

MAINE MARITIME ACADEMY

STUDENT AFFAIRS Section 604

SUBJECT: STUDENT SEXUAL MISCONDUCT AND ASSAULT, STALKING, AND RELATIONSHIP VIOLENCE

PURPOSE: To define and proscribe non-consensual sexual activities, stalking, dating violence and domestic violence not governed by Title IX

A. Introduction

This procedure governs acts by students of nonconsensual sexual conduct, dating and domestic violence and stalking that do not fall within the scope of Title IX of the Education Amendments of 1972. Such acts within the scope of Title IX are governed by Maine Maritime Academy Procedure 201.2. This procedure supplements the MMA Student Honor Code of Conduct and Responsibilities ("Code") by defining the prohibited acts of non-consensual sexual conduct, dating and domestic violence, and stalking governed by this procedure; explaining the procedures that will apply to the handling of such alleged violations; and providing important additional information to all students. The definitions of prohibited conduct governed by this procedure reflect Maine law where applicable and may differ from the federal definitions required in Procedure 201.2.

B. Definitions

For purposes of this procedure, the following terms have the following meanings.

1. **"Reliable Consent"** is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words and/or actions, as long as those words and/or actions create clear permission regarding willingness to engage in the sexual activity at the time of the activity. Mere acquiescence to the sexual activity shall not be regarded as reliable consent.

Reliable consent has been obtained when a reasonable person in the Respondent's position would understand through words and/or actions that the person has voluntarily agreed to the sexual activity, at the time of the activity. Agreement to engage in one sexual activity (such as a touching) is not agreement to engage in a different sexual activity (such as an act). Agreement can be withdrawn at any time and, if so withdrawn, the sexual activity shall stop. Agreement from a person who is visibly under the influence of alcohol or drugs or otherwise impaired shall not be regarded as reliable consent.

2. **"Acquiescence"** means a person's submission to engaging in one or more sexual activities without communicating either reliable consent or an express physical or verbal objection.
3. **"Sexual misconduct"** means the following where there is no reliable consent:
 - a. **"Sexual touching,"** which means any intentional touching of the breasts, buttocks, groin or inner thigh, directly or through clothing; or
 - b. **"Sexual contact,"** which means any intentional touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, or

- c. **"Sexual act,"** which means any intentional act when that act involves direct physical contact between the:
 - 1) Genitals of one and the mouth or anus of another; or
 - 2) Genitals of one and the genitals of another; or
 - 3) Genitals or anus of one and an instrument or device manipulated by another person.
- 4. **"Sexual assault"** means any sexual misconduct as defined above where, at the time of the sexual activity, the Complainant:
 - a. Expressly communicated by words or physical act(s) a timely objection; or
 - b. Was visibly intoxicated or otherwise visibly impaired; or
 - c. Was unconscious, incapacitated, or otherwise unaware that sexual activity was occurring or about to occur; or
 - d. Was placed in reasonable fear of physical injury or other harm because of the Respondent's use or threatened use of physical force or other harm.
- 5. **"Dating Violence"** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the following factors:
 - a. the length of the relationship;
 - b. the type of relationship; and,
 - c. the frequency of interaction between the persons involved in the relationship.
- 6. **"Domestic Violence"** means one of the following criminal acts against a family or household member:
 - a. Assault- intentionally, knowingly or recklessly causing bodily injury or offensive physical contact;
 - b. Criminal threatening - intentionally or knowingly placing a person in fear of imminent bodily injury;
 - c. Criminal terrorizing- communicating a threat of violence that places a person in fear for their safety or the safety of another;
 - d. Reckless conduct- recklessly creating a substantial risk of bodily injury to another person;
 - e. Stalking- intentionally or knowingly engaging in a course of conduct directed at or concerning a family or household member that would cause a reasonable person to; i) suffer serious inconvenience or emotional distress, ii) fear death or fear the death of a close relation, iii) fear damage or destruction to or tampering with property, or v) fear injury to or the death of an animal owned by or in the possession and control of that person; or
- 7. **"Stalking"** means the conduct described in subsection 6.e, but the conduct may be directed at or concerning any person.
- 8. **"Complainant"** means a person who believes he or she experienced sexual misconduct or assault by student.
- 9. **"Respondent"** means a student accused of sexual misconduct or assault.
- 10. **"Retaliation"** means pressuring a person to drop or support a complaint or to provide false or misleading information; pressuring a person to participate or refrain from participating

as a witness in a proceeding; or engaging in conduct that may reasonably be perceived to affect adversely that person's educational, living, or work environment for making a good-faith report or participating in good faith in an investigation.

C. Prohibited Conduct

It is a violation of the Code for a student to intentionally engage in sexual misconduct or sexual assault, stalking, dating violence or domestic violence or to retaliate against a person who in good faith reports or participates in an investigation under this procedure. A student may be found responsible for retaliation even if not found responsible for the underlying alleged conduct.

D. Reports to the Academy

1. **When to Report.** Students are advised to report allegations of sexual misconduct or sexual assault, stalking, dating violence or domestic violence immediately or as soon as possible.
2. **Where to Report.** Reports should be given to the Title IX Coordinator. Any other employee who receives such a report shall immediately share the report with the Title IX Coordinator. The Title IX Coordinator will determine whether the conduct is governed by this procedure or by MMA Procedure 202.2 (Title IX Sexual Harassment Procedure).
3. **What to Report.** A complaint may be made orally or in writing, and should be as specific as possible. A report should disclose the identity of the person(s) alleged to have engaged in the complained of conduct, and the location(s), date(s) and description of the alleged acts. The Academy cannot take complaints “off the record.” Once MMA receives such information, it has a duty to investigate and possibly take action even if, at the time of the complaint, the Complainant does not want the Academy to do either. Unless the Complainant signs a written statement specifying withdrawal of the complaint, the Complainant may not be deemed to have withdrawn her or his complaint.
4. **False Reports.** It is a violation of the Code for any student to intentionally file a report of any kind with an Academy official when the student knows that such report, by fabrication or material embellishment, is false.

E. Information Provided to a Complainant at the Time of a Report

At the time of a report to the Title IX Coordinator, the Academy shall provide to the Complainant a copy, or hypertext links to copies, of the Code, this Procedure and the Appendices to this Procedure. The Respondent shall receive copies or hypertext links upon notification of the allegation(s). Students are hereby advised of the following:

1. **Preserving Evidence.** It is important to preserve all evidence, including but not limited to physical evidence, text messages, social media, photographs, and security video in any way related to an allegation of sexual assault or misconduct, stalking, domestic violence, dating violence, retaliation, or request for a protective order.
2. **Confidentiality.** The Academy uses best efforts to protect the confidentiality of the identity and allegations involved in a report, including keeping all records confidential to the extent permissible by law. Information regarding reports of alleged violations, and any investigation or review of those reports, including sanctioning determinations, will be shared among Academy officials with a legitimate educational interest or with external individuals or entities only on a need-to-know basis and only as permitted by Academy policy and applicable law. MMA will be required to disclose the Complainant’s name,

statements and allegations to the Respondent. MMA may choose to comment publicly, in writing or otherwise, to the extent permitted by law, regarding the decision reached if, in the judgment of the Academy, the best interests of the community would be served by such a disclosure. If possible and appropriate, the anonymity of the student(s) involved will be protected.

3. **Counseling, Health and Mental Health Services.** Counseling, health and mental health support services are available on campus and/or in the area and both the Respondent and the Complainant shall be provided with information to access available services. A list of such services is attached in the *Appendix* to this procedure.
4. **Law Enforcement.** The complainant has the right to contact, and file a criminal complaint with, the police. A list of such authorities is attached in the *Appendix*. The police can advise and assist with the Complainant's option 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.
5. **Victim Advocacy and Legal Assistance Services.** Victim advocacy and legal assistance services are also available. A list of such services is attached in the *Appendix*.
6. **Financial Aid and Visa and Immigration Assistance.** Information regarding student financial aid issues may be obtained from the Academy's Financial Aid Office. International students may obtain information regarding visa and immigration issues from the Academy's Designated School Official.

F. Investigations

The Academy shall use the Code in conducting an investigation of reports or allegations of conduct within the scope of this procedure.

G. Interim Steps While an Investigation is Conducted

MMA shall consider what interim steps, if any, should be taken until the investigation and findings are complete. Such steps include, for example, changing the affected student(s) academic, living, transportation, and working situations if requested and reasonably available.

H. Participation during Proceedings

Consistent with the Code, both the Complainant and the Respondent shall have the same opportunity to have others present during internal disciplinary proceedings, including the opportunity to be accompanied to related meetings by an advisor of their choice.

I. Outcomes

At the time that the Academy makes its final findings, the Academy shall in writing notify simultaneously the Complainant and Respondent of:

1. Whether the Respondent was found to violate the Code and, if so, the provisions violated and discipline imposed; and
2. The Respondent's and Complainant's rights under the Code to appeal the findings and any discipline.

J. Discipline

A violation of this procedure shall result in discipline under the Code. With regard to cases involving sexual conduct, because of the wide range of conduct that exists between cases of violent assault and cases of sexual contact resulting from poor communication, the following guidelines shall assist MMA in determining the appropriate discipline for each case.

1. **Sexual Assault vs. Sexual Misconduct.** Findings of sexual assault shall be regarded as more severe than findings of sexual misconduct.
2. **Types of Sexual Misconduct.** Findings of a sexual act shall be regarded as a more severe form of sexual misconduct than findings of sexual contact, and findings of sexual contact shall be regarded as a more severe form of sexual misconduct than findings of sexual touching.
3. **Cases of Acquiescence.** Findings that a student did not obtain reliable consent and instead relied upon mere acquiescence shall be regarded as important but less severe than cases involving sexual assault.
4. **Repeat Violators.** Findings that a student was previously found responsible for sexual misconduct or sexual assault shall be regarded as more severe than a first-offender.

K. Retaliation

The Academy will take appropriate steps to ensure that a person who in good faith reports or participates in an investigation under this procedure will not be subjected to retaliation by the Respondent or others. Anyone who has experienced retaliation is strongly encouraged to report that concern using the procedures in *Section D* above.

L. Protective Orders

Complainants have 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 Academy security, have the authority to enforce such an order by arresting a person who violates the order. The Complainant should, therefore, promptly inform the Academy if such an order is obtained so that the Academy may be better prepared to more promptly contact the police if necessary.

M. Primary Authority and Annual Training

The Dean of Student Services and/or the Title IX Coordinator shall have primary responsibility for overseeing the application of this procedure. They shall ensure that Residence Life staff, Honor Board Members and other pertinent employees are annually informed about this procedure. They shall further consult with MMA Counsel on questions arising under, or recommendations to improve, this procedure.

N. Other

Nothing in this procedure shall be construed to confer a private right of action upon any person to enforce the provisions of this procedure.

O. Appendices

The Appendix of services and authorities referenced in *Section F* above is attached to this procedure.

REFERENCES: P. & S.L 1941, ch.27, sec. 2 as amended; 20-A M.R.S.A. §12706(7); The Campus SaVE Act (§304 of the re-authorized Violence Against Women Act of 2013 (VAWA); 20 U.S.C. §1092(f)(8) (Clery)

DATE ADOPTED: September 9, 2014

DATE(S) AMENDED: January 18, 2016(technical only), August 13, 2020

APPENDIX

APPENDIX

SEXUAL ASSAULT SUPPORT SERVICES

Maine Maritime Academy Counseling Services

207-326-2419 or eve.toomey@mma.edu

Students who wish to meet with a male counselor may request so through Counseling Services.

Maine Coalition Against Sexual Assault (MeCASA)

24 hour statewide sexual assault crisis and support line

1-800-871-7741 (voice) 711 (Maine Relay)

The regional sexual assault crisis and support centers that comprise the Maine Coalition Against Sexual Assault are:

Sexual Assault Response Services of Southern Maine

York and Cumberland Counties

24 hour support line: 1-800-313-9900

www.sarsonline.org

Sexual Assault Support Services of Midcoast Maine

Eastern Cumberland, Lincoln, Sagadahoc, Knox and Waldo Counties

24 hour support line: 1-800-822-5999

Anywhere in Maine: 1-800-871-7742

TTY: 1-888-458-5599

www.sassmm.org

Sexual Assault Prevention & Response Team

Androscoggin, Franklin and Oxford Counties, and the Towns of Bridgton and Harrison

24 hour helpline: 1-888-458-5599

TTY: 1-888-458-5599

www.sapars.org

Sexual Assault Crisis & Support Center

Kennebec and Somerset Counties

24 hour support line: 1-800-871-7741

www.silentnomore.org

Rape Response Services

Penobscot and Piscataquis Counties

24 hour hotline: 1-800-310-0000

TDD: 1-888-458-5599

www.rrsonline.org

AMHC Sexual Assault Services

Aroostook, Hancock & Washington Counties

(207)-498-6431

www.amhc.org

United Somali Women of Maine

Androscoggin and Cumberland Counties

(207) 753-0061
www.uswofmaine.org

Other Maine-based Sexual Violence Services

Maliseet Domestic Violence and Sexual Assault Program
(207) 532-6401

Penobscot Nation, Domestic Violence and Sexual Assault Services
(207) 817-7498

Passamaquoddy Peaceful Relations
1-877-853-2613

National Resources

National Sexual Assault Hotline: 1-800-656-HOPE

National Sexual Assault Online Hotline : <https://ohl.rainn.org/online/>

For a list of resources with particular focus on the needs of LGBTQ persons,
see: <http://barcc.org/information/resources-online/glb>

POLICE DEPARTMENTS

Hancock County Sheriff's Department
50 State Street
Ellsworth, Maine 04605
(207) 667-7575

MEDICAL HOSPITALS

Northern Light Blue Hill Memorial Hospital
57 Water Street, Blue Hill, Maine 04614
(207) 374-3400
<http://northernlighthealth.org/blue-hill-hospital>

Northern Light Eastern Maine Medical Center
489 State St., Bangor, Maine 04402
(207) 973-7000
<http://northernlighthealth.org/easter-n-maine-medical-center>

Northern Light Maine Coast Memorial Hospital
50 Union Street, Ellsworth, Maine 04605
(207) 667-5311
<http://northernlighthealth.org/eastern-maine-medical-center>

Mt. Desert Island Hospital
10 Wayman Lane, Bar Harbor, Maine 04609
(207) 288-5081
<http://mdihospital.org/site/>

Pen Bay Medical Center

6 Glen Cove Drive, Rockport, Maine 04856

(207) 596-8000

<http://www.penbayhealthcare.org/penbaymedicalcenter/>

St. Joseph Hospital

PO Box 403, Bangor, Maine 04401

(207) 262-1000

<http://www.stjoeshealing.org>

Waldo County General Hospital

PO Box 287, Belfast, Maine 04915

(207) 338-2500

<http://www.wcgh.org/index.html>

LEGAL SERVICES

Pine Tree Legal Services

Free legal services for low –income Maine residents
for non-criminal matters

Augusta Office

Somerset, Lincoln and Knox Counties
39 Green Street
P.O. Box 2429
Augusta, Maine 04338-2429
(207) 622-4731 or (207) 623-7777

Portland Office

Cumberland, York, Sagadahoc,
Androscoggin, Oxford, Franklin, Lincoln
and Knox
88 Federal Street
P.O. Box 547
Portland, Maine 04112
(207) 774-8211

Bangor Office

Penobscot, Piscataquis and Waldo
115 Main Street, 2nd floor
Bangor, Maine 04401
(207) 942-8241

Presque Isle Office

Aroostook County
373 Main Street
Presque Isle, Maine 04769
(207) 764-4349

Lewiston Office

Androscoggin, Oxford and Franklin
37 Park Street, Suite 401
Lewiston, Maine 04243-0398
(207) 784-1558

All Offices

TTY: 711

<http://www.ptla.org>

Machias Office

Washington and Hancock
13 Cooper Street

P.O. Box 278

Machias, Maine 04654

(207) 255-8656

Cumberland Legal Aid Clinic

A legal aid clinic operated by the University of Maine School of Law. Services provided to low-income individuals with legal cases in Southern Maine courts (Cumberland, parts of York, Sagadahoc and Androscoggin counties) for most types of civil, criminal, juvenile and family matters.

Greater Portland area – (207) 780-4370

Toll free: (877)-780-2522

<http://mainelaw.maine.edu/programs-centers/clac.html>

Maine Lawyer Referral Service

A referral service operated by the Maine State Bar Association.

1-800-860-1460

<http://www.lrs@mainebar.org>

Maine Volunteer Lawyers Project

Free legal information and pro bono legal representation for qualifying low-income individuals state-wide.

Portland: (207) 774-4348

Toll free: (800)-442-4293

<http://www.vlp.org>