POLICY ON SEXUAL MISCONDUCT, DOMESTIC VIOLENCE AND STALKING

A. INTRODUCTION

1. The University is committed to providing a working, living and learning environment that is free of all forms of sexually abusive, harassing, coercive or violent conduct. This policy seeks to protect the rights of all members of the University community and to have all individuals treated with respect and dignity.

2. Sexual misconduct includes sexual harassment, sexual assault, rape, and sexual exploitation or coercion of any nature. Acts of sexual misconduct, domestic violence or stalking are traumatizing events causing psychological and physical harm and can be among the most painful and upsetting events that can happen to a woman or a man.

3. The University will not tolerate sexual misconduct, domestic violence or stalking in any form. Campus rape/sexual assault, domestic violence and stalking are a violation of Massachusetts criminal law, federal discrimination law, and a violation of the University code of conduct. A student or employee charged with rape/sexual assault can be prosecuted under the Massachusetts Criminal Laws. He/she may also be disciplined through the University. Even if the criminal justice authorities choose not to prosecute an alleged assailant, he/she may be subject to University disciplinary action including suspension or expulsion.

4. Sexual misconduct, domestic violence or stalking may occur between a male perpetrator and female victim, a female perpetrator and male victim, or between a perpetrator and victim of the same gender. Regardless of the gender or sexual orientation of the perpetrator or the victim, various forms of sexual misconduct, domestic violence or stalking are a violation of the law and university policy.

B. UNIVERSITY DEFINITIONS

The following are educational definitions used by the University and are not intended to mirror Massachusetts General Law.

1. Rape (Nonconsensual Sexual Intercourse) – Entering into, engaging in, or continuing to engage in sexual intercourse, involving an act of vaginal, oral, or anal penetration with another person when it occurs against that person’s
will/without that person’s consent. Acquaintance rape (committed by a date, friend, or someone the victim knows casually) is defined the same as above and is the most prevalent form of rape on the University campus.

2. **Sexual Assault (Nonconsensual Sexual Touching)** – Unwanted touching (not penetration), however slight, of an intimate part of another’s body (breasts, buttocks, groin, or genitals) or removing another’s clothing against that person’s will/without that person’s consent.

3. **Sexual Exploitation** - Other violations of a sexual nature, which are also subject to the provisions of this policy include, but are not limited to, nonconsensual videotaping or audio taping of sexual activity, engaging in peeping on others, sexting, internet dissemination of sexual material, performing sexual acts in the presence of another without their consent, or any sexual exploitation, which is taking nonconsensual sexual advantage of another for one’s benefit or for the benefit of others.

4. **Sexual Harassment** – Sexual harassment consists of unwelcome verbal, non-verbal and/or physical behavior of a sexual nature which has the effect of interfering with a person’s academic, employment or other status, or of creating a sexually intimidating, hostile, or offensive environment (see Sexual Harassment Policy).

5. **Domestic Violence** – Domestic violence is physical, emotional, economical or sexual abuse occurring between individuals who are dating, married, sexually intimate, or residing together. Examples of abuse may include, but is not limited to, physical actions such as slapping, punching, kicking or attempting to cause physical harm; sexual abuse such as nonconsensual sexual activity, unwanted touching, or coercing a partner into having sex; emotional abuse involving controlling what the other person does or where the other person goes, making degrading comments, limiting the other person’s contacts with friends, or verbal threats that put a person in the relationship in fear of imminent harm; or economically controlling the money or assets of the other without their knowledge or consent.

6. **Stalking** – A pattern of conduct which includes repeated and unwanted attention directed at a specific person, which seriously alarms or annoys that person, and would cause a reasonable person to experience emotional distress or be alarmed or in fear of physical or psychological harm. This includes verbal and physical annoyances or attention as well as cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, cell phone texts, tweets, or blogs or other electronic contacts are used to pursue, harass or make unwanted contact with another person.
7. **Against A Person’s Will** – Physical or verbal force, coercion, intimidation, or threats inflicted upon another person whenever that person indicates verbal or non-verbal resistance, however slight. Against a person’s will also means without that person’s consent.

8. **Consent** - clear indication, either through verbal or physical actions, that parties are willing and active participants in the sexual act. Such authorization must be free of force, threat, intimidation, or coercion, and must be given actively and knowingly in a state of mind that is awake, conscious and rational and not compromised by alcohol or drug intoxication. Entering into, engaging in, or continuing to engage in intercourse with a person who you know to be, or should reasonably know to be incapacitated due to intoxication or unconsciousness or any helplessness making them incapable of consent, is a violation of this policy.

C. **PROCEDURES TO FOLLOW IF YOU ARE A VICTIM OF SEXUAL MISCONDUCT, DOMESTIC VIOLENCE OR STALKING**

1. Go to a safe place as soon as you can. Contact someone you trust, a close friend, family member, staff member or a resident assistant, to be with you and support you.

2. **Reporting the incident for investigation.** Students should report incidents for investigation to Public Safety by calling 911. Public Safety will coordinate the notification to Local or State Police. Public Safety can also be contacted (non-emergency at x5262). You may also report the incident directly the Office of Student Conduct or the Office Human Resources and Affirmative Action (Title IX Coordinator). These offices will work with Public Safety to investigate the incident. Although your privacy will be protected when you report through these offices, people who need to know may be told and information may be shared as necessary to investigate and adjudicate the matter. All efforts will be made to protect your privacy to the greatest extent.

3. **Confidential Reporting.** If you wish for the incident to remain completely confidential reports may be made to the University Counseling Center, Health Services, Campus Ministry, or any off-campus rape crisis or sexual assault advocacy provider. These offices may assist you in filing an official report for investigation with the Public Safety Office if you so choose.

5. **Faculty and Staff Obligation to Report.** Staff and faculty of the University outside of the offices of Counseling, Health Services and Campus Ministry are obligated to report incidents of sexual misconduct, domestic violence or stalking
to the Office of Public Safety and/or the Office of Human Resources and Affirmative Action within a timely manner, preferably not to exceed 72 hours. Such reports may be made as third party reports if the victim so chooses not to disclose their identity and/or the identity of the accused. Third party report forms are available through Public Safety, Student Conduct, or the Office of Human Resources and Affirmative Action.

5. It is important to preserve all physical evidence since this may be necessary in the proof of a criminal case. In the case of sexual misconduct, if possible, do not wash, eat, drink, douche, clean, use the bathroom, or change clothes. If you do change clothes, put all clothing you were wearing at the time of the attack into an unused or a clean paper bag.

6. Get medical attention as soon as possible. A medical examination can provide any necessary treatment and collect important evidence. Injuries may not be immediately apparent. Health Services and Public Safety personnel can assist in transporting you to the hospital.

D. PROTOCOL TO BE USED BY UNIVERSITY STAFF FOLLOWING A REPORT OF SEXUAL MISCONDUCT, DOMESTIC VIOLENCE OR STALKING

1. Offer immediate medical and emotional care for the victim’s well-being and for the documentation and collection of physical evidence of the assault.

2. Encourage the victim to speak with University Police Officers or a member of local law enforcement. Third party reports may be filed with University Public Safety and the Massachusetts State Police.

3. Based on the immediate needs of the victim, report the incident (while protecting the identity of the victim) to appropriate University personnel such as:
   a. Vice President for Student Affairs;
   b. Director of Public Safety;
   c. Director of Counseling Center;
   d. Director of Health Services;
   e. Office of Human Resources and Affirmative Action/ Title IX Coordinator; or
   f. Director of Residential Life.
4. If necessary, the Vice President for Student Affairs Dean of Students/designee may conduct an immediate emergency administrative hearing process.

5. If necessary, modify on-campus living arrangements or academic classes if the victim is in fear of his/her safety.

6. In order to protect the confidentiality of the victim, all requests for information from concerned students, parents, and press will be referred to the University Public Affairs Office.

7. If necessary, timely warning will be made by the Director of Public Safety/designee to the University community to protect the safety of others if the incident(s) reported are deemed to pose a substantial threat of danger to the community. This notification will not include any identifying information regarding the victim.

8. The Director of Public Safety or his/her designee and the Vice President for Student Affairs or his/her designee will inform the victim of the existence of the following options, any and/or all of which may be initiated by the victim and/or the University:

   a. Criminal prosecution;

   b. Civil prosecution;

   c. University disciplinary process and discrimination complaint procedures;

   d. Alternative options including structured resolution agreements; mediation would not be used in cases of sexual assault, rape, or sexual exploitation.

   e. University-issued protective order and/or court-issued restraining order;

   f. Counseling and support services both on and off campus; and

   g. Opportunities for and assistance with a change in academic and living situations.

E. UNIVERSITY DISCIPLINARY ACTION
1. In addition to Massachusetts criminal procedures, if there is sufficient evidence to prove that a sexual misconduct, domestic violence or stalking violation has occurred, the University will process the accused through standard University procedures outlined in the Westfield State University Student Conduct Code, Discrimination Complaint Procedures, or through appropriate bargaining unit agreements.

2. Any student who believes that he or she has been a victim of the acts described in this policy or a victim of discrimination, discriminatory harassment, or retaliation by another student and who wishes to report such incident must pursue the complaint through the University Student Conduct process. If the respective Student Conduct Officer believes that a student’s complaint against another student is more appropriately handled through the Title IX Complaint Procedures, the Student Conduct Officer may refer the student to the Title IX Officer for information filing a complaint under the Title IX Complaint Procedure.

3. Students charged through the campus disciplinary system will be afforded the rights prescribed by the University conduct code, including the following:

   a. The right to reasonable notice, in writing, of the charges against him/her, the particular standard of conduct or regulation which the student has allegedly violated and the basic facts, including dates and times on which the charges are based;

   b. The right to review substantive evidence to be used against him/her;

   c. The right to a hearing before either the Student Conduct Board or an Administrative Hearing Officer as determined by the Vice President, Student Affairs/designee;

   d. The right to have a person or persons of his/her choice accompany him/her throughout the disciplinary proceedings. (This person may also advise and counsel, but may not represent the student to the Student Conduct Board or Administrative Hearing Officer, or enter into direct questioning);

   e. The right to question witnesses against him/her and to present witnesses on his/her behalf. The Board/Hearing Officer will have the right to determine whether questions should be directed through the Board for initial review.

   f. The right to be informed of the outcome of the hearing and informed that all hearing decisions are based on a “more likely than not” standard of evidence;
g. The right to appeal as outlined in the Student Conduct Procedures; and

h. The right to be treated with respect and dignity.

4. Victim(s) of a rape or sexual assault sexual misconduct, domestic violence or stalking will be afforded rights not limited to the following:

a. The right to choose any and all options as outlined in Section D, No. 8 of this policy.

b. In the event that he/she elects to cooperate in pursuing the matter through University disciplinary procedures, the following rights shall be afforded:

i. The right to have a person or persons of his/her choice accompany him/her throughout the disciplinary proceedings;

ii. The right to be present during the entire disciplinary proceeding;

iii. Should a victim testify, he/she would have the right to request a modification to the hearing setting during their testimony. Such examples include, but are not limited to, a physical partition that would serve to separate the accused and the complainant during the hearing; questions from the accused being directed through the Board for initial review; and the possible use of technology to provide for testimony given through closed circuit means. Determinations about such requests will be made by the Vice President, Student Affairs/designee;

iv. In the case of sexual misconduct violations, the right, as established in Massachusetts Law, not to have his/her personal sexual history (including that with the accused student) discussed during the hearing;

v. The right to make a “victim impact statement” if the accused is found in violation of the University conduct code; and

vi. The right to be notified of the outcome of any disciplinary proceedings, pursuant to the requirements of Campus Security Act, Sexual Assault Bill of Rights (April 29, 1994) and the provisions of the Family Educational Rights and Privacy Act (FERPA).

c. In order to create an environment that encourages victims to report and pursue action relative to incidents of sexual misconduct, domestic violence or
stalking the University may choose not to pursue student conduct violations committed by the complainant (such as alcohol violations) related to the sexual misconduct incident. In those rare instances where violations are processed, they will be addressed through the use of educational methods such as counseling, community service, and/or educational workshops. Victims will not be subject to fines or removal from housing or the University.

d. The right to appeal as outlined in the Student Conduct Procedures.

e. The right to be treated with dignity and respect.

F. SANCTIONS

1. Any student found responsible of a charge of sexual misconduct, domestic violence, or stalking will face sanctions ranging from suspension from housing through suspension or expulsion from the University.

2. The University reserves the right to broaden or lessen any range of consequences or recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior.

G. RETALIATION

1. The University prohibits any attempts to retaliate against a person who reports sexual misconduct, domestic violence, or stalking. Retaliation includes any act or attempt to seek retribution or prevent a reporting party from participating in the options provided to him/her under this policy. Such acts include, but are not limited to, intimidation, harassment in any form, continued abuse or violence, slander or libel, or any act that serves to seek retaliation on the reporting party or prevent that party from moving forward.

2. Persons reportedly engaging in acts of retaliation will meet with immediate actions such as temporary removal from the University and be subject to additional charges and sanctions. Retaliation, even in the absence of a provable violation of the original complaint, constitutes as serious a violation as those prohibited in this policy.

G. CAMPUS EDUCATION/PREVENTION PROGRAMS

1. The University will provide information about acquaintance rape and other kinds of sexual assault and sexual misconduct, domestic violence and
stalking during student and employee orientation meetings.

2. The University will sponsor periodic workshops designed to educate students in regard to sexual assault, including rape and acquaintance rape. The University will also conduct regular workshops to educate students about domestic violence and stalking. These workshops will include prevention education, recognition of warning signs and information on available resources.

3. The University will distribute the information including the University Policy on Sexual Misconduct, Domestic Violence and Stalking which defines all terms and provides options and services available to victims.

4. The University will provide special educational and training programs about sexual assault misconduct, domestic violence and stalking for professional and paraprofessional staff who must be prepared to respond in an appropriate and sensitive way to victims.

5. The University will use the campus media, such as the newspaper, radio, and television to heighten awareness of campus rape/sexual assault sexual misconduct, domestic violence and stalking and its prevention. Prevention education will focus on options for bystander intervention.

6. The University will provide educational information about the involvement of alcohol and other drugs in acquaintance rapes and other sexual assaults. sexual misconduct, domestic violence and other forms of violence.

7. The University will encourage its faculty to introduce information about sexual assault misconduct, domestic violence, and stalking through reading and discussion in relevant classes.

H. ON-AND OFF-CAMPUS RESOURCES/CONTACTS

1. Medical Treatment
   a. Student Health Services, Scanlon Hall - x5415 or 572-5415
   b. Baystate Medical Center Emergency/Sexual Assault Nurse Examiner – (413)794-3233
   c. Noble Hospital Emergency Room (24 Hours) – (413)568-2811

2. University Police and Other Police Information
a. University Public Safety Office - x5262 or 572-5262

b. Westfield Police Department (Emergency) - 911

c. Hampden County District Attorney/Westfield Office – (413) 572-1454

3. Counseling and Emotional Support

a. Counseling Services, Lammers Hall Annex - x5790 or 572-5790

b. YWCA of Western, MA (Springfield, MA) – (413)733-7100

c. New Beginnings – (413)562-5739

d. Domestic Violence Shelter Services and 24 Hour Hotline
   Day number – (413) 732-3121
   (24 Hour Hotline) – (413) 733-7100

e. SafeLink (domestic violence support) – 1-877-785-2020

f. Every Women’s Center (Amherst)
   Resource and Referral – (413) 545-0883
   (24 Hour Hotline) – (413) 545-0800

4. University Offices

a. Title IX Coordinator, x8106 or 572-8106

b. Vice President/Dean of Student Affairs - x5421 or 572-5421

c. Director, Student Conduct—x5403 or 572-5403

d. Director of Residential Life - x5402 or 572-5402

e. Dean of Diversity/Affirmative Action - x5272

REVIEW

This document will be reviewed annually by the Office of the Vice President, Student Affairs.