



Student Code of Conduct and Disciplinary Process Handbook



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Code of Conduct and Disciplinary Process

Pre-amble

Fitchburg State University expects its students to act in a manner that demonstrates personal responsibility and respect for the community. Respect for the rights of others, openness to new and challenging ideas, civility and courtesy are examples of this expectation. The student discipline process has been established to address alleged violations of the Code of Conduct.

Part I: Student Conduct Authority

Under M.G.L. c. 15A § 22, Fitchburg State University has the legal authority to establish policies necessary for the general business of the institution. The president of the university and executive cabinet approved the *Code of Conduct and Disciplinary Process Handbook* ('The Code' or 'Code'). The disciplinary process is administered by the Dean of Students. The Dean of Students has been charged with the day-to-day responsibilities for the administration of student conduct and the disciplinary process. The Dean shall coordinate recommendations from members of the university community regarding suggested revisions to the Code of Conduct, policies, and shall present substantive changes to the Vice President for Student Affairs, and other appropriate parties.

'The Code' shall be reviewed annually, with a comprehensive review occurring every 5 years.

Part II: Student Conduct Policy Preface

1. Fitchburg State University recognizes that students, as members of society and residents of the United States of America, are entitled to respect, consideration and guaranteed freedoms of speech, assembly and association under the constitution. Fitchburg State University further recognizes students' rights within the institution to freedom of inquiry and the responsible use of university services and facilities.
2. Students at Fitchburg State University have a responsibility to act in a manner that promotes the wellbeing, respect, safety and security of all members of the university community.
3. It is the responsibility of students to know and understand individual departmental policies as well as campus policies published in the *Student Handbook* and other University literature. These policies include, but are not limited to, policies stated in the Housing Agreement, Academic Integrity Policy, Acceptable Use of Technology Policy, EO/AA Plan, Smoking Policy, Parking Policy, Hazing Policy, Alcohol Policy and Substance Abuse Policy.
4. The student Code of Conduct is applicable to any student enrolled in or accepted for an academic program, regardless of credits carried, any individual attending classes at Fitchburg State, or any individual residing in campus housing at Fitchburg State University, or any recognized student organization. Generally, a student may not withdraw from the university with a pending conduct matter. If a student does withdraw with a pending conduct matter, either the case may proceed and be heard regardless of student participation, or the case may be held until such time the student seeks to readmit. Such decisions shall be made by the Dean of Students or designee.

5. The student Code of Conduct applies to student conduct, which occurs at Fitchburg State University or any of its grounds or at any university related activity regardless of location. (away athletic contest for example) In addition, the student Code of Conduct applies when student conduct, wherever it occurs, calls into question a student's suitability as a member of the Fitchburg State University community, and/or has a detrimental effect on the reputation of the University.
6. Students who allegedly violate the student Code of Conduct, EO/AA Plan, good neighbor policy, or other university policies may become subject to disciplinary action.
7. Students may be accountable to both civil authorities and to Fitchburg State University for conduct, which constitutes violations of local, state, federal laws, the student Code of Conduct, and/or other university policies. On-campus student conduct procedures may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the Dean of Students or designee. On campus student conduct proceedings will not be subject to challenge on the ground that civil or criminal charges involving the same incident have been dismissed or reduced. When a student has been charged with a civil or criminal violation(s) of law, Fitchburg State University will neither request nor agree to special consideration for the student solely because of their status as a student.
8. The student Code of Conduct and student conduct process are published in order to give students general notice of prohibited conduct. The student Code of Conduct should be read broadly and is not designed to define misconduct in exhaustive terms. Questions or general inquiries should be made to the Office of Student Affairs.
9. The student Code of Conduct and the student conduct process are not to be regarded as contracts between students and Fitchburg State University. The university reserves the right to amend any provision of the student Code of Conduct and student conduct process at any time. Fitchburg State University will publish amendments in relevant campus publications.
10. Any conduct which may have been influenced by a student's mental state (irrespective of the ultimate evaluation) or the use of alcohol or other drugs shall not in any way limit the responsibility of the student for the consequences of their actions.
11. A student conduct and/or Dean of Students Hold may be placed on a student's academic record (or further action may be taken) when a student does not comply with a sanction or withdraws from the university prior to resolution of a student conduct matter. Students with a Hold may not be permitted to register, receive transcripts, receive a diploma, add or drop courses, register for university housing, or participate in other university activities.

Part III: Student Conduct Violations

The following conduct shall constitute violations of the 'Code.'

A. Academic dishonesty.

- 1.01 Failure to abide by the *Academic Integrity Policy*.

The full *Academic Integrity Policy* can be found in the Student Handbook or University Catalog.

B. Personal Conduct

- 2.01** Obstruction or disruption (participating in or inciting others to participate in the disruption or obstruction) of teaching, administration, disciplinary system, the university or community or other university activities.
- 2.02** Conduct, regardless of where it occurs, that is in violation of federal, state and/or local law or university policies that brings into question one's suitability as a member of the university community, or has a detrimental effect on the reputation of the University.
- 2.03** Theft, attempted theft, or possession of stolen and/or unauthorized possession of property, resources, or services.
- 2.04** Damage and/or vandalism to University property, or the property of a member of the Fitchburg State community, and/or guests.
- 2.05** Wrongful utilization of University property, goods, and/or services.
- 2.06** Gambling as defined in the *Student Handbook* is not permitted.
- 2.07** Unauthorized solicitation.
- 2.08** Unauthorized posting and/or distribution of flyers, bulletins or posters.
- 2.09** Failure to abide by the university Raffle Policy.
- 2.10** Failure to abide by the Good Neighbor Policy.
- 2.11** Conduct that is lewd or indecent such as public urination, public defecation, streaking, stripping, or solicitation of a stripper.
- 2.12** Attempted use or actual use of electronic devices that invade a person's privacy.
- 2.13** Assisting another person in the commission, or attempted commission, of a violation of the Code of Conduct or a crime
- 2.14** Threatening or other inappropriate racially or discriminatorily motivated comments or activity.
- 2.15** Violation of published University policies.

C. Physical Safety and Environmental Health

- 3.01 Physical Assault, or any action which may subject oneself or another person to physical injury.
- 3.02 Harassment or bullying of another person or threats of injury to oneself or another person which may: reasonably create a hostile environment, and/or infringe upon the rights of others, and/or interfere with the ability of a student to fully participate in the University.

Please Note: In determining whether an act constitutes bullying, the Dean of Students or designee will consider the full context of any given incident, giving due consideration to the protection of the members of the University community, and the individual rights, freedom of speech, academic freedom and advocacy required by law. Not every act that might be offensive to an individual or a group necessarily will be considered a violation of the Code of Conduct. In addition, any allegation of harassing behavior and/or bullying involving alleged discrimination and/or discriminatory harassment, which falls under the EO Plan, may be referred to and addressed through the University's EO Plan.

- 3.03 Possession or use of weapons or weapon replicas, including explosives, fireworks or other dangerous items or substances. Violation of the weapons policy as noted in the Student Handbook.
- 3.03A. Possession or use of defensive sprays (including pepper spray) that has not been registered with the University Police Department.
- 3.04A Creating a fire hazard, bomb or a dangerous situation which endangers others including false reports of fire or bombs.
- 3.04B Tampering with, damaging, disabling, or removing fire safety equipment and warning devices. This shall include covering a smoke detector.
- 3.04C Failure to follow fire safety procedures or instructions; or interference with firefighting equipment or personnel.
- 3.04 D Failure to evacuate a building during a fire alarm within a reasonable timeframe.
- 3.05 Failure to abide by the university hazing policy.

Please Note, the express or implied consent of the victim will not be a defense. Apathy and/or acquiescence in the presence of hazing are not neutral acts; they are violations of this code item.

- 3.06 Trespassing, forcible entry, or unauthorized entry and/or presence in buildings or property where posted or restricted, or attempts to commit the same. Reasonable notice of authority, or lack thereof, shall be given.
- 3.07 A Animals, with the exception of approved service animals and/or assistance animals are not permitted on campus property or in campus buildings.
- 3.07 B Failure to abide by university policy governing service and/or assistance animals.
- 3.08 Failure to abide by university or state policy governing smoking in public buildings and/or University residence halls. Smoking within 25 feet of a University building entrance. Smoking on campus in non-designated locations.
- 3.09 Failure to abide by established campus motor vehicle regulations.

Please Note: Parking violations are administratively resolved through Parking Services. They may be referred for the student conduct process under the 'Code' when criteria is met under the parking policies, and all other resolutions through Parking Services have been exhausted.

- 3.10 Rollerblading, skateboarding, or operating a bike or motorized scooters in a building or in such a way outside that poses a risk and/or danger to self or others.
- 3.11 Playing sports in buildings and/or other locations that may pose a risk to property and/or the safety of others.
- 3.12 Possession of prohibited items in the residence halls as outlined in the Housing Agreement/Policies and Procedures.
- 3.13 Failure to maintain community health and living standards as outlined in the Housing Agreement/Policies and Procedures.
- 3.14 Failure to comply with University public health, and/or testing requirements, as stated in University policies, posted signage, and/or as stated by local Board of Health, State Dept. of Public Health, the Centers for Disease Control, and/or other Governmental agencies.

D. Personal Identification and Representation

- 4.01 A Failure to present student identification and/or identify oneself upon request to a properly identified University Official, when acting in their official capacity.

- 4.01 B Falsification of one's identity or that of another, including but not limited to production, possession or distribution of fake IDs and/or OneCards.
- 4.02 Misrepresentation of a University official or campus organization or representing oneself as another.
- 4.03 Knowingly submitting false information for incorporation into any University record or document.
- 4.04 Failure to comply with a reasonable request of a University official while acting in their official capacity.
- 4.05 Unauthorized possession, duplication, tampering, or misuse of University property, including but not limited to records, electronic files, telecommunications systems, forms of identification, and keys.
- 4.06 Failure to abide by University computer policies, information technology policies, or network policies.
- 4.07 Failure to register an event.

Please Note: Consult with the Office of Student Development for event registration policies.
- 4.08 Failure to adhere to University guest policies.
- 4.09 Unauthorized use of the University name, logo, mascot or other University symbols.

E. Alcohol and Drugs

Failure to abide by University policies governing Alcohol

- 5.01A Any activity involving alcohol that is in violation of local, state or federal law, or University policies.
- 5.01B The possession and/or use of alcoholic beverages is restricted to those persons age 21 and older. Students under the age of 21 and their guests, regardless of age, may not possess, use or distribute alcoholic beverages or be in attendance where alcohol is present (with the exception of University sponsored events where approved).

Please Note: The possession or presence of empty alcohol containers is prohibited in rooms where students are under the age of 21 and will be viewed as evidence of possession or consumption of alcoholic beverages.
- 5.01C Possession of alcohol on campus over the approved limit as defined in the Student Handbook and/or Housing Policies.

- 5.01D Possession or use of common source alcohol containers and related paraphernalia (kegs, beer balls, funnels, etc.) are prohibited.
- 5.01 E Open Containers and/or consumption of alcohol in public areas (bathrooms, hallways, lounges, outside etc.) is prohibited.
- 5.01 F Providing alcohol to persons who are not of legal age is prohibited.
- 5.01 G Participation in drinking games as well as the use of funnels, beer bongs, and similar products is prohibited, with or without the actual presence of alcohol.
- 5.01 H Driving under the influence of alcohol and/or adjacent roads is prohibited.

Please Note: In most circumstances, the Dean of Students Office may not pursue formal disciplinary action against a student nor reporting party, when emergency services are contacted for an alcohol and/or drug overdose situation. While the individuals involved may be required to meet with an administrator or complete follow up actions, they will not have a disciplinary history. Questions regarding this statement should be directed to the Dean of Students Office

Failure to abide by University policies governing Marijuana

Please Note: In 2016, Massachusetts legalized the growth, possession and personal recreational use of marijuana by adults 21 years of age and older. As a recipient of federal funding, however, Fitchburg State must comply with current federal drug laws that classify marijuana as a controlled substance and prohibit use and possession. Fitchburg State does not recognize medical marijuana cards as an exemption from the University's prohibition.

- 5.02 A Possession, use, and/or cultivation of marijuana, or being in the presence of marijuana, in University buildings including residence halls, and/or on University property is prohibited.
- 5.02 B Possession and/or use of drug paraphernalia is prohibited.
- 5.02 C Possession with intent to sell and/or distribute: The sale, attempted sale, distribution and/or attempted distribution of marijuana is prohibited.

Please Note: Possession of an excessive quantity, scale, or other items relevant in distribution may constitute an allegation of distribution.

Failure to abide by University policies governing other Drugs (not marijuana)

- 5.03 A Possession and/or use of illegal drugs is prohibited.

- 5.03 B Abuse of prescription drugs; possession and/or use of prescription drugs without a valid prescription is prohibited.
- 5.03 E The sale, attempted sale, distribution and/or attempted distribution of illegal drugs and/or prescription drugs is prohibited.
- 5.04 Public intoxication on University property or at University sponsored activities is prohibited.

Please Note: A person shall be deemed to be intoxicated who is disruptive, disorderly, disrespectful to University staff, fails to comply with directives of University staff, and/or is unable to care for themselves due to their consumption of alcohol and/or drugs.

F. Discrimination and Sexual Violence Policy

Please Note: The EO/AA Plan supersedes the Code of Conduct. Incidents that fall under the EO/AA Plan are addressed through the complaint investigation and resolution procedures identified in the EO/AA Plan. Other violations of the Code of Conduct discovered during a complaint investigation will be addressed through the EO/AA Plan, and/or referred to the Dean of Students for disciplinary action under the Code of Conduct.

- 6.01 Discrimination as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.02 Discriminatory Harassment as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.03 Retaliation pertaining to a complaint of Discrimination or Sexual Violence, as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.04 Sexual Violence defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.04A Rape as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.04B Sexual Assault as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.04C Sexual Exploitation as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.04D Incest as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.04E Statutory Rape as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.

- 6.04 F Aiding in the Commission of Sexual Violence as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.05 Sexual Harassment as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.06 Gender-Based Harassment as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.07 Domestic and Dating Violence as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.
- 6.08 Stalking as defined in the Code of Conduct, Discrimination and Sexual Violence Definitions.

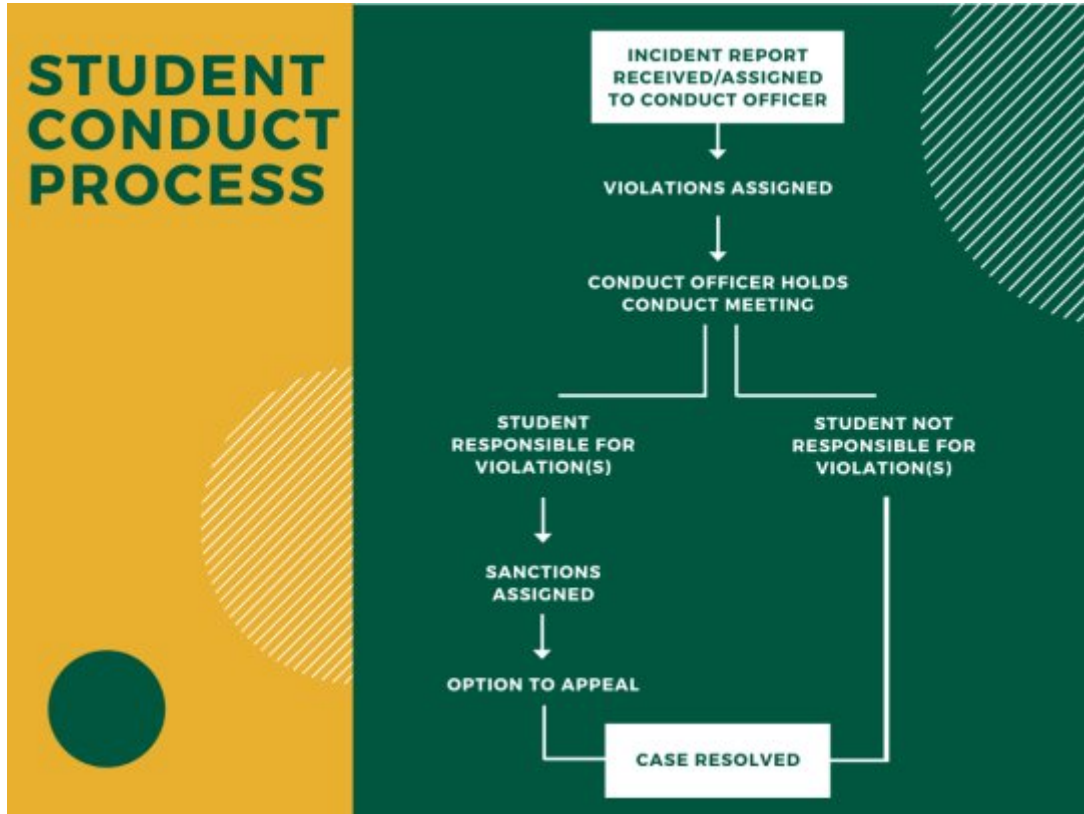
G. Abuse of the Student Conduct System

- 7.01 Disruption or interference with the orderly conduct of a student conduct proceeding.
- 7.02 Falsification, distortion, or misrepresentation of information to an administrative hearing officer, student conduct staff member, or within the student conduct process.
- 7.03 Influencing or attempting to influence another person to commit an abuse of the student conduct system.
- 7.04 Attempting to discourage an individual's proper participation in, or use of, the student conduct system.
- 7.05 Intimidation and/or retaliation of any person submitting a report, listed as a witness, and/or participating in a student conduct proceeding.
- 7.06 Institution of a student conduct proceeding in bad faith.
- 7.07 Failure to comply with interim restrictions imposed by a University official.
- 7.08 Failure to comply with the sanction(s) imposed under the Code of Conduct.

NOTE: The above list of violations is not intended to be exhaustive. A student may be subject to review for engaging in any listed or unlisted activity which appears to be in violation of what would be considered to believe reasonable behavior of the student community.

Part IV: Student Conduct Process and Disciplinary Procedure

The following flow chart demonstrates the process of the conduct system:



A. Incident Report

Any member of the Fitchburg State University community may submit a written incident report documenting a student for an alleged violation of policy. When possible, this report should be submitted within 60 calendar days of discovery of the alleged violation. The Dean of Students has the authority to extend this timeframe on a case by-case basis. In cases involving allegations of sexual violence, as defined within the Code, Discrimination and Sexual Violence definitions, any member of the Fitchburg State University community may submit a written complaint at any point during the time the respondent is enrolled or matriculated at Fitchburg State University.

All incident reports will be referred to the Dean of Students or designee who may take one or more of the following actions within 10 business days:

1. Dismiss the incident report if it lacks merit or is not submitted in a timely manner.

2. Continue the matter pending further information and/or remand the matter for further administrative investigation.
3. Schedule a mediation session, alternative dispute resolution meeting and/or informal resolution meeting.
4. Refer the matter for a student conduct meeting, for formal resolution of the alleged violations.
5. Impose interim restrictions and/or administrative protective measures, when there are sufficient facts to show that the student's continued presence on campus endangers the physical safety or well-being of others or themselves, or disrupts the educational process of the University.

Refer the complaint to the Title IX Coordinator for allegations that may fall under the EO plan.

B. Mediations and Student Conduct Meetings

1. The objective of the mediation is for the accused student and the individual submitting the incident report to agree upon a mediated solution. The objective of an informal resolution meeting is for the accused student and a University official to agree upon a resolution, come to an agreement. If an agreement is reached, the case will end with no opportunity for appeal. All parties must agree to the outcome. If no agreement is reached, the case will be referred back to the Dean of Students or designee for additional review.
2. Student Conduct meetings are formal meetings to determine a student's responsibility for violating the Code and to determine sanctions for responsibility.
3. Mediations, informal resolution meetings, or student conduct meetings will be conducted as soon as possible, but no sooner than two (2) business days (with the exception of the accused student waiving such right), nor more than fifteen (15) business days after the accused student has officially been notified (barring extenuating circumstances and/or in the event of an emergency situation). Accused students, with good reason, may request postponement of a meeting.
4. Notice to appear for mediation, informal resolution meetings, or student conduct meetings will be delivered in writing to the accused student's Fitchburg State email address.
 - a. Official communication is sent through Maxient, which consists of a letter being sent to the student's Fitchburg State email address. The student is required to login to review the letter. Notice is considered given when the student has logged in to review the letter.
 - b. If the student fails to login in to review the letter in a timely manner, the student conduct officer shall send additional notices, which may include:

email to the student's Fitchburg State email address, hardcopy letter to the student's residence hall location, or off-campus address via USPS.

- c. If the student fails to appear for the meeting, additional notice shall be sent to the student about their absence, and providing the student with 48 hours to respond. If the student fails to respond or provide a valid reason for their absence, the matter shall be heard in their absence.
 - d. Notice for Student Conduct Meetings shall include the following information:
 - i. Time, Date, and Location of the meeting;
 - ii. The specific alleged violations in the Code;
 - iii. Nature of the Incident;
 - iv. Office(s) or individual(s) that submitted the incident report;
 - v. How to request to review the incident report;
 - vi. Names and titles of any parties that may be present at the meeting, and their role in the meeting;
 - vii. Where to find and/or link to the accused student's rights as outlined in the Code.
5. When multiple parties are involved in the same incident, the student conduct officer will decide whether cases will be heard together or separately.
 6. Mediations, informal resolution meetings, investigations, or student conduct meetings are not open to the public and are confidential in nature.
 7. Generally recording of any kind is strictly prohibited and potentially illegal. Any person found in violation of this rule, may be immediately removed from the meeting, and subject to disciplinary action for violation of Rule 7.01.
 - a. If all parties in a meeting agree to record the meeting, then the University will officially record the meeting and a copy of the recording (and transcription if applicable) shall be saved to the file and made available to the accused student upon request.
 8. Only evidence and/or information introduced at the student conduct meeting will be considered in determining an accused student's responsibility. Formal rules of process, procedure and/or technical rules of evidence, such as are applied to criminal or civil court proceedings, need not be used in Fitchburg State conduct proceedings. Generally, a student conduct meeting will follow the following format.
 - a. Introductions;
 - b. Review of the Student Conduct Process;
 - c. Review of the alleged violations;
 - d. Review of Accused student's rights;
 - e. Opening Statement by Accused Student;
 - f. Discussion of Incident and Question and Answer;

- g. Presentation of any witnesses (if applicable) and Question and Answer;
 - h. Further discussion of incident;
 - i. Closing Statement by Accused Student;
 - j. Review of next steps in the process.
- 9. Student conduct officers must be impartial. Student conduct officers may recuse themselves at any time if they feel that they cannot be impartial or remain unbiased. Questions of impartiality or bias should be directed to the Dean of Students and/or Vice President for Student Affairs.
- 10. The decision of the Student Conduct officer will be made on the basis of whether it is more likely than not, the preponderance standard, that the accused student violated the Code.
- 11. Any person including the accused student, who disrupts a student conduct meeting or who fails to adhere to the rulings of the student conduct officer, may be excluded from the student conduct meeting.
- 12. Mediations and student conduct meetings may be recessed at any time provided they are reconvened within ten (10) business days (barring extenuating circumstances).
- 13. There may be written and/or recorded summation or other type of record as determined by the student conduct officer, of all meetings. The record shall be the property of Fitchburg State University and maintained in the student's file. The records shall be protected by FERPA.
- 14. A student may not be found to have violated the Code of Conduct solely because the student failed to appear for the meeting. In all cases, the materials and information in support of the alleged violations shall be presented and considered, as the meeting will be held in the absence of the student, should they fail to attend.
- 15. A case may be reopened after the final decision is made if both of the following conditions are met:
 - a. There is newly available evidence and/or information which could not reasonably have been discovered at the time of the original meeting.
 - b. The request to reopen is made within one academic semester following the date of the original final decision. The Dean of Students has the authority to extend the time-frame on a case-by-case basis when there is reasonable information or extenuating circumstances to substantiate extending the time frame.
- 16. When a student has also been criminally charged, the accused student has the right to refuse to incriminate themselves. All statements made in student conduct meetings or any other meeting, may be subject to subpoena.

17. All procedural questions are subject to the final decision of the Dean of Students, or designee.

Part V: Student Conduct Officer(s) and Appellate Officers

1. The Dean of Students, or designee(s) will conduct student conduct meetings.
2. Student Conduct Officers are appointed by the Dean of Students or designee.
3. Appellate Officers are appointed by the Dean of Students with the approval of the Vice President for Student Affairs.
4. All Student Conduct Officers and Appellate Officers shall be required to attend annual training relative to the Code, conducting student conduct meetings, and relevant topics to include but not limited to student conduct practice, use of Maxient, restorative justice, implicit bias, ethics, laws and regulatory compliance, trauma informed interviewing etc. Appellate Officers shall attend additional training regarding the review of appeals and appeals procedures.

Part VI: Rights of All Parties

A. Accused Student (Respondent) will be entitled to:

1. Written notice of the allegation, as outlined in Part V, B.4.d.
2. To be notified, at least 2 business days in advance, of all persons present at the meeting, and as to their role in the meeting.
3. To be notified, at least 2 business days in advance, of any witnesses that will be called at the meeting and as to what they will provide information on.
4. Opportunity to present their case, pose and/or raise any questions for consideration, question any witnesses, and present witnesses on their behalf.
 - a. The accused student shall notify the student conduct officer at least 2 business days in advance as to any witnesses they plan to call and as to what they will provide information on.
 - b. It shall be the responsibility of the accused student to notify their witnesses as to the time/date/and location of the meeting.
 - c. Generally character witnesses are not accepted in person for meetings, but statements of character may be considered relevant to sanctioning.
5. Not answer any questions or make any statements during a student conduct meeting. Such silence will not be used against the accused student; however, the outcome of the meeting will be based upon the information (or lack thereof) presented during the meeting.

6. Work with an advisor throughout the conduct process. Only one advisor per accused student is allowed in the meeting. Advisors are not permitted to directly address the student conduct officer and may not participate directly in any meeting. An advisor may consist of an attorney. When the accused student's advisor is an attorney, the University may also have legal counsel present.
7. Be informed in writing within five (5) business days of the decision (barring any extenuating circumstances). In the event of delay, the student conduct officer shall notify the student of the delay and the timeframe for receiving a notice of outcome.
8. Opportunity to appeal the decision based on the appellate criteria outlined in the appeals section.

B. Alleged victims/survivors will be entitled to:

1. Submit a 'victim/survivor impact statement' to explain the emotional, physical, financial, educational, and/or other impact(s) the incident has had on the alleged victim/survivor's life. The accused student shall be able to review the statement. The statement will be part of the meeting record.
2. Work with an advisor throughout the conduct process. Only one advisor per party is allowed in the meeting. Advisors are not permitted to address the student conduct officer and may not participate directly in the meeting.
 - a. It is at the discretion of the student conduct officer whether the victim/survivor will be called as a witness to the meeting, or permitted to directly read their 'impact statement' at the meeting.
3. Notice of the decision consistent with applicable law.

Part VII: Sanctions

Fitchburg State University adheres to and upholds a philosophy of progressive discipline whenever appropriate. The conduct system and imposition of sanctions contribute to the teaching of appropriate individual and group behavior and foster the ethical development and personal integrity of students.

A. Sanctions Criteria and General Listing

1. In determining a sanction, the responsible student's present demeanor, past disciplinary history, the nature of the offense, the resulting severity of any damage, injury or harm and other factors may be considered.
2. Any one or more of the following sanctions may be imposed, deferred, or held in abeyance by the student conduct officer or conduct board. A student shall not be considered in good conduct standing while they are on any type of conduct probationary status.
 - a. **Warning.** Verbal or written notice that the behavior has been inappropriate. May be considered part of the student conduct record in future disciplinary action.

- b. **Fine.** A fine is a fee, financial sanction, imposed for alcohol, drug, and/or other violations which will be used toward prevention education and alternative programming.
- c. **Restitution.** Financial compensation for damages or costs may not exceed the actual value.
- d. **University/educational service.** Assignment of an appropriate project or attendance at an educational workshop that will benefit the university community, responsible student or others.
- e. **Referral.** A student may be referred to the counseling services, substance awareness, health services or other appropriate offices or local agencies when deemed appropriate by the Dean of Students, or designee.
- f. **Restriction.** Denial of access to any campus facility, activity, class or program, or denial of student privileges.
- g. **Disciplinary Probation.** A period of time during which a student's behavior is subject to close examination. A student is not considered in good conduct standing while on probation. Disciplinary Probation is set for a predetermined set of time. The student conduct officer will communicate to the student any specific parameters of the probation and/or expectations. Any student may apply to come off of probation before the expiration date if they can demonstrate their service to the community and show good cause for why it should end early.
- h. **Relocation of Residence.** Required assignment to another residence area.
- i. **Loss of Residence.** Removal from the residence halls. The expiration of the loss of residence period is no guarantee of readmittance to housing.
- j. **Deferred Loss of Residence.** A delayed removal from University Housing for a period up to two semesters. Any proven violation during this period may result in immediate removal from University Housing for a specific period of time.
- k. **Deferred Suspension.** A delayed removal from class/the university for a period up to two semesters. Any proven violation during this period may result in immediate suspension for a specific period of time.
- l. **Suspension.** Removal from class/the university for a specified period of time ranging up to a maximum of two years. Suspended students must remove themselves from the campus totally. Students suspended from the university may not attend evening or online classes during their suspensions. The expiration of the suspension period is no guarantee of readmittance.¹ Suspended students are administratively withdrawn from the University with an effective date of the date of suspension or date of restriction, if applicable. The earlier date will be used. When the student is administratively withdrawn, it will be noted that the withdrawal is for conduct purposes. Generally, students administratively withdrawn for conduct purposes are not eligible for a refund and/or tuition and fees appeal.

¹ A suspended student must seek readmission no later than thirty (30) days prior to the expiration of the suspension. The Dean of Students or designee will make a determination based upon all available information whether readmission with or without conditions is possible. If not, the student will have the ability to file an appeal with regard to the continued suspension.

- m. **Deferred Loss of Recognition.** A delayed removal of recognition as a recognized student organization. Any proven violation during this period may result in immediate loss of recognition for a specified period of time.
- n. **Loss of Recognition.** During this time, a recognized student organization may not associate itself with the university by using the university name, facilities, and/or other rights and privileges of recognized student organizations. The expiration of the loss of recognition period is no guarantee of re-recognition.
- o. **Dismissal.** Permanent removal from the university. Dismissed students are administratively withdrawn from the University with an effective date of the date of suspension or date of restriction, if applicable. The earlier date will be used. When the student is administratively withdrawn, it will be noted that the withdrawal is for conduct purposes. Generally, students administratively withdrawn for conduct purposes are not eligible for a refund and/or tuition and fees appeal.
- p. **Notification.** Parents, faculty/staff and others may be notified or contacted regarding a student's behavior consistent with applicable law.
- q. **Other Sanctions.** Other sanctions may be imposed instead of or in addition to those specified above.

Part VIII: Appeals

1. Students may appeal the results of an administrative hearing. Requests for an appeal must be submitted in writing to the Office of Student Affairs electronically on the Student Conduct website, or emailed to: studentconduct@fitchburgstate.edu. The appeal request must be submitted by the student. Appeal requests not received in the established timeframe or that do not meet the established criteria will be rejected.
2. Appeal requests will be considered based on the following criteria:
 - a. procedural error within the conduct process that would substantially change the outcome of the hearing;
 - b. lack of sufficient evidence to support the decision, new evidence or information that was not available at the time of the hearing that would substantially alter the findings of fact and change the outcome of the hearing;
 - c. the sanction imposed is excessive or inappropriate.
3. Students requesting to appeal a decision must do so in writing within five (5) business days of the date of the findings letter. The cutoff for appeals is 5 PM on the fifth business day. All requests are to be submitted to the Office of Student Affairs. The request should include the grounds for the appeal, all relevant information, and the desired outcome.

4. Upon receipt of the request for an appeal letter, the Dean of Students or designee will review the appeal and record from the meeting. The Dean of Students will take one of the following actions.
 - a. Dismiss the appeal if it does not meet the criteria and/or is not timely.
 - b. Refer the matter to an appeals officer and/or appeals board.
5. The appeals officer or appeals board (consisting of more than 1 appeals officer) may determine there are no grounds for the appeal, thus upholding the decision or determine that the sanction is excessive or inadequate and alter it accordingly or return it to the prior level for further appropriate proceedings or conduct a formal meeting and render a decision that upholds the decision, modifies the decision or dismisses the case.
6. Formal appeal meetings will be conducted following the same system as set forth for student conduct meetings.
7. Appellate decisions are final.

Part IX: Interim Restrictions

1. The Dean of Students, or designee may impose upon a student pending disciplinary action and/or in all cases where a student has been accused with and/or is undergoing criminal proceedings for any felony charge, immediate interim restrictions without prior notice whenever there are sufficient facts to show that the accused student's continued presence on the campus endangers the physical safety or well-being of others, or themselves, or disrupts the educational process of the university.
2. Interim restrictions may include, but are not limited to: restriction from class/university and/or campus housing, assignment to alternate housing, limitation of access to designated housing facilities and/or campus facilities by time and location, restriction of communication with named individuals within the university community, and/or the requirement to secure advance authorization to engage in a specified activity.
 - a. All restrictions from the University and/or removal from class and/or attendance at classes shall be subject to review by the Dean of Students and/or Vice President for Student Affairs or designee.
3. The Director of Housing and Residential Services, or designee, may impose upon a student pending disciplinary action immediate residential restrictions without prior notice whenever there are sufficient facts to show that the accused student's continued presence in the residence halls disrupts or potentially disrupts the residential community.
4. Students wishing to appeal an interim restriction must first do so in writing, by submitting a written appeal to the Office of Student Affairs. Upon receipt of the

written appeal, the student shall have the opportunity to meet with the Dean of Students, or designee, to present their own version of the facts and to indicate why interim restrictions should not be imposed or should be modified. Following this meeting, the decision of the Dean or designee will be final.

5. Violations of interim restrictions may result in suspension or dismissal from Fitchburg State University.

Part X: Protective Measures and No-Contact Orders

1. The Dean of Students, or designee may take administrative action, irrespective of the student conduct process, to provide protective measures and/or issue no- contact orders. A student wishing to contest any such measures, shall submit a letter in writing to the Office of Student and Affairs. Such measures may include but are not limited to:
 - a. "No contact/communication" orders;
 - b. escorts to ensure safety while moving between locations on campus;
 - c. changes in academic or work schedules;
 - d. alternative housing, dining, and/or office accommodations;
 - e. restrictions from areas of campus;
 - f. assistance in identifying an advocate to help secure additional assistance, such as off-campus and community advocacy, support and services; and/or
 - g. appropriate academic accommodations.
2. A no contact order is not meant to be a permanent solution to a conduct complaint or conflict. When a no contact order is issued, it will be reviewed within 5-10 business days by a student conduct officer to review the report/incident and determine the status of the no contact order. A formal meeting may be scheduled with the parties (separately if indicated) to review the order. If the requesting party fails to respond to the notice and/or appear for the meeting, the order may be dropped at the discretion of the student conduct officer. Following the review and/or meeting the student conduct officer will issue notice to the parties as to the order's status, parameters, and date of further review and/or expiration of the order. No contact orders shall not be issued on an indefinite basis.

Part XI: Process Accommodations for Students with Disabilities

1. A student with a disability who desires an accommodation in reference to a mediation, informal resolution meeting, student conduct meeting, appeal, or any other student must request an accommodation by following the procedure for requesting an accommodations through the Disability Services Office. The Disability Services Office will make a determination regarding the request and notify the appropriate parties. A student will not be considered to have a disability unless and until the student registers with the Disability Services Office. Please contact the Disability Services Office for further information.

2. Reasonable accommodations depend upon the nature and severity of the individual's documented disability and the setting for which the accommodations are requested. The University is not required to grant a requested accommodation that is unreasonable, ineffective, an undue burden or substantially alters a University program, service or practice. Reasonable accommodations will be provided as required by law.
3. All students, irrespective of a disability, substance use issue, mental health condition, and/or any other condition are expected to adhere to the Code of Conduct and University policies. The American with Disabilities Act does not protect behaviors alleged to be a consequence of a disabling condition.

Part XII Maintenance and Review of Student Conduct Records

1. Student Conduct files are deemed educational records and are maintained separately from any other academic or official file at the University by the Dean of Students or designee. Generally, information from the files is not released without the written consent of the student. However, certain information may be provided without a student's prior consent to individuals within the University who have a legitimate legal and/or educational interest in obtaining it, and to individuals outside the University under certain circumstances. (Please refer to the federal Family Educational Rights and Privacy Act of 1974, as amended.
 - a. A student conduct file or disciplinary record is any record where the student has been found "responsible" for a violation of the Code of Conduct.
 - b. Other records are maintained, but not considered student conduct files/ disciplinary records for reporting purposes.
2. The sanctions of "Suspension" and "Dismissal" are not reported on the student's transcript. When a student is suspended and/or dismissed, the student will be administratively withdrawn with an effective date of the suspension and/or dismissal, or the date of restriction (whichever date is earlier). When the student is administratively withdrawn, it will be noted that the withdrawal is for conduct purposes.
3. A Student Conduct file is maintained chronologically by incident date and then by the accused student. A student may have more than one file. Generally, a Student Conduct file, including related documents, will be kept for seven (7) years from the final disposition of an incident. In cases of suspension or other special circumstances, at the discretion of the Dean of Students, files may be maintained longer. The Student Conduct file of a suspended and/or dismissed student is maintained permanently. All files and records are maintained in an electronic database.
4. In situations involving both a respondent and a student who believes they were the victim of a student's misconduct, the records of the process, if any, will be

considered to be the educational records of both the accused student and the student who believes themselves, himself/herself to be the victim because the educational career and chances of success in the academic community of each may be impacted.

5. The Dean of Students or designee has final authority regarding the inspection, review, or release of any student conduct file.

Part XIII: Interpretation and Revision

1. Any questions of interpretation regarding the Code of Conduct shall be referred to the Dean of Students or designee for determination. The Dean of Students or designee's determination is final.
2. The Code of Conduct shall be reviewed annually by the Dean of Students or designee, and formally at least every five (5) years by advisory group to the Dean of Students.

Part XIV: Interim Public Health Statement

The novel coronavirus, COVID-19, is a highly infectious, life-threatening disease declared to be a global pandemic. The safety of the campus community in respect to COVID-19 is a shared risk and all community members must do their part to contribute to the health and safety of the community. To that end, the University has implemented new safety rules and precautions to mitigate the spread of COVID-19, which the University may update or revise at any time in response to new information, recommendations or guidance from the CDC or Massachusetts Department of Health. All students are expected to comply with the rules and precautions implemented by the University, including, but not limited to, wearing face coverings, washing or sanitizing hands, social distancing, monitoring of symptoms, and self-reporting of symptoms or a positive COVID diagnosis. Behaviors that jeopardize the health and safety of the University community will not be tolerated. Students suspected of, or found to be in violation of the preceding may be immediately removed from the residence halls and/or the University, pending further action. Failure to comply with these rules and precautions implemented in response to COVID-19 is a violation of the University's Code of Conduct and could subject students to sanctions, up to and including expulsion from the University.

Appendix A - General Definitions

The following selected terms are defined in an effort to facilitate a more thorough understanding of the Code of Conduct. This list is not intended to be a complete list of all terms referenced in the Code of Conduct that might require interpretation or clarification. The Dean of Students or designee shall make the final determination on the definition of any term found in the Code of Conduct.

Advisor:

An individual who provides support and/or advice to a party in the conduct process. An advisor may be any individual, including an attorney. An advisor may observe, advise, or pass notes to the party, but in no way may ask questions, speak, or directly participate in the process.

Agreement:

The final agreement regarding violations and/or sanctions agreed upon between the hearing officer and the student.

Appellate Officer:

Any person or persons authorized by the Dean of Students and/or Vice President for Student Affairs, or designee to conduct a review of a decision reached by a student conduct officer.

Bullying:

The severe or repeated use by one or more students of a written, verbal, or electronic expression, or physical act or gesture, or any combination thereof, directed at another individual, that has the effect of: causing physical or emotional harm to the other student or damage to the other student's property; placing the other student in reasonable fear of harm to themselves him/herself or damage to their his/her property; creating a hostile environment at school for the other student; infringing on the rights of other students on campus; materially and substantially altering the education process or the orderly operation of the University. If the bullying is directed at those associated, or perceived to be associated with a protected class, it may be a violation of the University Policy Against Discrimination, Discriminatory Harassment, and Retaliation (included in the Equal Opportunity Diversity and Affirmative Action Plan) and/or a violation of the University's Sexual Violence Policy. Violations of those policies may be addressed under the EO Investigation and Resolution Procedures.

Business Day:

Any day, Monday through Friday, that the university is open.

Complainant:

Any person, office, or the university itself, who submits an allegation that a student violated the Code of Conduct.

Class Day:

A day when classes are in session.

Day:

A calendar day.

Designee:

A staff or faculty member who is responsible for implementing the student conduct process or administering the student conduct system, in part or in whole, at the direction of the appropriate dean, Dean of Students, Vice President for Student Affairs, or other university official.

Dean of Students:

The person in Student Affairs, designated by the president, to be responsible for the overall coordination of the university student conduct system, including the development of policies, procedures, and education training programs. The Dean may serve as a student conduct officer and/or appellate officer.

Dean of Students Hold:

An administrative hold placed on a student's account by the Dean of Students for purposes related to the functions of the conduct system, EO Plan, and/or other administrative policies/purposes. Also referred to as a Dean of Students Hold.

Student Conduct Hold:

An administrative hold placed on a student's record when they do not respond to the request of a university official to attend an administrative hearing, has not completed a disciplinary sanction, or has withdrawn or left the university while a conduct matter is pending.

Equal Opportunity, Diversity and Affirmative Action Plan ('EO/AA Plan'):

The Massachusetts State Universities Plan that includes the policy against discrimination, discriminatory harassment and retaliation, and sexual violence policy. The document also includes the complaint investigation and resolution procedures.

Instructor:

Any faculty member, teaching assistant, graduate assistants or any other person authorized by the university to provide educational services (e.g., teaching, research, or academic advising).

Interim Restriction:

Restrictions, which may be immediate, taken against a student prior to an administrative hearing on the student's alleged violation.

Guest:

A non-student who is an associate of a student.

Harassment:

This means the severe or repeated use by one or more students of a written, verbal, or electronic expression, or a physical act or gesture, or any combination thereof, directed at another individual that has the effect of: causing physical or emotional harm to the other student or damage to the other student's property; placing the other student in reasonable fear of harm to themselves him/herself or damage to their his/her property; creating a hostile environment at school for the other student; infringing on the rights of other students on campus; materially and substantially altering the education process or orderly operations of the university.

Informal Resolution:

A type of mediation under the student conduct process, which is offered on a discretionary basis. A meeting between a hearing officer and a student to discuss an incident that occurred or a complaint that was filed, which serves the purpose of determining if an agreement can be reached in lieu of an administrative hearing.

Intoxication:

An allegation that a person is visibly drunk or under the influence of alcohol.

May:

This is used in the permissive sense.

Member of the University Community:

Includes any person who is a student, instructor, or university staff member; any person working for the university, either directly or indirectly (e.g., private enterprise on campus); or any person who resides on university premises. The Dean of Students shall determine a person's status in a particular situation.

Policy: The written regulations, standards, and student conduct expectations adopted by the university. These may be amended, modified, or replaced from time to time.

Registered Student Organization:

A group or associate of students which has complied with the other student organizations requirements prescribed by the Office of Student Development and by SGA.

Respondent/Responding Student:

Any student accused of violating the student Code of Conduct. (also referred to as accused student)

Sanction:

A requirement a student must abide by or complete when found responsible for violating the student Code of Conduct.

Shall and Will:

These are used in the imperative sense.

Student:

Any person admitted, registered, enrolled, or attending any university course or university conducted program; any person admitted to the university who is on university premises or university-related premises for any purpose pertaining to their registration or enrollment.

Student Conduct Record:

The printed/written/electronic file which may include but is not limited to incident report(s), correspondence, academic transcript, witness statements, and student conduct history.

Student Conduct Officer:

A university staff member who is authorized to determine the appropriate resolution of an alleged violation of the student Code of Conduct, and/or to impose sanctions or affect other remedies as appropriate. A hearing officer is also vested with the authority to, among other duties, investigate a complaint of an alleged violation of the Code of Conduct, decline to pursue a complaint, refer identified disputants to mediation or other appropriate resources.

Student Organization:

An association or group of persons that has complied with the formal requirements for university recognition or is recognized by the university.

University:

Fitchburg State University

University Document:

Means any University record, written communication, or form.

University Official:

Any person employed by the university to perform administrative, instructional, or other professional duties.

University premises:

All land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university, either solely or in conjunction with another entity.

University Sponsored Activities:

Any activity, on or off the University premises, which is initiated, aided, authorized, or supervised by the University, including any student, and/or registered student organization.

Victim/Survivor:

A person who is harmed, injured, or otherwise directly impacted as the result of a crime, accident, violation of the code, or other event or action.

Witness:

Any person with knowledge of a student's alleged violation of the student Code of Conduct.

Appendix B - Discrimination and Sexual Violence Definitions

Sexual Violence:

As defined by Fitchburg State University, sexual violence “refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent (e.g., due to the [person’s] age or use of drugs or alcohol, or because an intellectual or other disability prevents the [person] from having the capacity to give consent).” All forms of sexual violence are prohibited by the Code of Conduct, the Massachusetts State Universities, and Title IX.

Rape:

Rape is the penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person’s consent. Rape is also the performance of oral sex or anal sex on another person without that person’s consent.

Sexual Assault:

Sexual assault is any kind of sexual physical contact that involves any form of coercion, force or lack of consent. Sexual physical contact includes the intentional touching of another person on an area of the body generally recognized as a private part of the body, or touching any part of another person’s body with a private part of one’s own body or object, no matter how slight. Sexual intercourse means penetration, no matter how slight, of a bodily orifice (vagina, anus, or mouth) by an object or by a body part, and/or non-consensual oral sex or anal sex. Examples of sexual assault include, but are not limited to:

- kissing or fondling without consent;
- rape;
- advancing sexual activity without consent;
- ignoring a partner’s objections to sexual activity on one occasion even when consent has been given in the past;
- and engaging in manipulative, threatening and coercive behavior to obtain consent.

Sexual Exploitation:

Taking sexual advantage of another person for one’s own benefit or the benefit of anyone other than that person without that person’s consent. Examples of behavior that could rise to the level of sexual exploitation include, but are not limited to:

- prostituting another person;
- recording images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness without that person’s consent;
- distributing through social media, text, email or other media images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure;
- viewing child pornography; and

- viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent.

Incest:

Incest is sexual intercourse between persons who are related to each other and whose marriage would be prohibited by law. Attempts to commit incest are also prohibited.

Statutory Rape:

Statutory rape is sexual intercourse with a person who is under the statutory age of consent, which is 16 in Massachusetts. Attempts to commit statutory rape are also prohibited.

Aiding in the Commission of Sexual Violence:

The aiding or assisting in the commission of an act(s) of sexual violence is prohibited. Examples of aiding in the commission of sexual violence include, but are not limited to:

- videotaping a friend having sex with a person who has passed out drunk at a party;
- helping a friend to drug the friend's date's drink; and
- encouraging students to engage in sexual activity when one knows those students to be incapacitated by drugs or alcohol.

Affirmative Consent:

Consent is an understandable exchange of affirmative words or actions, which indicate a willingness by all parties to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement.

Whether an individual has taken advantage of a position of influence over a complainant may be a factor in determining consent. For example, a position of influence could include supervisory or disciplinary authority.

Silence, previous sexual relationships or experiences, and/or a current relationship may not, in themselves, be taken to imply consent. While nonverbal consent is possible (through active participation), it is best to obtain verbal consent. Similarly, consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.

Incapacitation:

An individual who is incapacitated by alcohol and/or drugs both voluntarily or involuntarily consumed may not give consent. Alcohol or drug related incapacitation is more severe than impairment, being under the influence, or intoxication. Evidence of incapacity may be detected from context clues, such as slurred speech, bloodshot eyes, the smell of alcohol on the breath, shaky equilibrium, vomiting, unusual behavior or unconsciousness. While context clues are important in determining incapacitation, they alone do not necessarily indicate incapacitation.

Persons unable to consent due to incapacitation also include, but are not limited to: persons under age sixteen (16); persons who are intellectually incapable of understanding the implications and consequences of the act or actions in question; and persons who are physically helpless. A physically helpless person is one who is asleep,

blacked out, involuntarily physically restrained, unconscious, or, for any other reason, unable to communicate unwillingness to engage in any act.

The use of alcohol or drugs to render another person mentally or physically incapacitated as a precursor to or part of a sexual assault is prohibited. The use of alcohol, medications or other drugs by the respondent or accused does not excuse a violation of this Policy.

Force: Force is the use of physical strength or action (no matter how slight), violence, threats of violence or intimidation (implied threats of violence) as a means to engage in sexual activity. A person who is the object of actual or threatened force is not required to physically, verbally or otherwise resist the aggressor.

Coercion: Coercion is unreasonable pressure or emotional manipulation to persuade another to engage in sexual activity. When someone makes it clear that s/he does not want to engage in sexual behavior, or s/he does not want to go beyond a certain point of sexual activity, continued pressure beyond that point can be considered coercive. Being coerced into sexual activity is not consent to that activity.

Sexual Harassment:

Unwelcome conduct of a sexual nature is prohibited when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; and/or
- submission to, or rejection of, such conduct by an individual is used as a basis for academic or employment decisions affecting that individual; and/or
- such conduct has the purpose or effect of substantially interfering with an individual's academic or work professional performance or creating a sexually intimidating or hostile employment, educational, or living environment.

Examples of sexual harassment may include, but are not limited to:

- repeatedly pressuring another person for sexual activity;
- making sexist remarks about an individual's clothing, body or sexual activities;
- unnecessary touching, patting or pinching another person;
- demanding sex from a subordinate while making threats concerning the subordinate's job;
- demanding sex from a student while making implied threats concerning the student's grade;
- electronically transmitting derogatory, demeaning or pornographic materials;
- posting explicit sexual pictures on an exterior office door or on a computer monitor; and
- sexually assaulting another person.

Sexual harassment can occur between people of any gender. It can occur between equals (e.g., student-to-student, staff-to-staff, faculty-to-faculty) or between those of differing power status (e.g., supervisor-to-subordinate, faculty-to-student, coach-to-athlete). It is possible for one who appears to have the lesser power to commit sexual harassment (e.g., a student harassing a faculty member).

In order for conduct to constitute sexual harassment under this Policy, a reasonable person under similar circumstance would have to conclude that the behavior was harassing or discriminatory.

Reasonable directions or warnings by authorized University personnel as to the time, place and manner in which employees perform their assigned responsibilities, students carry out their educational assignments or program participants engage in sponsored activities do not constitute evidence of sexual harassment under this Policy.

Hostile Environment:

A hostile environment exists when sexual harassment is sufficiently serious to deny or limit a person's ability to participate in or benefit from the University's programs or activities. A hostile environment can be created by anyone involved in the University's programs or activities (e.g., administrators, faculty members, students, and campus visitors).

To make the ultimate determination of whether a hostile environment exists for campus community member(s), the University considers a variety of factors related to the severity, persistence, or pervasiveness of the sexual harassment, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and, (5) the degree to which the conduct affected one or more person's education or employment.

A single or isolated incident may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to show evidence of a hostile environment, particularly if the harassment is physical.

Gender-Based Harassment:

Unwelcome conduct of a nonsexual nature based on a person's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes, is prohibited when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; and/or
- submission to, or rejection of, such conduct by an individual is used as a basis for academic or employment decisions affecting that individual; and/or
- such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating an intimidating or hostile employment, educational, or living environment based on gender.

Examples of gender-based harassment include, but are not limited to:

- using derogatory comments and terms toward another person who or persons who do not act in ways that align with their gender stereotype,
- telling someone to use a restroom that does not align with that person's gender identity; and
- making generalized derogatory comments about one gender

While harassment based on non-sexual factors may be distinguished from sexual harassment, these types of behaviors may contribute to the creation of a hostile environment. Thus, in determining whether a sexually hostile environment exists, the University may consider acts of gender-based harassment. In order for conduct to constitute gender-based harassment under this Policy, a reasonable person under similar circumstances would have to conclude that the behavior was harassing or discriminatory.

Reasonable directions or warnings by authorized University personnel as to the time, place and manner in which employees perform their assigned responsibilities, students carrying out their educational assignments or program participants engaging in sponsored activities do not constitute evidence of gender-based harassment under this Policy.

The definition of hostile environment provided under the Sexual Harassment section above also applies in the context of gender-based harassment.

Domestic and Dating Violence:

Domestic and dating violence are acts of abusive or coercive behavior (physical, sexual, financial, verbal and/or emotional) used by a perpetrator to gain or exercise control over another, including any behaviors that intimidate, manipulate, humiliate, isolate, frighten, threaten, blame, hurt, injure, or wound someone. Domestic and dating violence can occur in relationships between persons of any gender.

Domestic violence is such behavior directed against a current or former spouse, family member (blood, step, adoptive or foster), person with whom a child is shared, or cohabitant (possibly a roommate).

Dating violence is such behavior directed against another person in a social relationship of a romantic or intimate nature, and where the existence of such a relationship is determined based on a consideration of the length and type of relationship and frequency of interaction between the persons involved.

Examples of domestic and dating violence may, under the totality of the circumstances of each case, include, but are not limited to:

- hitting, slapping, punching, kicking, pulling hair or other physical misconduct;
- isolating a partner from family and friends;
- destroying a roommate's personal items;
- physically assaulting the child of a partner;
- pursuing sexual activity when a partner is not fully conscious, is not asked, or is afraid to say no, or coercing a partner to have sex without protection;
- threatening to reveal a person's sexual orientation without the person's permission;
- exhibiting excessive possessiveness and jealousy;
- constantly belittling or insulting a partner;
- checking a roommate's cell phone or email account without permission;
- demanding that a partner dress or act in a certain way; and/or
- threatening violence against the victim's acquaintances, friends, or family members.

Stalking:

Engaging in a course of harassing, threatening, or unwanted behavior that would cause a reasonable person to suffer substantial emotional distress or fear for their safety or the safety of others. Stalking may occur in a range of formats including, but not limited to, in-person conduct, writings, texting, voicemail, email, social media, following someone with a global position system (GPS), and video/audio recording. Examples of stalking behaviors include, but are not limited to:

- repeated unwanted or unsolicited contact or leaving unwanted gifts or items;
- posting disturbing messages or threats online;
- creating, attempting to create, or disseminating unauthorized recordings of another;
- gathering information about an individual from family, friends, co-workers, and/or classmates, or by electronic means by installing spy-ware on a computer or using GPS;
- threats in any form about an individual or their loved ones or threats to harm oneself;
- damaging, stealing, borrowing, or relocating property, trespassing and vandalism;
- pursuing, waiting, or showing up uninvited at a workplace, residence, classroom, or other locations frequented by an individual; and
- directing a third party to take any of the above acts.

Discrimination:

An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's membership in a protected class or association with a member(s) of a protected class. Discrimination may be classified as either disparate impact (facially neutral practices that fall more harshly on one group than another and cannot be justified by business necessity) or disparate treatment (treatment of an individual that is less favorable than treatment of others based on discriminatory reasons). A single act of discrimination may be based on more than one protected class status. For example, discrimination based on anti-Semitism may relate to religion, national origin, or both; discrimination against a pregnant woman might be based on sex, marital or parental status, or both; discrimination against a transgender individual might be based on sex or sexual orientation.

Discriminatory Harassment:

A form of discrimination including verbal and/or physical conduct based on legally protected characteristics and/or membership in a protected class that:

- has the purpose or effect of creating an objectively intimidating or hostile work or educational environment;
- has the purpose or effect of unreasonably interfering with an individual's work or educational opportunities; or
- otherwise unreasonably adversely affects an individual's employment or educational opportunities.

Reasonable directions or warnings by authorized University personnel as to the time, place and manner in which employees perform their assigned responsibilities, students

carry out their educational assignments or program participants engage in sponsored activities do not constitute evidence of discriminatory harassment under this Policy.

For purposes of this Policy, unwelcome conduct constitutes hostile environment harassment when:

- it is targeted against a person on the basis of his/her membership in a protected class;

AND

- it is sufficiently severe or pervasive that it alters the conditions of education or employment and creates an environment that a reasonable person would find intimidating or hostile; OR
- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or education; OR
- submission to, or rejection of, such conduct by an individual is used as a basis for academic or employment decisions affecting that individual.

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

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

Retaliation:

Fitchburg State University and The Massachusetts State Universities prohibit retaliation against any person for making a complaint of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation, for assisting in making a complaint, for resisting or openly opposing such conduct, or for otherwise using or participating in the complaint investigation process under the Policy. Persons who file, or participate in the investigation or resolution of, claims or complaints of sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence, stalking and retaliation with outside agencies, law enforcement or otherwise pursuant to any applicable state or federal law, are also protected from retaliation by this Policy.

Prohibited retaliation includes, but is not limited to: threats; intimidation; reprisals; continued harassment or misconduct; other forms of harassment; slander and libel; and adverse actions related to employment or education. Retaliation can be committed by individuals or groups, including friends, relatives or other associates of the person against whom a complaint is filed. Retaliation, even in the absence of proven sexual violence, sexual harassment, gender-based harassment, domestic violence, dating violence or stalking in an underlying complaint, constitutes a violation of this Policy that is just as serious as the main offense itself.

Any person who believes that they are the object of retaliation, or any person with questions or concerns about retaliation under the Code of Conduct should contact the Dean of Students.