



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

September 29, 2021

Kumble R. Subbaswamy  
Office of the Chancellor  
University of Massachusetts – Amherst  
374 Whitmore Building  
Amherst, Massachusetts 01003  
By email: [chancellor@umass.edu](mailto:chancellor@umass.edu)

Re: OCR Compliance Review No. 01-11-6001  
University of Massachusetts – Amherst

Dear Chancellor Subbaswamy:

On June 30, 2011, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified the University of Massachusetts – Amherst (University) that OCR had selected the University for a compliance review. The compliance review examined the University's handling of complaints of sexual harassment, including sexual violence.

OCR is responsible for enforcing Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Section 1681 *et seq.*, and its implementing regulation, 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of Federal financial assistance.<sup>1</sup> The University receives Federal financial assistance from the Department and is therefore subject to Title IX.

OCR initiated this compliance review pursuant to our authority under the Title IX regulation at 34 C.F.R. § 106.71, which incorporates by reference the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, at 34 C.F.R. § 100.7(a). This regulation authorizes OCR to periodically review the practices of recipients to determine whether they are complying with the laws OCR enforces.

Prior to the completion of OCR's investigation, the University requested to resolve the compliance review under Section 302 of OCR's *Case Processing Manual* (CPM). OCR had identified various issues and determined that it was appropriate to resolve them pursuant to a Resolution Agreement.

Set forth below are a summary of the facts determined to date and the Resolution Agreement for this compliance review.

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<sup>1</sup> Amendments to the Title IX regulation went into effect on August 14, 2020 and can be viewed [here](#). However, OCR evaluated this case based on the Title IX regulation that was in effect for this compliance review. You can find that regulation [here](#). For more information about Title IX, including the new Title IX regulation and related resources, visit OCR's website at <https://www2.ed.gov/policy/rights/guid/ocr/sexoverview.html>.

## **LEGAL STANDARDS**

The regulation implementing Title IX, at 34 C.F.R. § 106.31(a), states as follows: “Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient which receives Federal financial assistance.”

At the time OCR initiated its compliance review, the Title IX regulation contained a number of procedural requirements. The Title IX regulation required that each recipient notify applicants for admission and employment, students and parents of elementary and secondary school students and employees, among others, that it does not discriminate on the basis of sex in its education programs or activities and that it is required by Title IX not to discriminate in such a manner. The notice had to state, at least, that the requirement not to discriminate in the education program or activity extended to employment therein and admission thereto unless Subpart C of the regulation did not apply and that inquiries concerning Title IX could be referred to the Title IX coordinator or to OCR. *See former* 34 C.F.R. § 106.9(a).

In addition, the Title IX regulation required each recipient to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX or alleging any actions which would be prohibited by Title IX. A recipient was also required to notify all its students and employees of the name, office address, and telephone number of the employee(s) designated as the recipient’s coordinator of its Title IX responsibilities. *See former* 34 C.F.R. § 106.8(a).

The Title IX regulation also required recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX. *See former* 34 C.F.R. § 106.8(b). There is no fixed time frame to determine whether a resolution has been prompt; rather, OCR will evaluate a recipient’s good faith efforts under the circumstances. An equitable response requires a trained investigator to analyze and document the available evidence to support reliable decisions, and any rights or opportunities that a recipient makes available to one party during an investigation should be made available to the other party on equal terms. OCR evaluates on a case-by-case basis whether the resolution of a sexual harassment complaint is prompt and equitable.

Sexual harassment is a form of sex discrimination prohibited by Title IX. Sexual harassment can include unwelcome sexual advances and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

Under the Title IX regulation then in effect, a school had a responsibility to respond promptly and effectively to notice of sexual harassment. This included taking appropriate steps to investigate or otherwise determine what occurred and taking immediate and effective action to end the harassment, prevent its recurrence, and, as appropriate, remedy its effects. This may have also included taking interim measures prior to or during the investigation of a complaint.

Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

### **INVESTIGATION TO DATE**

OCR's investigation included extensive records reviews and interviews to assess the University's Title IX processes. Specifically, OCR analyzed the University's notices of nondiscrimination; the University's written Title IX grievance procedures over ten academic years, from 2010-2011 through 2019-2020; case file information regarding the University's response to reports of sexual harassment over four academic years, 2010-2011 and 2012-2013 through 2014-2015; and information reflecting the designation and duties of the University employee(s) charged with overseeing Title IX compliance over ten academic years, from 2010-2011 through 2019-2020.

OCR also interviewed the Title IX Coordinator;<sup>2</sup> the Associate Dean of Students for Student Conduct, Compliance, and Clearances (Associate Dean of Student Conduct);<sup>3</sup> the former Associate Dean of Students for Student Conduct, Compliance, and Clearances;<sup>4</sup> the Vice Chancellor for Student Affairs and Campus Life (Vice Chancellor);<sup>5</sup> the former Vice Chancellor for Student Affairs and Campus Life;<sup>6</sup> the Chief of the University of Massachusetts Police Department;<sup>7</sup> two police officers; a police lieutenant; the Associate Director of the Center for Women and Community<sup>8</sup>, and an advocate from that organization; the University Ombudsperson;<sup>9</sup> the Athletics Director;<sup>10</sup> the Associate Athletics Director, who also served as a Deputy Title IX Coordinator;<sup>11</sup> the former Associate Athletics Director, who also served as a Deputy Title IX Coordinator;<sup>12</sup> two head coaches; a psychiatric social worker and the Director of the Center for Counseling and Psychological Health;<sup>13</sup> a union representative; faculty representatives on the Status of Women Council; an Associate Chancellor, who led the Code of Student Conduct Commission in 2010-2011; the Director of the Faculty and Staff Assistance Program;<sup>14</sup> the Director of the Stonewall Center;<sup>15</sup> the Associate Director of Residential Life;<sup>16</sup> two Residence Directors; two professors; Peer Educators; a representative of the Grad Women's Network; two officers of the Pride Alliance; members of the Coalition to End Rape Culture; two

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<sup>2</sup> This witness served in this role from 2010 through May 2019.

<sup>3</sup> This witness has served in this role since 2014.

<sup>4</sup> This witness served in this role from 2009 to 2014.

<sup>5</sup> This witness served in this role from 2013 to 2019.

<sup>6</sup> This witness served in this role from 2009 to 2013.

<sup>7</sup> This witness served in this role from 2009 to 2012.

<sup>8</sup> This witness served in this role from 2008 to 2020.

<sup>9</sup> This witness served in this role from 1999 to 2015.

<sup>10</sup> This witness has served in this role since 2015.

<sup>11</sup> This witness has served in this role since 2014.

<sup>12</sup> This witness served in this role from 2004 to 2014.

<sup>13</sup> This witness served in this role from 1995 to 2017.

<sup>14</sup> This witness served in this role from 2010 to 2017.

<sup>15</sup> This witness has served in this role since 2006.

<sup>16</sup> This witness served in this role from 2010 to 2016.

Sorority representatives; five Fraternity representatives; and three residential advisors. OCR also conducted six on-site visits, including thirteen student focus groups and discussions with individual undergraduate and graduate students.

Additionally, OCR reviewed the results of five climate surveys conducted by the University and two health surveys conducted by the American College Health Association, as well as data from the University's Center for Women and Community. OCR also reviewed documents related to training of students and employees regarding sexual harassment and other initiatives undertaken by the University to reduce instances of sexual harassment.

## **FACTUAL FINDINGS TO DATE**

The University is a public research university located in Amherst, Massachusetts, that offers undergraduate, graduate, and professional degrees. It is the largest public university in Massachusetts, and the oldest of five campuses that comprise the University of Massachusetts public university system; the other four campuses were not part of this compliance review.<sup>17</sup> In fall 2019, the University enrolled over 24,000 undergraduate students and over 7,000 graduate students, and employed over 1,400 instructional faculty.

The University is also a member of the Five College Consortium (Consortium), whose other members are Amherst College, Mount Holyoke College, Smith College, and Hampshire College. The University's membership in the Consortium is distinct from its membership in the University of Massachusetts public university system. The Consortium is a collaboration between five member institutions of close geographical proximity, whose students are allowed to cross-register and attend events across member institutions.<sup>18</sup> University administrators and students informed OCR that University students frequently socialize with peers at other Consortium institutions, which is facilitated by a free bus service linking the institutions together.

According to OCR's investigation, the University generally maintained two Title IX resolution processes, depending upon whether the respondent was a student or an employee. If the respondent was an employee, the resolution was handled by the Equal Opportunity and Diversity Office (EO&D) – renamed the "Equal Opportunity Office" in 2019 – pursuant to the employee grievance procedures. This process was directly overseen by the Title IX Coordinator, who until 2019 served as EO&D's Executive Director, the University's Chief Diversity Officer, and the Title VI, Section 504, and Americans with Disabilities Act Coordinator. If the respondent was a student, the resolution was handled by the Dean of Students Office (Dean's Office) pursuant to

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<sup>17</sup> The other campuses that are part of the University of Massachusetts public university system are: University of Massachusetts – Boston, University of Massachusetts – Dartmouth, University of Massachusetts – Lowell, and University of Massachusetts – Worcester.

<sup>18</sup> The University provided enrollment data to OCR indicating that from academic years 2010-2011 to 2014-2015, between 2.2% and 3.3% of the University's total enrolled students registered for courses at another Consortium college, and that Consortium students comprised between 5.4% and 5.8% of the total students registered for courses at the University. (The numbers reported are based on enrollment in courses; therefore, there may be duplicated counts of students who have taken more than one course at a Consortium institution that is not their home institution in a given academic year.)

the student grievance procedures. This process was directly overseen by the Associate Dean of Student Conduct, who also served as a Deputy Title IX Coordinator.

### **Notice of Nondiscrimination**

OCR reviewed two dozen notices of nondiscrimination that the University published from academic years 2010-2011 through 2015-2016, and the University's current notice of nondiscrimination. The notices from 2010-2016 appeared in various places, including the University's Affirmative Action and Nondiscrimination Policy Statement; the Sexual Harassment Policy and Procedures; the Grievance Policy and Procedures; Code of Student Conduct; the University of Massachusetts Police Department (UMPD) Anti-Harassment and Discrimination Policy; the UMPD Equal Opportunity and Affirmative Action Policy; the Student Athlete Expectations and Responsibilities policy; ten collective bargaining agreements; the UMPD Domestic and Protective Orders Policy; the UMPD Bias Based Profiling Policy; the UMPD Preliminary Investigations Policy; the UMPD Victim Witness Assistance Policy; the Everywoman's Center Sexual Assault Policies; the University Health Services Care of the Sexual Assault Patient Policy; and the Student-Athlete Policies and Conduct Policy.

For the notices published through 2016, OCR found that the University routinely did not list the name of the Associate Dean of Student Conduct, who oversaw the resolution process for sexual harassment complaints against all University students; and many of these notices also lacked the Title IX Coordinator's name and references to OCR. For the University's current notice of nondiscrimination published on the Equal Opportunity Office website, OCR found all of the information required by the Title IX regulation except for the name of the University's Title IX Coordinator; the notice listed the name of the University's previous Title IX Coordinator, but not the Title IX Coordinator at that time.<sup>19</sup>

### **Title IX Coordinator(s)**

As noted above, during the review period, the University designated the Title IX Coordinator as the employee who oversaw, among other responsibilities, the University's resolution of sexual harassment allegations against University employees and third parties. The University designated the Associate Dean of Student Conduct as the employee who oversaw, among other responsibilities, the University's resolution of sexual harassment allegations against University students.

Prior to June 2014, the University disseminated notice of the Title IX Coordinator and Associate Dean of Student Conduct within its notices of nondiscrimination (listed above); however, these notices did not always include the name, office address, and/or telephone number of the Title IX Coordinator, the Associate Dean of Student Conduct, or both. In June 2014, the University developed a Title IX resource guide (titled "Title IX Comprehensive Resources to Address Sexual Harassment, Sexual Assault, Relationship Violence and Stalking"), which included the names, office addresses, and telephone numbers of the Title IX Coordinator and Associate Dean of Student Conduct. The University emailed these materials to all University staff and graduate

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<sup>19</sup> <https://www.umass.edu/equalopportunity/sites/default/files/2018-11/AAND%20Policy%2011-16%2018.pdf> (last accessed by OCR May 6, 2020).

employees in June 2014, and to the entire campus community in July 2015. The University also developed a Title IX Team website that lists the names, titles, office addresses, and telephone numbers of the Title IX Coordinator and the Associate Dean of Student Conduct and publicized it to the University community in September 2015.<sup>20</sup>

As part of the compliance review, OCR gathered information about how the Title IX Coordinator and/or the Associate Dean of Student Conduct were coordinating the University's responsibilities under Title IX, including the resolution of sexual harassment complaints. OCR determined that, for the 2010-2011 academic year, the Title IX Coordinator had an incorrect understanding of her obligation to coordinate the University's response to allegations of sexual violence. The Title IX Coordinator explained that, at the time, she believed that UMPD was solely responsible for handling allegations of sexual violence by employees;<sup>21</sup> however, this practice was corrected as of fall 2011. OCR also determined that the Title IX Coordinator had otherwise received training regarding the procedures resolving complaints of sexual harassment against employees and third parties.<sup>22</sup> The Title IX Coordinator also frequently conducted training sessions for University stakeholders.<sup>23</sup> Similarly, OCR determined that the Associate Dean of Student Conduct and her predecessor had received training regarding the procedures resolving complaints of sexual harassment against students.<sup>24</sup> The Associate Dean of Student Conduct also frequently conducted training sessions for University stakeholders.<sup>25</sup>

The Title IX Coordinator chaired the University's Title IX Team, which consisted of the Title IX Coordinator and all Deputy Title IX Coordinators – 12 total by fall 2018, including the Associate Dean of Student Conduct – who represented a variety of University offices and constituencies. Since January 2012, the Title IX Team met on a weekly basis to discuss, among other topics, allegations of sexual harassment that had been brought to a Team member's attention. As of fall 2018, however, OCR did not identify any other information demonstrating coordination across

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<sup>20</sup> <http://www.umass.edu/titleix/title-ix-team> (last accessed by OCR April 25, 2020).

<sup>21</sup> Consistent with the Title IX Coordinator's explanation, the University did not identify or produce to OCR any case files involving sexual violence allegations against a University employee predating fall 2011. The University corrected this practice beginning fall 2011 when EO&D began to process complaints alleging sexual violence against employees.

<sup>22</sup> The Title IX Coordinator participated in 28 training programs related to Title IX during the review period, covering topics including conducting trauma-informed investigations, determining appropriate interim measures for complainants and respondents, recognizing and responding to stalking allegations, and campus violence prevention, among other topics.

<sup>23</sup> For example, the Title IX Coordinator provided or arranged for trainings to EO&D staff, the Dean's Office, and UMPD staff assigned to investigate allegations of sexual harassment.

<sup>24</sup> The University's previous Associate Dean of Student Conduct served in this position until October 2013. At that time, the current Associate Dean of Student Conduct (who had been serving as an Assistant Dean for Student Conduct) assumed the position of Associate Dean of Student Conduct and began to serve as a Deputy Title IX Coordinator. These two individuals collectively participated in 42 training programs related to Title IX by fall 2018, covering topics, including trauma-informed investigations, overseeing campus disciplinary and judicial boards, the reporting obligations of responsible employees, and working with students accused of sexual harassment, among other topics.

<sup>25</sup> For example, the Associate Dean of Student Conduct provided Title IX trainings to Residential Life, the Center for Counseling and Psychological Health, the Athletics Department, the Conduct Hearing and Appeals Boards, and various student groups, including resident assistants and members of student government. The Title IX Coordinator provided or arranged for trainings to EO&D staff, the Dean's Office, and UMPD staff assigned to investigate allegations of sexual harassment.

the University's two Title IX resolutions systems (student resolution process, and employee resolution process). Furthermore, while the Title IX Coordinator could access certain case file information for complaints against students, there was no schedule or system for reviewing these materials, and these records did not include non-disciplinary information (such as documentation about interim supports), which were maintained by the Dean's Office in a separate filing system not readily accessible to University staff.

## Grievance Procedures

The University generally maintained separate Title IX grievance procedures for resolving complaints against students, and for resolving complaints against employees, and revised both procedures several times during the course of OCR's compliance review.<sup>26</sup> OCR's discussion below focuses on the University's most recent procedures in effect prior to the Title IX amendments promulgated by the U.S. Department of Education on May 19, 2020.<sup>27</sup>

The Code of Student Conduct applied to complaints of sexual harassment, including sexual violence, against students. The Code of Student Conduct was reissued annually, though it remained substantively the same from the 2013-2014 through 2018-2019 academic years (2013-2019 Code).<sup>28</sup> The University revised the Code of Student Conduct for the 2019-2020 academic year (2019-2020 Code).

Until 2019, the Sexual Harassment Policy and Procedures (SHPP) was the University's grievance procedure for addressing complaints of sexual harassment, including sexual violence, against employees. The SHPP was published in 1983 and revised in 2001, 2011, 2013, 2014, and 2018. The SHPP remained substantially unchanged from 2001 through 2018, except for a section added in 2018 regarding anonymous complaints.<sup>29</sup> As noted above, EO&D administered the SHPP, overseen by the Title IX Coordinator. In March 2019, the University replaced the SHPP with the Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking.<sup>30</sup>

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<sup>26</sup> The University also had a Grievance Policy and Procedures, which prohibited discrimination based on sex (among other protected bases). The University represented to OCR that the Grievance Policy and Procedures apply to incidents of sex discrimination other than sexual harassment (e.g., a denial of a promotion based on sex). This document was revised and renamed "Grievance Procedures" in March 2019, and is posted on the Equal Opportunity Office's website, at <https://www.umass.edu/equalopportunity/sites/default/files/2019-03/Grievance%20Procedures.pdf> (last accessed by OCR on May 7, 2020).

<sup>27</sup> The University implemented revised grievance procedures on August 14, 2020 to comport with the Title IX amendments. OCR has not analyzed these procedures for purposes of this compliance review.

<sup>28</sup> Each version of the Code of Student Conduct is available at [https://www.umass.edu/dean\\_students/codeofconduct](https://www.umass.edu/dean_students/codeofconduct) (last accessed by OCR April 18, 2020). The version(s) in effect from 2013-2014 through 2018-2019 are available at [https://www.umass.edu/dean\\_students/sites/default/files/documents/2016-2019%20Code%20of%20Student%20Conduct.pdf](https://www.umass.edu/dean_students/sites/default/files/documents/2016-2019%20Code%20of%20Student%20Conduct.pdf); [https://www.umass.edu/dean\\_students/sites/default/files/documents/2013-2016%20Code%20of%20Student%20Conduct.pdf](https://www.umass.edu/dean_students/sites/default/files/documents/2013-2016%20Code%20of%20Student%20Conduct.pdf).

<sup>29</sup> The final version of the SHPP (updated July 2018) is available here: <https://www.umass.edu/equalopportunity/sites/default/files/2018-08/Sexual%20Harassment%20Policy%20and%20Procedures.pdf> (last accessed by OCR April 18, 2020).

<sup>30</sup> The Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking are available at <https://www.umass.edu/equalopportunity/sites/default/files/2019-03/Procedures%20for%20Sexual%20and%20Gender->



In December 2018, the University enacted a Policy against Discrimination, Harassment, and Related Interpersonal Violence, Including Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, Stalking, Complicity, and Retaliation (Policy Against Discrimination);<sup>31</sup> this was not a grievance procedure, but rather a policy expressing the University’s commitment to provide an environment free of sexual harassment. The Policy Against Discrimination, which was maintained by the Equal Opportunity Office, included definitions for prohibited conduct, including sexual harassment, sexual violence, and retaliation, and provided examples of these behaviors.<sup>32</sup> The Policy Against Discrimination stated that the University would maintain grievance procedures, and directed reports of prohibited conduct to be filed with Equal Opportunity Office where the respondent was faculty or staff, and with the Dean of Students Office where the respondent was a graduate or undergraduate student. The Policy Against Discrimination appeared to contain outdated information regarding the identity of the Title IX Coordinator.

### *2013-2019 Code of Student Conduct*

The 2013-2019 Code stated that it applied to any student, including graduate students, enrolled in a University academic course or program, and to student conduct that occurred at the University or at the other colleges in the Consortium. Although the 2013-2019 Code did not expressly state its applicability to outgoing Consortium students (i.e., University students taking classes at other Consortium institutions) or incoming Consortium students (i.e., students from other Consortium institutions taking classes at the University), the 2013-2019 Code stated that it applied to all student conduct at University properties and at Consortium institutions or programs.<sup>33</sup> The 2013-2019 Code also did not identify the procedures applicable to sexual harassment complaints against employees or third parties, and did not specifically identify where to file complaints – specifically, the 2013-2019 Code stated that complaints against students were handled by the Dean’s Office, but did not include any contact information. The 2013-2019 Code defined “sexual harassment” and “sexual misconduct” in detail.

Under the 2013-2019 Code, the conduct process began when a complaint was filed by a University student or employee, or when the University independently decided to investigate. The University next determined whether to file charges, a process that could include witness interviews and document review. The 2013-2019 Code did not specify a timeframe for this determination. If the University filed charges, the respondent would receive a Notice of Charge and attend a Conduct Conference with the Dean’s Office. The 2013-2019 Code required the

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[Based%20Harassment%2C%20Sexual%20Assault%2C%20Sexual%20Exploitation%2C%20Intimate%20Partner%20Violence%2C%20and%20Stalking.pdf](#) (last accessed by OCR April 18, 2020).

<sup>31</sup> The Policy Against Discrimination is available at [https://www.umass.edu/equalopportunity/sites/default/files/2019-03/Policy%20Against%20Discrimination%2C%20Harassment%2C%20and%20Related%20Interpersonal%20Violence\\_0.pdf](https://www.umass.edu/equalopportunity/sites/default/files/2019-03/Policy%20Against%20Discrimination%2C%20Harassment%2C%20and%20Related%20Interpersonal%20Violence_0.pdf) (last accessed by OCR on April 18, 2020).

<sup>32</sup> See <https://www.umass.edu/equalopportunity/equal-opportunity-policies-and-procedures> (last accessed by OCR Apr. 18, 2020).

<sup>33</sup> The 2013-2019 Code’s applicability to any student enrolled in a University academic course would cover incoming Consortium students, and its applicability to any conduct that occurred throughout the Consortium would cover outgoing Consortium students.



respondent to contact the Dean’s Office within two business days of receiving the Notice of Charge to schedule a Conduct Conference, although the 2013-2019 Code did not specify a deadline for holding this meeting. The Conduct Conference included a discussion of the allegations, the respondent’s responsibility, the resolution options, and possible sanctions.<sup>34</sup>

Under the 2013-2019 Code, there were six possible outcomes stemming from the Conduct Conference:

- (1) a Not Responsible finding for some or all of the charges based on a review of the facts;
- (2) an Insufficient Information finding, which was classified as a Not Responsible finding;
- (3) a Warning Letter, which was classified as a Responsible finding and advised that the conduct may have violated University expectations and may be subject to the conduct process if repeated;
- (4) a Voluntary Administrative Agreement, where the Dean’s Office and the respondent agreed with the facts of the case and the recommended sanction;
- (5) a Summary Administrative Review, available in cases that would not result in expulsion, suspension and/or housing removal, where the respondent agreed with the facts and requested a Sanction Hearing with the Dean of Students “or her or his designee” to challenge the recommended sanction on the ground that it was unsupported by substantial evidence, by the charges, and/or by the respondent’s disciplinary history; and
- (6) a Conduct Hearing Board, available in cases that might result in expulsion, suspension and/or housing removal, where the respondent disputed the facts and/or sanction and requested a formal hearing.

The 2013-2019 Code authorized interim restrictions, including suspension, housing re-assignment, facility limitations, and communication restrictions. The 2013-2019 Code specified that these interim restrictions could be imposed on a “student pending disciplinary proceedings” suggesting that these restrictions applied only to the respondent. The 2013-2019 Code required the University to meet with any “student pending disciplinary proceedings” prior to imposing interim restrictions, whenever reasonably possible, to explain the basis of the allegation and provide an opportunity to respond. The interim restrictions would take effect without prior notice only if, “in the professional judgment of a properly designated University official,” there was an “imminent threat to himself or herself, to others, or to property, or to cause imminent disruption to the orderly operation of the University.” The 2013-2019 Code did not mention any other interim measures, though the 2013-2019 Code encouraged anyone who became aware of a sexual assault to assist the victim in obtaining medical attention, contacting the police, or accessing other resources such as the Center for Women and Community and the Center for Counseling and Psychological Health.<sup>35</sup> In addition, according to the 2013-2019 Code, the notice

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<sup>34</sup> The 2013-2019 Code listed potential sanctions, including warning, probation, housing removal, suspension, and expulsion. Deferred suspension and deferred housing removal were available in cases presenting mitigating factors, whereby the respondent would not be suspended or removed unless another violation occurred.

<sup>35</sup> Although the 2013-2019 Code did not provide information about resources available to both parties, OCR notes that the University provided this information in other materials, such as the Sexual & Relationship Violence Resource Guide; the Title IX Comprehensive Resources to Address Sexual Harassment, Sexual Assault, Relationship Violence and Stalking; the Student Conduct Resources page on the Dean’s Office website; and the Resources page on the Title IX website. See [https://www.umass.edu/titleix/sites/default/files/documents/sexual\\_violence\\_resource\\_guide-fall2019.pdf](https://www.umass.edu/titleix/sites/default/files/documents/sexual_violence_resource_guide-fall2019.pdf); ;

for Conduct Hearings contained information about on-campus assistance available to both parties.

As noted above, the 2013-2019 Code provided that the Dean’s Office would issue a Summary Administrative Review where a respondent agreed with the facts in a case but disputed the appropriateness of the recommended sanction. In this situation, the respondent could request a Sanction Hearing to challenge the recommended sanction. The 2013-2019 Code stated that the Sanction Hearing would involve a review of notes from the Conduct Conference, which was described as a meeting “to discuss the nature of the conduct complained about, the respondent’s responsibility for the allegations, and the options to resolve the matter.” The bases for contesting the sanction appeared to involve a review of the underlying evidence and charges: the first ground invited the respondent to explain why the evidence did not support the sanction, and the second ground invited the respondent to explain why the sanction was not supported by the charges and/or the respondent’s disciplinary history. The 2013-2019 Code did not specify a timeframe for holding a Sanction Hearing, or describe any other notice or other procedures that would apply to this hearing. The 2013-2019 Code also did not identify whether the complainant received notice of or had an opportunity to participate in the Sanction Hearing.

In cases that proceeded to the Conduct Hearing Board, the University provided notice of the hearing to both parties, which included a description of the allegations and a summary of the information upon which the charges were based. The 2013-2019 Code required the University to provide this notice at least five business days prior to the date of the Conduct Hearing although the 2013-2019 Code did not specify any deadlines for holding the Conduct Hearing. Both parties could obtain assistance from a non-attorney advocate at the University. The 2013-2019 Code stated that “the student(s)” could be accompanied by an attorney if there was a pending or likely criminal case.<sup>36</sup> The Conduct Hearing Board, consisting of three to five employees and/or students, could rely on witness statements, reports, and other documents. The 2013-2019 Code specified that the Conduct Hearing Board would make a responsibility determination based only on the evidence and testimony at the hearing.

Under the 2013-2019 Code, the Conduct Hearing Board would issue a recommendation and forward a summary of testimony, findings of fact, and rationale to the Dean of Students. Within five business days of receiving this report, the “designated University official” – a position not defined by the 2013-2019 Code – would issue a decision in the disciplinary matter, consisting of findings of fact, sanction(s), and rationale. The 2013-2019 Code required notice of the outcome to respondents in all cases and to complainants in cases alleging “violence or non-forcible sexual misconduct.”<sup>37</sup>

Under the 2013-2019 Code, the respondent could appeal the outcome resulting from a Conduct Hearing on the following grounds: (1) there was procedural error or irregularity that materially

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[https://www.umass.edu/dean\\_students/conduct/resources](https://www.umass.edu/dean_students/conduct/resources); <https://www.umass.edu/titleix/title-ix-campus-resources> (last accessed by OCR March 3, 2020).

<sup>36</sup> Although the 2013-2019 Code did not specify whether “the student” referred to both the complainant and the respondent, a separate hearing procedures document stated that either party could be assisted by an attorney at a hearing.

<sup>37</sup> The 2013-2019 Code did not define “non-forcible sexual misconduct.”

affected the decision; and (2) new evidence was available that had not previously been available that would have materially affected the decision. In cases involving violence or non-forcible sexual misconduct, the complainant also received these appeal rights. The 2013-2019 Code did not specify whether the same appeal rights applied to Sanction Hearings. The 2013-2019 Code required any appeals to be filed within five business days of receipt of the University official's decision. The University Appeals Board would review the hearing records and issue a recommendation to the Vice Chancellor. Within fifteen business days of receiving the appeal, "the appropriate University official" – a position not defined by the 2013-2019 Code – would issue the appeal decision or request clarification from the Conduct Hearing Board. The 2013-2019 Code further authorized the Chancellor or his or her designee to review the appeal decision of the University official in exceptional cases implicating the safety or well-being of the University community. The 2013-2019 Code stated that the appeal decision would be sent to the respondent but was silent as to the complainant.

The University distributed the 2013-2019 Code by email to students; however, the University did not identify any instances in which it distributed the 2013-2019 Code to employees or incoming Consortium students.

### ***2019-2020 Code of Student Conduct***

The University significantly revised the Code of Student Conduct for the 2019-2020 academic year. The 2019-2020 Code retained the overall structure of the student conduct process but contained numerous changes to the options and rights available to the parties.

Like the 2013-2019 Code, the 2019-2020 Code applied to students enrolled in a University academic course or program and to conduct that occurred at the University or in the Consortium.<sup>38</sup> This language apparently extended to both incoming and outgoing Consortium students, but did not explicitly state its applicability to them. The 2019-2020 Code continued to omit any reference to the procedures for complaints against employees or third parties, and also where specifically to file complaints against students; the 2019-2020 Code stated that complaints against students were handled by the Student Conduct & Community Standards Office (Student Conduct Office), a division within the Dean's Office, but did not include any contact information for this apparently new office. The 2019-2020 Code removed the definitions of "sexual harassment" and "sexual misconduct" and instead stated that policies and conduct relating to sexual harassment and sexual assault were set forth in the Policy Against Discrimination, which in turn contained these and other definitions.<sup>39</sup>

The 2019-2020 Code contained a new section addressing the rights of respondents, complainants, and witnesses, which included the right to have reasonable access to review case information ("to the extent permitted by the Code and the law"), to receive notices, to have

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<sup>38</sup> The 2019-2020 Code included a new provision stating that the grievance procedure also applied to conduct that occurred online, by email, or on social media. The 2019-2020 Code also contained new language authorizing the University to initiate the conduct process against a former student if a "serious alleged code violation" was committed while the student was enrolled but reported after the student graduated.

<sup>39</sup> The 2019-2020 Code did not provide a hyperlink to the Policy Against Discrimination or otherwise explain where to find the policy.

access to an advisor during any conduct proceeding, to participate and/or speak (or not to speak) during the conduct process, to address information that may be used in determining the outcome, to receive information about services to assist them in the resolution process, and to provide information and identify witnesses.

As with the 2013-2019 Code, the conduct process under the 2019-2020 Code began when a complaint (called a “student conduct referral”) was filed by a University student or employee, or when the University decided on its own to investigate. The 2019-2020 Code recognized that external entities, such as law enforcement and the public, could have also submitted referrals. While the 2013-2019 Code did not address anonymous complaints, the 2019-2020 Code stated that individuals could not submit student conduct referrals anonymously to the Student Conduct Office, but that the University would attempt to take appropriate steps if another University department received an anonymous report.

After the filing of a student conduct referral, the 2019-2020 Code introduced a new procedural notice: a Notice of Inquiry, which the University could issue to the respondent to notify the respondent of the conduct referral, and which requested the respondent to meet to discuss the information received and resolution options. The University then decided whether to file charges, a process that could include interviews and document review, but continued to not have a timeframe, as with the 2013-2019 Code. If the University proceeded to file charges, a respondent would receive a Notice of Charge.

The 2019-2020 Code stated that the Case Administrator, a new position not found in the 2013-2019 Code, was responsible for reviewing student conduct referrals and gathering information concerning the matter. According to the 2019-2020 Code, the parties were asked to identify witnesses and provide relevant information for the Case Administrator to review. The 2019-2020 Code provided the respondent with the ability to review information used to determine the outcome of the conduct case, and stated that the complainant (and others) would have access to this information in accordance with the Code, federal law, state law, and/or University regulations.

The 2019-2020 Code continued to authorize the imposition of interim restrictions, but removed “suspensions” from its list of examples. Similar to the language in the 2013-2019 Code, the 2019-2020 Code stated that interim restrictions could be imposed on a student pending the outcome of conduct proceedings, and that they could take effect immediately and without notice to the respondent when “in the professional judgment of a designated University official,” certain circumstances were met. The 2019-2020 Code identified these circumstances as when “the [r]espondent represents an imminent threat to others, is facing allegations of serious misconduct, to preserve the integrity of the investigation, to preserve University property, and/or to prevent disruption of, or interference with, the normal operations of the University.” The 2019-2020 Code also removed the requirement from the 2013-2019 Code that the University shall meet with the respondent prior to imposing interim restrictions whenever possible, and replaced it with a provision stating that the respondent had two business days to schedule a meeting following the imposition of interim restrictions, where the University would determine, based on the respondent’s account of the incident, whether to continue or modify the interim restrictions.

The 2019-2020 Code did not discuss any other interim measures, but it did state that all parties had the “right...to be informed of resources available to assist them throughout the conduct process and an explanation of the available reporting and/or resolution options.” Additionally, as with the 2013-2019 Code, the 2019-2020 Code stated that information about on-campus assistance available to both parties was provided in the notice for Conduct Hearings.

The 2019-2020 Code required the respondent to schedule an Administrative Meeting, previously referred to as a Conduct Conference in the 2013-2019 Code, within two business days of receiving the Notice of Charge. The 2019-2020 Code did not specify a deadline for holding the Administrative Meeting, which was conducted by the Case Administrator. Like the Conduct Conference in the 2013-2019 Code, the Administrative Meeting included a discussion of the allegations, the respondent’s responsibility, the resolution options, and possible sanctions.<sup>40</sup>

The 2019-2020 Code contained numerous changes to the possible outcomes. The 2019-2020 Code added new language stating that upon reviewing the information provided, the Case Administrator might delay completion of the case review for further investigation. No timeline was provided for this investigation or the case review overall. In addition, the 2019-2020 Code included new language stating that at the conclusion of the investigation, the Case Administrator would “communicate with the [r]espondent...to review gathered information and determine next steps.” Under the 2019-2020 Code, there were four types of outcomes, stemming from the Administrative Meeting:

- (1) Educational and Restorative Actions, such as a warning notice, community service, an apology, an educational program, or restorative conference/circles;
- (2) an Administrative Resolution, available in cases that would not result in housing removal, probation, suspension, or expulsion, where the Case Administrator determined whether the respondent was responsible and there was no opportunity for a further hearing or appeal;<sup>41</sup>
- (3) a Summary Administrative Review, available in cases that may have resulted in housing removal, probation, suspension, or expulsion, where the Case Administrator determined responsibility, imposed sanctions, and set forth resolution options, and the respondent had three business days to request a Sanction Review (to dispute the sanction) or a University Hearing Board (to dispute responsibility)—otherwise the decision was final; and
- (4) a referral to the University Hearing Board at the conclusion of the investigation, available in cases that may have resulted in housing removal, probation, suspension, or expulsion. The 2019-2020 Code stated that the Case Administrator reserved the right to make this referral, and that a respondent could request a referral.

The 2019-2020 Code’s “Sanction Review” was similar to the 2013-2019 Code’s “Sanction Hearings,” in allowing respondents to dispute recommended sanctions from the Summary

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<sup>40</sup> In addition to the potential sanctions listed in the 2013-2019 Code, the 2019-2020 Code contained new sanctions, such as degree revocation, facilities restriction, apology, and restorative conference/circles. The 2019-2020 Code listed no-contact directive as a potential sanction, whereas the 2013-2019 Code had only listed this as a potential interim restriction.

<sup>41</sup> If the Case Administrator determined that the respondent was responsible for the violation, the Case Administrator imposed sanctions. The Case Administrator was allowed to impose an educational intervention and/or a no-contact directive even in cases where the respondent was found not responsible.

Administrative Review process, with some differences. Under the 2019-2020 Code, the Sanction Review was conducted by the Dean of Students (or designee), who met with the respondent to discuss the respondent's rationale for requesting a review of the imposed sanction. Unlike the 2013-2019 Code, the 2019-2020 Code did not outline specific bases for contesting the sanction. Whereas the 2013-2019 Code stated that Sanction Hearings were reserved for cases that would not result in housing removal, expulsion, and/or suspension, the 2019-2020 Code stated that Sanction Reviews were intended for cases that may have resulted in housing removal, probation, suspension, or expulsion. Like the prior version, the 2019-2020 Code did not specify a timeframe or procedures for the Sanction Review. In addition, the 2019-2020 Code did not indicate whether the complainant received notice of or had an opportunity to participate in the Sanction Review. The 2019-2020 Code stated that the University would notify the respondent in writing as to whether the imposed sanctions were upheld or modified.

In cases that proceeded to a University Hearing Board (formerly known as the Conduct Hearing Board in the 2013-2019 Code), the 2019-2020 Code continued to require at least five days of notice to both parties prior to the hearing. The 2019-2020 Code still did not specify a deadline for holding this hearing. The notice of the hearing contained a description of the allegations, a copy of the hearing procedures, and a list of available campus resources, while the 2013-2019 Code stated that the notice would also include a summary of the information upon which the charges were based. Under the 2013-2019 Code, a student could only be accompanied by an attorney if there was a pending or likely criminal case; however, the 2019-2020 Code permitted "an individual involved in the conduct process" to obtain assistance from any advisor, including an attorney, to "support and provide guidance during the conduct proceedings," provided that the advisor "may only act in an advisory capacity and may not represent the person or otherwise speak on behalf of the person in any meetings or hearings."

Like the Conduct Hearing Board in the 2013-2019 Code, the University Hearing Board in the 2019-2020 Code was comprised of three to five employees and/or students who could rely on witness statements, reports, and other documents. The 2019-2020 Code added a provision stating that the University Hearing Board determined responsibility by a majority vote but removed the language from the 2013-2019 Code limiting the decision to evidence and testimony at the hearing.<sup>42</sup>

The University Hearing Board process outlined in the 2019-2020 Code was slightly different from the prior version. Under the 2019-2020 Code, the University Hearing Board completed a Hearing Board Report, describing its decision and rationale. The Hearing Board Report was sent to the Dean of Students (or designee) within two business days of the end of the hearing.<sup>43</sup> In a new step added in the 2019-2020 Code, the parties had three business days to submit relevant information for consideration in determining sanctions (although the 2019-2020 Code did not state whether the parties received a copy of the Hearing Board Report). Under the 2019-2020 Code, respondents received notice of the outcome in all cases and complainants only received

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<sup>42</sup> The 2019-2020 Code stated that a University official would serve as the Procedural Advisor to ensure that Hearing Board procedures were followed, and that a member of the Hearing Board would serve as Hearing Board Chair. The Procedural Advisor did not participate in evaluating information or reaching a finding.

<sup>43</sup> This process differed slightly from the prior version in that the 2019-2020 Code no longer involved an unidentified "designated University official" as the decisionmaker after the hearing,

notice of the outcome “[w]hen applicable.” The 2019-2020 Code stated elsewhere that the complainant would receive notice of the outcome in cases alleging “violence against person(s).”<sup>44</sup>

Under the 2019-2020 Code, the respondent could appeal the outcome of either a Sanction Review or a Hearing Board on the following grounds, which were similar to the grounds contained in the 2013-2019 Code: (1) there was procedural error or irregularity that materially affected the decision; and (2) new evidence was available that had not previously been known or could not reasonably have been discovered that would have substantially impacted the decision.<sup>45</sup> The 2019-2020 Code stated that “[w]hen applicable” the complainant could also appeal the outcome, but did not provide any clarification as to the applicable circumstances; the previous version expressly afforded appeal rights to complainants in cases involving violence or non-forcible sexual misconduct. The 2019-2020 Code required any appeals to be filed within five business days of receipt of the outcome letter, though it also allowed for discretionary extensions. The 2019-2020 Code introduced a screening step in which the Chair of the University Appeals Board determined whether the appeal request met the grounds for an appeal. If the request met the grounds for an appeal, the University Appeals Board convened to review the appeal and any relevant information. The 2019-2020 Code required the University Appeals Board to issue its decision within ten business days.<sup>46</sup> Like the 2013-2019 Code, the 2019-2020 Code authorized the Chancellor (or designee) to review the appeal decision in exceptional cases implicating the safety or well-being of the University community. While the 2013-2019 Code was silent as to whether the complainant would receive the appeal decision, the 2019-2020 Code clarified that “all applicable parties” would be notified of the outcome of the appeal.<sup>47</sup>

The 2019-2020 Code stated that students received a copy of the Code of Student Conduct annually through a link on the University website, with printed copies available upon request from the Student Conduct Office.

### ***Sexual Harassment Policy and Procedures***

The SHPP was the University’s grievance procedure for addressing complaints of sexual harassment, including sexual violence, against employees from 1983 through early 2019. The SHPP stated that no University student or employee was exempt from its jurisdiction, and anyone employed by or enrolled at the University could file a complaint under the SHPP. The SHPP further stated, however, that if the respondent in a “formal grievance” was a student, the complainant should contact the Dean’s Office for processing under the Code of Student

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<sup>44</sup> This may be narrower than the cases in which the complainants received notice of the outcome under the 2013-2019 Code (i.e. in cases alleging “violence or non-forcible sexual misconduct”). In addition, the 2019-2020 Code noted that the Dean of Students had the right to provide “appropriate notification” to the complainant when a no-contact directive had been issued.

<sup>45</sup> The 2013-2019 Code was silent as to whether appeal rights applied to Sanction Hearings, whereas the 2019-2020 Code made clear that respondents had the same appeal rights in Sanction Reviews and University Board Hearings.

<sup>46</sup> By contrast, under the 2013-2019 Code, the appropriate University official – a position not defined by the 2013-2019 Code – would issue the appeal decision.

<sup>47</sup> The 2019-2020 Code did not define or otherwise explain the meaning of “applicable parties.”



Conduct.<sup>48</sup> The SHPP was silent as to its applicability to complaints against third parties, although the University informed OCR that the SHPP did apply to such complaints.

The SHPP encouraged informal resolution options prior to filing a formal grievance, but expressly stated that attempts at informal resolution were not required before filing a formal grievance. The informal resolution options included:

- (1) Self-Help: If the complainant could “comfortably confront the individual responsible,” the complainant should, in the presence of a witness: (1) confront the person; (2) inform the person that the conduct is offensive, intimidating, or embarrassing; (3) describe the effects of such conduct; and (4) ask that the behavior stop immediately.
- (2) Department-Level Consultation and Action: When the complainant “cannot comfortably and directly confront” the respondent or the behavior has persisted despite confrontation, the complainant should report the conduct to “someone in a position of authority who can intervene,” such as a supervisor.
- (3) Mediation: The SHPP stated that mediation can sometimes resolve cases, and that the Ombuds Office could provide mediation services.

To proceed via a formal grievance, the SHPP required the complainant to submit a formal written grievance to the Chair of the Sexual Harassment Board (Chair),<sup>49</sup> who provided a copy to the respondent. The Chair could also initiate a formal grievance when the actions were “sufficiently egregious.” The respondent had the opportunity to submit a written response, which was sent to the complainant. The Chair then appointed a factfinder to investigate and write a report, which both parties would receive. The SHPP did not specify a timeframe for this pre-hearing investigation, other than to state that it would commence immediately and be completed as quickly as possible. The SHPP did not indicate whether the parties had the opportunity to present witnesses or evidence during this pre-hearing investigation. The Chair would review the report to determine whether to dismiss the complaint or send it to a hearing. No timeframe was specified for this decision. If the complaint was dismissed, both parties would receive notice and there was no appeal option.

The 2018 version of the SHPP added a section regarding the processing of anonymous complaints. The SHPP stated that the University would not formally investigate an anonymous complaint or report unless it contains a “sufficient level of detail to indicate a probability that the sexual misconduct occurred and reasonably identifies the respondent and the victim.” For complaints that did not meet this standard, EO&D or the Dean’s Office would “take such steps as necessary or feasible, in their discretion, to address the matters in an informal manner.” The SHPP noted that an informal resolution may gather sufficient information to lead to a formal investigation.

The SHPP did not expressly provide for interim supportive measures or interim restrictions. Nevertheless, the SHPP stated that “nothing in these procedures is intended to prevent the

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<sup>48</sup> Although the Code of Student Conduct had applied to complaints against all graduate students since 2011, the SHPP inaccurately referred such complaints to a separate procedure until 2013.

<sup>49</sup> The Chair of the Sexual Harassment Board was also EO&D’s Executive Director and the University’s Title IX Coordinator.

University administration from taking appropriate interim measures to protect one or more of the parties until such time final adjudication regarding the complaint has been reached.” An appendix to the SHPP referenced “Support and Referral Contacts,” defined as members of the University community who were trained to provide information about available resources. The SHPP did not identify any of these contacts other than to state that names would be published in various places throughout campus.<sup>50</sup>

If the case proceeded to a hearing, the Chair would appoint a three-member hearing panel.<sup>51</sup> The SHPP did not specify a timeframe for making this appointment. The panel would receive the complaint, response, and report. The SHPP did not identify a timeframe for the hearing, other than to note that it would be held as soon as possible following the appointment of the panel. The parties were required to submit any documents and witness names in advance of the hearing, and the panel could identify additional witnesses and materials. The parties could hear and respond to all testimony, examine all evidence, and present relevant witnesses and evidence. The parties could be accompanied by two people, including an attorney. The parties would give opening statements and present their evidence and witnesses. The panel would then call any additional witnesses. The panel would pose questions to the parties and witnesses, with the panel’s presiding officer setting the protocol for questioning. The parties could make a concluding statement at the hearing and submit a written argument afterwards. At the end of the hearing, the panel voted on whether the SHPP had been violated. If the panel found a violation, it would recommend a penalty for the respondent and any appropriate relief for the complainant.<sup>52</sup> The SHPP required the panel to submit its decision and a report (containing the facts, supporting evidence, and conclusion) as soon as possible to the Chair. The Chair could adjust the recommended penalty based on any prior violations. The Chair then forwarded the report, along with appropriate commentary, to the Vice Chancellor for a final decision. The SHPP did not identify a timeframe for this decision. Both parties received written notice of the outcome.

The complainant, respondent, or the Chair could submit a written petition for review to the Chancellor or designee within thirty days of receipt of the decision. The SHPP did not specify whether the non-moving party would receive notice of the appeal or have the opportunity to respond. The Chancellor would review the record, including the taped hearing. The Chancellor could affirm or revise the Vice Chancellor’s decision, request specific findings from the hearing panel, or remand the case for a hearing before a new panel. The Chancellor could modify or vacate the decision if the panel’s findings were not supported by a preponderance of the evidence

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<sup>50</sup> Although the SHPP did not provide information about available resources, OCR notes that the University did provide this information in other materials, such as the Sexual & Relationship Violence Resource Guide; the Title IX Comprehensive Resources to Address Sexual Harassment, Sexual Assault, Relationship Violence and Stalking; the Civil Rights & Sexual Misconduct Resources page on the Equal Opportunity website; and the Resources page on the Title IX website. See [https://www.umass.edu/titleix/sites/default/files/documents/sexual\\_violence\\_resource\\_guide-fall2019.pdf](https://www.umass.edu/titleix/sites/default/files/documents/sexual_violence_resource_guide-fall2019.pdf); [https://www.umass.edu/titleix/sites/default/files/title\\_ix\\_comprehensive\\_resources.pdf](https://www.umass.edu/titleix/sites/default/files/title_ix_comprehensive_resources.pdf); <https://www.umass.edu/equalopportunity/civil-rights-sexual-misconduct-resources>; (last accessed by OCR March 3, 2020).

<sup>51</sup> The panel would contain at least one member from each of the parties’ “constituent groups” (i.e., classified employees, faculty, professional staff, undergraduate students, and graduate students).

<sup>52</sup> Potential penalties included warning, probation, suspension without pay, demotion, and dismissal.

or if the process violated an individual’s rights, academic freedom, or the SHPP. The SHPP stated that the Chancellor would render the appeal decision in as timely a manner as possible but did not otherwise identify a timeframe. Both parties would receive written notice of the Chancellor’s decision.

As mentioned above, the EO&D handled the resolution of sexual harassment complaints against employees, so it administered the SHPP. OCR’s review of cases processed by EO&D included several cases that were adjudicated through a special due process hearing, known as a Loudermill hearing.<sup>53</sup> According to the Title IX Coordinator and OCR’s review of case files, in these hearings, the respondent-employee’s supervisor reviewed the findings from the EO&D investigation report with the respondent, as well as an advocate or union representative, if invited by the respondent. The supervisor permitted the respondent to respond to the report’s findings before determining responsibility and any sanctions. The University explained to OCR that it convened Loudermill hearings to comport with a respondent’s collective bargaining agreement. The SHPP contained no mention of this alternate hearing process.<sup>54</sup>

The University periodically distributed the SHPP to employees; however, the University identified only one instance of distribution to undergraduate students from 2010 through 2016.

***Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking***

In March 2019, the University replaced the SHPP with the Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking. OCR found that the revised grievance procedure was nearly identical to its predecessor, the SHPP, but omitted the following information: an introductory policy section that defined sexual harassment and identified EO&D as responsible for administering the grievance procedure; an express prohibition against retaliation; and contact information for EO&D. This information was found in the Policy Against Discrimination; however, the Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking did not cite to or otherwise cross-reference that policy document by name.

OCR did not request information about how the University has disseminated the Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Intimate Partner Violence, and Stalking to the University community.

***Information on University and Consortium Websites***

During OCR’s review, the 2019-2020 Code, as well as prior versions, were posted in the Student Conduct section of the Dean’s Office website.<sup>55</sup> The Dean’s Office website also had a Sexual Misconduct section, which linked to the Title IX website and a Sexual & Relationship Violence

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<sup>53</sup> See Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 (1985) (holding that a “tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story” prior to termination).

<sup>54</sup> OCR learned about the Loudermill hearing process through interviews, data responses, and case file reviews.

<sup>55</sup> [https://www.umass.edu/dean\\_students/codeofconduct](https://www.umass.edu/dean_students/codeofconduct) (last accessed by OCR Jan. 27, 2020).

Resource Guide. The Dean’s Office website did not clearly identify the 2013-2019 Code or the 2019-2020 Code as the grievance procedure governing Title IX complaints against students.

The Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking was easily located on the Equal Opportunity Office website.<sup>56</sup> The Equal Opportunity Office website directly linked to the Title IX website and sexual misconduct resources. The Equal Opportunity Office website also identified the Title IX team, how to report an assault, and how to get support. The website, however, was inconsistent in whether it listed the current or former Title IX Coordinator. Likewise, OCR notes that other pages within the Equal Opportunity Office website appeared to be outdated and continued to discuss the SHPP as the applicable grievance procedure.<sup>57</sup>

The University’s Title IX website provided extensive information about reporting options, resources, and the Title IX team.<sup>58</sup> The Title IX website explained which offices handle complaints against students and employees, and included links to the 2019-2020 Code and the Policy Against Discrimination. However, the Title IX website did not list the link to the 2019-2020 Code under “Reporting Options,” and did not list the link anywhere to the Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking; instead, it linked to outdated and incomplete materials from 2018 and 2019.

Finally, the Consortium website stated that the student conduct policies of the campus that a student was visiting applied.<sup>59</sup> The website linked to the student conduct policies of each of the five member institutions.

### **Reports of Sexual Harassment/Sexual Violence During Compliance Review Period**

During the course of its compliance review, OCR reviewed documentation associated with complaints of sexual harassment from academic years 2010-2011 and 2012-2015—a total of 80 case files: 58 processed by the Dean’s Office (resolving complaints against students), and 22 processed by EO&D (resolving complaints against employees).<sup>60</sup> Of these 80 case files, 44 involved at least one allegation of sexual violence (39 involving student-respondents, and five

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<sup>56</sup> <https://www.umass.edu/equalopportunity/> (last accessed by OCR Jan. 30, 2020).

<sup>57</sup> For example, the “About the Equal Opportunity Office” page stated that the Equal Opportunity Office “[a]dministers the University’s Sexual Harassment Policy & Procedures,” and the “Civil Rights & Sexual Misconduct Resources” page identified the “Sexual Harassment Policy and Procedures” as the means for resolving complaints of sexual harassment. The “About the Equal Opportunity Office” page also stated that “[t]he University has a separate Sexual Harassment Grievance Procedure,” which did not appear to match the title of any of the University’s grievance procedures. See <https://www.umass.edu/equalopportunity/about>; <https://www.umass.edu/equalopportunity/civil-rights-sexual-misconduct-resources> (last accessed by OCR Apr. 11, 2020).

<sup>58</sup> <https://www.umass.edu/titleix/> (last accessed by OCR Jan. 30, 2020).

<sup>59</sup> [https://www.fivecolleges.edu/students/cross\\_registration](https://www.fivecolleges.edu/students/cross_registration) (last accessed by OCR Jan. 30, 2020).

<sup>60</sup> The University provided OCR with 194 case files involving allegations of student or employee misconduct arising during academic years 2004-2005, 2007-2011, and 2012-2015. Many of these case files involved allegations of misconduct unrelated to sexual harassment. For purposes of this compliance review, OCR reviewed only those case files concerning allegations of sexual harassment that arose during academic years 2010-2011 and 2012-2015.

involving employee-respondents), and 36 solely involved allegations of non-violent sexual harassment.

OCR has a concern about how well the University tracked cases of sexual harassment during the compliance review period. As noted earlier, the Title IX Coordinator acknowledged that in 2010-2011, the University did not process any allegations of sexual violence against employees on the belief that UMPD was the appropriate authority to resolve such complaints. Accordingly, the University did not produce any case files for sexual violence allegedly perpetrated by employees before 2011. Nor did the University produce any records of alleged harassment perpetrated by third parties, even though OCR identified multiple media reports of the University responding to at least one instance where a University student alleged sexual harassment by third parties. The University represented to OCR that it would have produced case files against third parties if they existed; however, none was provided.

Further, the case file records provided to OCR were often incomplete or kept in a manner that did not allow OCR to assess the adequacy of the University's compliance with Title IX as to the reported cases. The Associate Dean of Student Conduct informed OCR that important case-specific communications were not always memorialized in relevant case files, and OCR's case file review confirmed the absence of documents demonstrating actions that the University allegedly had taken or communications it allegedly had shared with the parties. For this reason, even the Dean's Office had significant difficulty identifying and producing to OCR information about interim supports provided to the parties in Title IX complaints against students. For example, while OCR found boilerplate notice letters issued to both complainants and respondents providing contact information for various campus resources (e.g., student legal services, counseling center, and disability services) and offering assistance from the Dean's Office to obtain additional supports, 18 case files – or, more than one fifth of all the case files involving allegations of sexual harassment – lacked any documentation indicating whether interim supports were considered or provided. The University acknowledged that the documentation for interim remedies may be absent from a number of case files and that “a systematic search [for these records] would be a lengthy and difficult process beyond the staffing ability of” the University, but represented that it was the University's practice to discuss with the parties “whether any supports or other interim remedies might be appropriate under the circumstances.”

The University represented that it may have taken responsive actions comporting with Title IX that were not evident in OCR's review of case files. Given the University and OCR's decision to proceed with a CPM Section 302 resolution, OCR did not conduct interviews to fill in information gaps with respect to specific case files. Rather, based on the paper files alone, OCR made the following observations.

OCR identified case files where allegations of sexual harassment may not have been resolved promptly. For example, in one case filed with the Dean's Office during the 2013–2014 academic year, a former graduate student alleged that she had been repeatedly sexually assaulted by a male classmate in the complainant's graduate program. From the documentation in the file, it appeared that, after receiving the complaint, the Dean's Office took no action for more than two months before it first contacted the respondent, and later took almost three months to schedule a

hearing. In the end, it took approximately 180 days to resolve the matter. In another case filed with EO&D during the 2012-2013 academic year, several graduate students alleged in December 2012 that a professor had inappropriately touched them. The case file indicates that the investigation report was finalized in August 2013, nearly one year after the complaint was filed. The University reported to OCR that it informed the professor that he would not be reappointed at around that time; however, the case file does not reflect this discussion, or any activity, until April 2014 when the University issued the professor a letter stating that he would not be reappointed the next academic year – eight months after the investigation report was finalized and more than 480 days after the complaint was filed.

OCR also reviewed case files to assess whether the University provided an equitable response. In the majority of case files that OCR reviewed, both parties were: reminded of the University's prohibition on intimidation or retaliation; issued mutual no contact orders; provided measures to end any harassment determined to have occurred; and, as noted above, provided a document listing resources for academic, mental health, and other interim remedial measures. However, OCR identified cases files that raised notice concerns because they employed processes that were not published, deviated from the University's grievance procedures, or were unclear. OCR identified four cases processed in the 2010-2011 and 2013-2014 academic years where allegations against employees were resolved pursuant to a Loudermill hearing, which was a resolution process not addressed by any grievance procedure. OCR also identified 11 cases processed between academic years 2010-2011 and 2014-2015 when the University convened Sanction Hearings. Of these 11 cases, ten were convened to hear the respondent's challenge to a proposed expulsion, suspension, and/or housing removal; however, the 2013-2019 Code did not provide for Sanction Hearings in these circumstances. Furthermore, OCR identified two cases involving complainants who were students at other Consortium institutions, one of which contained statements from the complainant and her mother indicating confusion as to how visiting Consortium students may file a complaint and uncertainty as to which procedures were applicable to resolve their Title IX allegations. This confusion may be understandable because, as noted earlier, the University did not provide clear guidance in its grievance procedures as to the resolution process for complaints involving Consortium students, including how to file a complaint and which institution's procedures would apply.

Relatedly, OCR identified case files where allegations of sexual harassment may not have been resolved equitably because one party may not have had comparable participation opportunities. For example, in the 11 cases involving Sanction Hearings (renamed "Sanction Reviews" in the 2019-2020 Code), OCR's review of these case files suggested that the Sanction Hearings may have involved respondents presenting additional evidence about the underlying allegation, rather than simply focusing on the appropriate sanction; however, the case files did not illustrate that complainants were provided comparable opportunities to present evidence or otherwise participate in this process.

OCR also identified case files that raised concerns because the University may have ended its response inappropriately, and because notice of the outcome may not have been provided to both parties. Specifically, OCR identified around 20 cases where the University may have automatically discontinued the resolution process and took no other actions when the complainant requested confidentiality and/or a party departed from the University without first

assessing whether it could take any steps to address the alleged misconduct and/or the alleged harm. The case files that OCR reviewed suggest the University may have ended its response automatically without any records demonstrating a deliberative process justifying these decisions. OCR also identified over one dozen cases where the University may not have notified a party of the outcome of an investigation into allegations of sexual harassment. Most, but not all, of these instances pre-date the 2014-2015 academic year when the University's grievance procedures did not require notice to be provided to both parties; however, there were additional case files in the 2014-2015 academic year – when the grievance procedures required notice be provided to both parties – with no documentation demonstrating that this was done.

### **SUMMARY OF CONCERNS**

OCR is concerned whether the University's notice of nondiscrimination contained all the information required by the Title IX regulation and whether the Associate Dean of Student Conduct and the Title IX Coordinator coordinated the work of their respective offices to assess appropriately the University's compliance with Title IX.

Regarding the University's grievance procedures, OCR identified a number of concerns with the grievance procedures in effect for most of the review period – the 2013-2019 Code, and the SHPP. The subsequent procedures – the 2019-2020 Code, and the Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking – addressed some but not all concerns, and in some instances introduced new concerns.

OCR is concerned that the University may not have provided sufficient notice of the 2013-2019 Code and the SHPP to students and employees. The University did appear to have disseminated (or otherwise provided adequate notice of) the 2013-2019 Code to its employees, nor did the University appear to have disseminated (or otherwise provided adequate notice of) the SHPP to its students.<sup>61</sup> Relatedly, the 2013-2019 Code may have caused confusion with students participating in the Consortium as to which institution's procedures would apply to allegations against them, because the 2013-2019 Code stated it applies to students enrolled in University academic programs and to conduct at any of the Consortium institutions, whereas the Consortium website stated that the policy of the campus that a student is visiting applies. OCR is concerned that the subsequent 2019-2020 Code preserved this or similar ambiguous language. OCR is also concerned that while the 2013-2019 Code included key definitions (such as "sexual harassment" and "retaliation"), the 2019-2020 Code removed this information and referenced a separate policy without including a hyperlink or instructions on how to locate it. Likewise, the 2013-2019 Code did not identify where to file complaints against students, and OCR is concerned that this remained unaddressed by the 2019-2020 Code.

Also, as to notice, the SHPP may have created confusion as to its applicability to students, by stating that no student was exempt from its jurisdiction, but also stating that formal grievances against students were handled under the 2013-2019 Code. OCR is concerned that the subsequent Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation,

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<sup>61</sup> OCR accepted the University's request to voluntarily resolve this matter before assessing whether the University has taken steps to address this concern for the 2019-2020 Code and the Procedure for Sexual Harassment and Assault.



Intimate Partner Violence, and Stalking preserved this language and therefore retained this ambiguity. Neither the 2013-2019 Code nor the SHPP identified the grievance procedure applicable to complaints against third parties, and neither the 2019-2020 Code nor the Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking addressed this issue. Finally, OCR is concerned that the University had inconsistencies between its written procedures and actual practice with respect to its use of Loudermill hearings and Sanction Hearings.

Additionally, OCR has concerns about whether the written grievance procedures provided equitable resolution processes. Of the six resolution options listed in the 2013-2019 Code, only the Conduct Hearing option appears to have guaranteed that both parties could present witnesses and other evidence, and review the evidence. In particular, the 2013-2019 Code did not describe a role for the complainant in Sanction Hearings, where the respondent had the opportunity to challenge the recommended sanction by arguing that the sanction was unsupported by substantial evidence or by the charges. The 2019-2020 Code addressed most of this concern, by stating that both parties would be asked to identify witnesses and provide relevant information; however, OCR is concerned with language providing respondents in all cases but complainants only in certain, unidentified cases (“to the extent permitted by the Code and the law”) the opportunity to review the information used to determine the outcome. For example, the 2019-2020 Code included new language stating that at the end of the Administrative Meeting process, and before taking next steps in the resolution process (which may have included formal referral to a University Hearing Board), the Case Administrator would “communicate with the [r]espondent...to review gathered information and determine next steps,” but did not state that this information would be shared with the complainant. OCR is also concerned that the 2019-2020 Code continued to allow the respondent, but did not include language for the complainant, the opportunity to dispute the Case Administrator’s proposed findings and request adjudication before the University Hearing Board for cases that may have resulted in housing removal, probation, suspension, or expulsion. Also, OCR is concerned that Sanction Reviews under the 2019-2020 Code – like Sanction Hearings under the 2013-2019 Code – did not describe a role for the complainant.

As to written notices provided to the parties, the 2013-2019 Code did not guarantee notice of outcome to both parties: it provided for notice of the outcome to all respondents, but only to complainants in cases involving violence or non-forcible sexual misconduct. OCR is concerned that this inequity remained in the 2019-2020 Code, which provided notice of outcome to all respondents but only to complainants in cases involving “violence against persons” without further clarification. Relatedly, the 2019-2020 Code included a new provision stating that respondents would receive notice of when a conduct referral had been filed (Notice of Inquiry), and retained the provision from the 2013-2019 Code stating that respondents would receive notice when/whether the University filed charges (Notice of Charge), without stating that complainants would also receive this information.

As to appeals, while the 2013-2019 Code allowed respondents to appeal all determinations, the 2013-2019 Code only authorized complainants to appeal determinations involving violence or non-forcible sexual misconduct. OCR is concerned that this inequity remained in the 2019-2020 Code, which again allowed respondents to appeal all determinations, but only authorized

complainants to appeal in more limited and unidentified circumstances. Finally, the 2013-2019 Code only required notice of the appeal outcome to respondents, and while the 2019-2020 Code appeared to have addressed this concern by requiring notice of the appeal outcome to “all applicable parties,” this phrasing implied but did not clearly state its application to both parties, i.e., respondents and complainants.

As to promptness, the 2013-2019 Code and the SHPP did not include specific timeframes for certain major stages of the resolution process, such as the Conduct Hearing Board and the Sanction Hearing for the 2013-2019 Code; and the hearing, final decision, and the appeal decision for the SHPP. OCR is concerned that these omissions remained in the subsequent 2019-2020 Code<sup>62</sup> and the Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking.

As to interim measures, neither the 2013-2019 Code nor the SHPP identified interim supportive measures, and OCR notes that examples of interim supports continued to be absent from the subsequent 2019-2020 Code, and the Procedures for Sexual and Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Intimate Partner Violence, and Stalking. Similarly, while both the 2013-2019 Code and the subsequent 2019-2020 Code addressed interim restrictions pending the outcome of conduct proceedings, and stated that they will only be imposed immediately and without notice when “in the professional judgment of a designated University official” certain conditions are met, OCR notes that the 2019-2020 Code expanded the bases when interim restrictions could be imposed and removed language about exigency and imminence from several of the new conditions.

Finally, OCR is concerned about unclear or inconsistent information posted on University websites about Title IX. For example, OCR is concerned that the Title IX website may have linked to outdated and incomplete information as to the applicable employee grievance procedure (with occasional references to the outdated SHPP); the Equal Opportunity Office website was inconsistent in listing the current or former Title IX Coordinator; and the Dean’s Office website did not clearly identify the 2019-2020 Code as the grievance procedure applicable to Title IX complaints against students.

## **RESOLUTION AGREEMENT**

As noted above, prior to OCR’s completion of the investigation, the University expressed an interest in resolving this compliance review under Section 302 of the CPM, and OCR determined that it would be appropriate to resolve the issues OCR had identified. The University signed the enclosed Resolution Agreement that, when fully implemented, will resolve the compliance review. The Resolution Agreement requires the University to review and, if necessary, revise its notice(s) of nondiscrimination, Title IX grievance procedures, and Title IX recordkeeping systems; review and take responsive action, if necessary, to ensure a prompt and equitable response for complaints of sexual harassment for the 2020-2021 and 2021-2022 academic years; ensure that the Title IX Coordinator, and any other designated employee(s), shall be responsible for coordinating and overseeing the University’s compliance with Title IX, including but not limited

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<sup>62</sup> “Sanction Hearings” in the 2013-2019 Code were renamed “Sanction Reviews” in the 2019-2020 Code, and continued to lack timeframes.

to the resolution of complaints of sexual harassment against students, employees, and/or third parties; and provide Title IX training to employees involved in Title IX resolution process(s).

## **CONCLUSION**

This concludes OCR's investigation of the University. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by duly authorized OCR officials and made available to the public. This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint with the University or with OCR, or participated in any complaint resolution process. If this happens, the individual subjected to such treatment may file a complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We wish to thank the University for its cooperation during OCR's compliance review. If you have any questions, you may contact Program Manager/Supervisory Attorney Ramzi Ajami at [Ramzi.Ajami@ed.gov](mailto:Ramzi.Ajami@ed.gov) or at (617) 289-0086.

Sincerely,

Adrienne M. Mundy-Shephard  
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Enclosure

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