discrimination in violation of this directive is **subject to disciplinary action up to and including dismissal from employment.**
- B. Employees may be **personally liable** if they engage in harassing, sexually harassing, or discriminatory behavior.
- C. Supervisors may potentially be **personally liable** if they **knew or should have known** about incidents of sexual harassment and did not take appropriate corrective action.
- D. The Department may not be held responsible for harassment, sexual harassment, and discrimination cases if it can show that it took prompt and appropriate corrective action.
- E. Any individual alleging sexual harassment will be assisted by this department and all appropriate resources will be offered to the victim including criminal complaint when appropriate and university sanctions as determined by university administrators (i.e. Dean of Students, Title IX Coordinator, Human Resources).

Standards of Proof

The standard of proof that sexual harassment has caused distress for a victim is the victim's reasonable objective belief that such conduct has caused interference for them, or with their employment.

- A. The standard shall incorporate the totality of the circumstances including the severity of the conduct and its pervasiveness.
- B. Sexual harassment does not depend upon the victim who has suffered an actual economic injury as a result of the harasser's conduct.

- C. For example, improper sexual advances that do not result in the loss of a promotion by the victim, or the discharge of the victim, may nonetheless constitute sexual harassment, where such conduct interferes with the victim's work or creates a harmful or offensive work environment.
- D. The sexual harassment of students, including sexual violence, interferes with the student's right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Complaint Procedure

- A. **Employees** of this department shall report cases of harassment, sexual harassment, or discrimination:
 - 1. To a supervisor, who shall assist the reporting party in immediately reporting the complaint to the Chief of Police or;
 - 2. Directly to the Chief of Police,
 - 3. Directly to Human Resources
- B. **The Chief of Police, or designee**, shall respond promptly to the complaint, and follow proper reporting and investigating procedures.
- C. Upon receipt of a complaint of harassment or discrimination, supervisors shall advise the Chief of Police.
- D. Sexual harassment complaints shall be handled in the manner prescribed by the University's Equal Opportunity, Diversity, and Affirmative Action Plan.
- E. **NOTE:** In instances of any type of harassment, it is permissible to report such allegations directly to the Chief of Police, outside of the normal chain of command.

Complaint Procedure Option

Employees and students may also file a complaint with any of the following administrative agencies:

Office of Diversity and Equal Opportunity
Division of Human Resources
One Ashburton Place, Room 213
Boston, MA 02108-1516
Telephone: 617-727-7441
www.mass.gov/hrd

U.S. Equal Employment Opportunity Commission
JFK Federal Building, 475
Government Center
Boston, MA 02203
Telephone: 617-565-3200
<http://www.eeoc.gov/boston/index.html>

Responsibilities

A. Supervisors shall:

1. Aggressively monitor the workplace to detect and prevent harassment, sexual harassment, and discrimination.
2. Take appropriate corrective action to stop all types of harassment, sexual harassment, and discrimination.
3. Assist any employee in filing a complaint, or obtaining information on applicable sexual harassment policies and procedures.
4. Immediately report incidents of harassment, sexual harassment or discrimination to the Internal Affairs Bureau.
5. When a student is a complainant, ensure information is made available that a report to the university through the Title IX Coordinator is another option.

B. The Designated Internal Affairs Investigator shall:

1. Make themselves readily available to all employees and supervisors.
2. Attend available training, assess training needs, and in conjunction with the Chief or designee, arrange for training of other employees.
3. Receive and investigate reports of harassment, sexual harassment or discrimination confidential and expeditious manner.
4. Maintain confidential, accurate, and current records of reports of harassment, sexual harassment or discrimination.
5. In all cases, make a record of complaints received.
6. Submit all completed cases; whether resulting in a finding, withdrawal or referral; to the Chief for review and approval.
7. Regardless of determination or disposition, the basis of complaints may still be deemed a violation of other rules of conduct, orders, or written directives, and addressed as such.

C. All Employees

1. Shall not engage in harassing, sexually harassing, or discriminatory behavior.
2. Shall not create an intimidating, hostile, or offensive work environment
3. Shall cooperate in an investigation of harassment, sexual harassment or discrimination.

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4. Shall actively participate in the Department's efforts to prevent and eliminate harassment, sexual harassment, or discrimination.

Retaliation

1. Any retaliation against any individual who has complained about harassment, sexual harassment, or discrimination and any retaliation against individuals for cooperating with an investigation of harassment, sexual harassment or discrimination complaint is **unlawful** and shall not be tolerated.
2. No employee will be disciplined, retaliated against, or experience any adverse consequences from bringing any allegations of harassment to the attention of a department supervisor. In cases of reporting harassment occurring within the department, a department member may step out of the chain of command, without fear of discipline or adverse consequences.

Training

All department members shall receive initial training upon hire, annual training in harassment, workplace harassment, and sexual harassment, and the standards established by this policy. Such training shall include:

1. The dissemination of this policy to all employees;
2. Instruction in reporting all harassment;
3. Biennial Supplemental training in the form of Roll Call or In-service Training;
4. Supervisors shall be trained initially upon promotion and retraining at least every two years, to monitor employee conduct to ensure that the standards of this policy are being carried out by employees under their supervision
5. The Accreditation Manager will reissue the order to all employees on an annual basis and employees are required to sign an acknowledgment of receipt.

IACLEA 4.1.2 b/ MPAC 26.1.3

Approval:



Chief of Police



Date