

# MAINE MARITIME ACADEMY

## GENERAL ADMINISTRATION Section 201

**SUBJECT: SEXUAL HARASSMENT, SEXUAL ASSAULT AND OTHER SEX BASED CONDUCT, RELATIONSHIP VIOLENCE, AND STALKING. PROHIBITED CONSENSUAL RELATIONS**

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**PURPOSE: To define, prohibit and prevent sexual harassment, sexual assault and certain other acts of a sexual nature, domestic and dating violence and certain other acts within an intimate relationship, sexual violence and stalking. Also to prohibit certain consensual sexual relationships.**

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This policy governs a broad range of sexual and other sex-based conduct defined and prohibited by federal and/or state law. For purposes of this policy, “sex” includes gender as well as sexual orientation, gender identity and gender expression.

Sexual harassment, a form of sex discrimination, is a violation of state and federal law and a violation of this policy when engaged in by employees or students. As described herein, the federal definition of “sexual harassment” under Title IX of the Education Amendments of 1972 is substantially broader than the state definition and includes sexual assault, dating and domestic violence and stalking. This policy is also violated when students or employees engage in conduct defined by state law as sexual violence, intimate partner violence and stalking. Conduct governed by this policy is collectively referred to herein as “prohibited conduct.”

A full description of the procedure governing the administration of this policy is set forth in MMA Procedure 201.2 which includes definitions, how to make a report of prohibited conduct, file a Formal Complaint, and obtain emergency and ongoing support services and supportive measures; the procedures for informal and formal resolution; and the investigative, disciplinary and appeals processes. A summary description of procedural information is set forth in Section C herein.

All capitalized terms used herein and not otherwise defined in this Policy 201 shall have the same meaning given to such terms in Procedure 201.2.

Any Maine Maritime Academy employee or student who violates this policy or the applicable laws will be subject to disciplinary action.

### **A. Sexual Harassment**

#### **1. Maine Human Rights Act and Title VII of the Civil Rights Act of 1964**

Under the Maine Human Rights Act and Title VII of the Civil Rights Act of 1964, sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature, including conduct based on sex, constitute sexual harassment when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or educational benefits; or
- b. Submission to or rejection of such conduct is used as the basis for an employment or education decision affecting an individual; or
- c. Such conduct is so severe or pervasive as to have the purpose or effect of substantially interfering with an individual's academic or work performance or creating an intimidating, hostile or offensive employment, educational or living environment, thereby effectively denying equal access to an MMA program or activity; and
- d. A person of reasonable sensibilities would clearly understand that the conduct was unwelcome, harmful or offensive.

## **2. Title IX of the Education Amendments Act of 1972**

Title IX of the Education Amendments of 1972 has similar proscriptions against the same types of unwelcome sexual and sex-based conduct prohibited by Title VII and the Maine Human Rights Act, although with different definitions of the prohibited conduct. Title IX also includes sexual assault, stalking, dating violence and domestic violence within the definition of sexual harassment.

Under Title IX, sexual harassment is unwelcome conduct based on sex that satisfies one of more of the following:

- a. An MMA employee conditions the provision of an MMA aid, benefit, or service on an individual's participation in unwelcome sexual conduct.
- b. Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to MMA education programs or activities.
- c. Sexual assault, domestic violence, dating violence or stalking as defined by federal law and set forth in MMA Procedure 201.2.

In addition, certain jurisdictional requirements must be satisfied for the conduct to be within the scope of Title IX. Specifically, the alleged conduct must have:

- d. occurred against a person in the United States;
- e. participating or attempting to participate in an MMA education program or activity at a location owned or controlled by MMA; and
- f. MMA had substantial control over the alleged perpetrator and the context in which the alleged sexual harassment occurred.

## **B. State Law Prohibitions on Sexual Violence, Intimate Partner Violence and Stalking**

Maine law prohibits conduct that falls within the broad definitions of sexual violence and intimate partner violence, as well as stalking. These categories of conduct are similar to those prohibited by Title IX, but the definitions differ. In addition, unlike Title IX, these categories are not included within the state definition of sexual harassment. The definitions of sexual violence, intimate partner violence and stalking as defined by Maine law are set forth in Procedure 201.2.

### **C. Procedure for Filing a Report or Formal Complaint, Obtaining Support Services and Information on Resolution Options**

The procedure for filing a report or Formal Complaint of conduct prohibited by this policy is set forth in MMA Procedure 201.2, which also describes emergency and ongoing support and services and supportive measures; the availability of important information on crisis center support, as well as medical, counseling, law enforcement, legal and financial aid services; the procedures for reporting prohibited conduct, filing a Formal Complaint and informal resolution; and the investigative, disciplinary and appeals process.

Individuals who believe that they are victims of conduct prohibited by this policy are strongly encouraged to report the conduct to their Title IX Coordinator so they can receive emergency support and services, supportive measures and important information as soon as possible. The filing of a Formal Complaint is not required in order to receive emergency and ongoing services designed to aid victims of prohibited conduct.

Victims of sexual violence, intimate partner violence and stalking as defined by state law may also seek emergency and ongoing support and services from a Confidential Resource Advisor (“CRA”), a specially trained sexual assault or domestic violence advocate. The roles and responsibilities of the Title IX Coordinator and the CRA are more fully described in Procedure 201.2.

As described in Procedure 201.2, the filing of a Formal Complaint with the Title IX coordinator is required in order to initiate the investigation and disciplinary process. It is the policy of the Maine Maritime Academy to provide fair and impartial investigations, consistent with related MMA procedures and guidance, that will protect the rights of persons filing complaints of conduct prohibited by this policy, the persons complained against, and the Maine Maritime Academy. All conduct within the scope of this policy is governed by MMA Procedure 201.2.

Additionally, individuals may also file a sexual harassment complaint with the Maine Human Rights Commission within 300 days of the alleged incident. Further information is available from the Maine Human Rights Commission at State House Station 51, Augusta, Maine 04333, (207) 287-2326, and/or from the United States Department of Education, Office for Civil Rights, 33 Arch Street, Suite 900, Boston, Massachusetts 02110, tel. 617-289-0111, TTY/TTD 617-289-0063, and fax 617-289-0150.

College presidents are directed to take appropriate steps to distribute this policy statement and to inform students and employees of procedures for making complaints.

### **D. Consensual Sexual Relations**

Sexual relationships between employees and students, or between employees, that begin consensually can end acrimoniously. Such endings can and do subsequently lead to claims of unprofessional conduct, sexual harassment in violation of this policy, and/or a conflict of interest in violation of other Academy policy.

Accordingly, the Academy prohibits consensual romantic or sexual relationships between employees when one employee supervises or otherwise has authority over the other employee. In addition, consensual romantic or sexual relationships between an employee and a student, even when the employee does not instruct, advise, or otherwise have authority over the student, can give rise to the same claims described above. Consequently, the Academy prohibits all such relationships between an employee and a student, unless the relationship pre-existed the start of employment or academic enrollment. Employees who violate these prohibitions are subject to counseling and/or disciplinary action.

#### **E. Confidentiality**

Disclosure by the Title IX Coordinator, other MMA employees or the CRA of information regarding an incident of prohibited conduct, including the identities of the parties, is prohibited except as permitted under federal or state law. A CRA is also prohibited from disclosing any information about the parties, the incident, or other information obtained while providing services unless required by law or with consent of the person. While a person who receives CRA services may refuse to disclose, and refuse to permit a CRA from disclosing, confidential communications between the person and the CRA and any written records, memoranda or reports concerning the person, the CRA may still be required to disclose said information under the law.

#### **F. Protective and No Contact Orders**

A person who has experienced an alleged incident of conduct governed by this policy has the right to request from a court that a temporary or permanent restraining order, or other protection or no-contact order be issued against an alleged offender. Only the police, and not Campus Safety, have the authority to enforce such an order by arresting a person who violates the order. In the event an order is obtained, a copy should be provided to the Title IX Coordinator or the head of campus security so that the Academy may be better prepared to promptly contact the police if necessary and to provide such other assistance as may be available and appropriate to the circumstances, including when both parties have an on campus presence due to class schedules or employment responsibilities.

Mutual no contact orders issued by the Title IX Coordinator may be available as a supportive measure for complainants and respondents and are enforced by the Academy.

#### **G. Retaliation and Immunity**

The Academy will take appropriate steps to ensure that a person who in good faith reports or participates in an investigation under Procedure 201.2 will not be subjected to retaliation by the Respondent or others. Anyone who has experienced retaliation is strongly encouraged to report that concern to the Title IX Coordinator.

A person who reports having experienced an alleged incident of prohibited conduct, or a witness who requests an investigation of such conduct, shall not be subject to disciplinary action for drug

and alcohol use, trespassing or unauthorized entry of Academy facilities prohibited by the MMA Student Code of Conduct if the Academy becomes aware of the alleged prohibited conduct as a result of the report or investigation of the alleged conduct, unless the request was not made in good faith or the Code violation was egregious. An egregious violation must include, but is not limited to, an action that places the health and safety of another person at risk.

## **H. False Reports**

It is a violation of this policy to intentionally file a report of any kind with a Academy official when the person knows that such report, by fabrication or material embellishment, is false.

## **I. Amendment**

Prior to adopting substantive amendments to this policy, MMA shall provide a draft of the proposed amendments to internal and external parties by electronic or U.S. mail with instructions on how to comment and a reasonable length of time in which to comment. Non-substantive amendments are not subject to these requirements.

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REFERENCES: 5 M.R.S.A. §4551– §4632, 5 M.R.S.A. §4601–§4604, 42 U.S.C. §2000e, et seq., 20 U.S.C. §1681, et seq., 34 C.F.R. §106.1, et seq.; 20-A MRS 12981, et seq.

DATE ADOPTED: April 9, 2014

DATE(S) AMENDED: November 29, 2012, January 24, 2018, August 13, 2020, November 3, 2020, October 10, 2023