

MASSACHUSETTS SCHOOL OF LAW
SEXUAL/GENDER-BASED MISCONDUCT POLICY
PERTAINING TO STUDENT COMPLAINTS

Introduction

The Massachusetts School of Law does not tolerate sexual misconduct, including sexual and/or gender harassment. Such conduct is harmful to the well-being of our community, taints our learning environment, and damages the proper collegial relationships among students, faculty, and staff that characterize, and are necessary components of, the culture of MSL. MSL regards all forms of prohibited conduct under this Policy to be a serious offense, and violations may result in discipline, including the possibility of separation from the institution. In addition, state and federal laws address conduct that may also meet MSL's classifications of prohibited conduct under this Policy, and it is possible that criminal prosecution and/or civil proceedings under state or federal law may occur independently of any disciplinary action instituted by MSL.

The Massachusetts School of Law takes the firmest possible stand against sexual/gender-based harassment of its students, staff, and faculty. Sexual harassment is a form of gender discrimination that violates Title IX of the Civil Rights Act of 1964 and Massachusetts General Laws, Chapter 151C.

Applicability

This Sexual/Gender Misconduct Policy applies to all students, faculty, or staff whenever defined misconduct occurs: (1) on the MSL campus, or (2) off the MSL campus if the conduct was in connection with an MSL-sanctioned event or, even if not in connection with an MSL-sanctioned event, if the conduct may create a hostile environment for any member of the MSL community while participating in the education offered by, or employment occurring at, MSL. Students are authorized hereunder to file complaints against other students, faculty, staff, or other MSL employees. Nothing herein is meant to foreclose or diminish additional actions that MSL may take under other policies or codes pertaining to students, faculty, employees, or other members of the MSL community.

Definitions of Sexual/Gender-Based Harassment

A. The MSL Definition of Sexual/Gender-Based Harassment (Independent of State and Federal Law)

In the educational context, sexual- and gender-based harassment consists of verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct or communications based on sex, sex-stereotyping, gender identity, gender identity stereotyping, sexual orientation, and sexual orientation stereotyping when such conduct or communication is

severe, persistent, or pervasive enough to interfere with, or materially limit, one's ability to meaningfully participate in or benefit from MSL's classes, activities, or other components of the educational experience. Retaliation against an individual who has raised an allegation of sexual or gender-based harassment, who has cooperated in an investigation of such a complaint, or who has opposed conduct/communications that violate this Policy is deemed to be a violation of this Policy.

B. State and Federal Definitions

There are two (2) definitions of sexual harassment under applicable law; one involving state law and one involving federal law. *Conduct that meets any of these two (2) definitions also constitutes a violation of this Sexual/ Gender-Based Misconduct Policy.* Here are the two (2) definitions of what constitutes a violation of state and federal law:

a. State Law – Chapter 151C

As defined by Chapter 151C § 1 of the Massachusetts General Laws, "sexual harassment" shall mean:

any sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:— (i) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of the provision of the benefits, privileges or placement services or as a basis for the evaluation of academic achievement; or (ii) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's education by creating an intimidating, hostile, humiliating or sexually offensive educational environment.

b. Federal Law – Title IX of the Civil Rights Act of 1964

The Code of Federal Regulations sets forth the definition of sexual harassment under 34 CFR § 106.30. "Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:"

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively

offensive that it effectively denies a person equal access to the recipient's education program or activity; or

- (3) "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v) "dating violence" as defined in 34 U.S.C. § 12291(a)(10), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30).

C. Conduct/Communications that Violate this Policy

Without excluding other situations, the following conduct/communications are deemed sufficiently egregious to violate this sexual/gender-based harassment Policy:

- Retaliation against an individual for raising an allegation of sexual or gender-based harassment, for cooperating in an investigation of such a complaint, or for opposing discriminatory practices.
- A hostile work or educational environment created by persistent or pervasive conduct or by a single severe episode. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment.
- Sexual violence, including rape, sexual assault, and domestic and dating violence, violates this Policy.
- Observing, photographing, videotaping, or making other visual or auditory records of sexual activity or nudity, where there is a reasonable expectation of privacy, without the knowledge and consent of all parties violates this Policy.
- Sharing visual or auditory records of sexual activity or nudity without the knowledge and consent of all recorded parties and recipient(s) violates this Policy.
- Unwanted or unwelcomed sexual advances, whether or not they involve physical touching violates this Policy. Whether the conduct creates a hostile environment may depend on a variety of factors, including: the degree to which the conduct affected one or more person's education or employment; the type, frequency, and duration of the conduct; the relationship between the parties; the number of people involved; and the context in which the conduct occurred. Conduct or communications are unwelcomed when:

1. the Complainant did not request or invite it,
2. the Complainant regarded the unrequested or uninvited conduct or communication as undesirable or offensive,
3. a totality of the circumstances leads to the conclusion that the conduct or communications are unwelcomed, including a consideration of both objective and subjective factors,
4. without excluding other situations, one of the following acts or communications occur:
 - commenting about or inappropriately touching an individual's body,
 - requests for sexual favors in exchange for actual or promised educational benefits, such as favorable grades or other educational benefits,
 - lewd or sexually suggestive comments, innuendoes, or gestures,
 - stalking,
 - other verbal, nonverbal, graphic, or physical conduct that is sufficiently persistent, pervasive, or severe so as to deny a person equal access to the MSLs educational programs or activities, or
 - a Complainant is so impaired or incapacitated as to be incapable of requesting or inviting the conduct and the Respondent knew or reasonably should have known of the person's impairment or incapacity. A Complainant may be impaired or incapacitated because of drugs or alcohol or for some other reason, such as sleep or unconsciousness. A Respondent's impairment at the time of the incident because of drugs or alcohol does not, however, diminish the Respondent's responsibility for sexual or gender-based harassment under this Policy

D. Conduct/Communications That Is Not Sexual/Gender-Based Harassment

- Submitting a complaint that is not made in good faith or provides false or misleading information in any investigation of complaints, is prohibited and may result in discipline against the Complainant.

- Nothing herein shall be construed to abridge academic freedom and inquiry, principles of free speech, or MSL's educational mission. The policies and procedures provided herein are designed to ensure a safe and nondiscriminatory educational environment and to meet federal, state, and accreditation requirements. This Policy is not intended to compromise or diminish freedom of thought, inquiry, or debate, even when the expression is sometimes deemed to be offensive by some people. Rather, the Policy seeks to ensure an environment in which education, discussion, and learning are not corrupted by sexual and gender-based harassment.

Procedures for Implementing Harassment Policies and Consequences of Violations.

MSL is committed to reviewing all complaints of sexual or gender-based harassment in a fair and expeditious manner. Full and complete investigations and assessment of campus culture are essential to ensure that no improper – perhaps even illegal – culture of harassment on campus should occur in the first instance, and certainly will not be permitted to fester if an incident does occur. MSL will do all it can to prevent such a culture from developing and, if it discovers that such a culture is developing, will employ its full energy to stamp it out. At the same time, MSL understands the need to sensitively balance its investigative and punishment functions against the need to protect a Complainant's mental health, reputation, freedom from embarrassment, and potential interference with privacy rights. In addition, MSL understands that charges against a Respondent could have far-reaching and damaging effects on one's reputation and professional prospects going forward. It is thus essential that any investigation, hearing, and prosecution function be as fair, accurate, and free from arbitrariness as possible. MSL has attempted to craft a procedure for dealing with complaints that is respectful of these (sometimes) competing interests.

A. Sexual/Gender-Based Harassment Campus Coordinators

In an attempt to provide multiple sources of information and action so that students enduring a sexual/gender-based incident can deal with an administrator with whom s/he (and all other applicable pronouns) is most comfortable in reporting sensitive information, MSL has designated three (3) Campus Coordinators to deal with sexual/gender-based issues involving harassment and/or discrimination.

Dean Michael L.
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Andover, MA 01810
(978) 681-0800
coyne@msslaw.edu

Assistant Dean Diane Sullivan
500 Federal Street
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dianes@mslaw.edu

Assistant Dean Paula Kaldis
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(978) 681-0800
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These three Deans (for the purposes of this Policy, hereafter referred to collectively as the “Coordinators”) will serve to coordinate compliance with MSL’s sexual/gender-based harassment Policy, as well as the federal Title IX as described above and Massachusetts General Laws, Chapter 151C. Each Coordinator should be considered a “go to” person for matters related to sexual/gender-based misconduct.

Whether a student or other member of the MSL community initially reports directly to a Coordinator or some other faculty member or administrator, the Coordinators will be informed of all reports, informal complaints, and formal complaints alleging violations of this Policy, and will oversee MSL’s centralized response to ensure compliance with both this Policy and applicable federal and state law. Their responsibilities include but are not limited to:

- communicating with members of the MSL community regarding applicable law, including but not limited to Title VII, Title IX, the federal Violence Against Women Act, and Massachusetts General Laws, Chapter 151B and 151C, and providing information about how individuals may access their rights;
- reviewing applicable MSL policies to ensure institutional compliance with applicable law;
- monitoring MSL’s administration of its own policies, including this Policy and all related record keeping, time-frames, and other procedural requirements; and
- responding to any report or formal complaint regarding conduct that is alleged to violate this Policy. For any report of which MSL has actual knowledge (and any formal complaint), the three Coordinators shall oversee and implement the explanation and provision of any supportive measures. For all informal and formal complaints, the Coordinators will oversee the investigations and

resolution of such alleged misconduct, and shall direct the provision of any additional supportive measures.

The Coordinators may delegate certain responsibilities under this Policy to designated administrators, faculty members, or committees, including but not limited to the so-called Disciplinary Committee.

B. Informal Complaints or Issues Involving the Sexual/Gender-Based Policy.

i. The Informal Complaint Process Generally.

- a. Although an attempt to informally resolve a harassment complaint is not required prior to the initiation of a formal complaint under the procedures set forth below, MSL favors informal resolution of harassment claims whenever such resolutions can be effectuated fairly and satisfactorily for the parties. This is because the outcome of formal charges of sexual/gender-based harassment can cause additional psychological trauma for the Complainant and reputational damage to the Respondent, even when ultimate result is exoneration. The exception to this preference is when charges appear to involve serious allegations that Title IX of the Civil Rights Act of 1964 and/or Chapter 151C of the Massachusetts General Laws have been violated, or when there are allegations of rape, sexual assault, or other claims involving violence. MSL considers such matters to be severe and impactful enough to require resolution through the formal complaint process described below.
- b. The means to achieve an informal resolution of a complaint should be varied, flexible and, of course, “informal.” While the final decision on which informal method of proceeding will be made by the Coordinator(s), the Complainant and Respondent may have input into the process. Listed below are suggested methods of informal resolution procedures.
- c. At all times, the Coordinators reserve the right to transfer complaints initially commenced under this informal resolution process to the formal complaint process described below or to terminate the process if it becomes clear that there is no good cause to proceed. If the Coordinators determine that the complaint will be transferred to be handled as a formal complaint, they will first notify the Complainant as described below

ii. Achieving an Informal Resolution

- a. Initiation of the Informal Complaint. The informal resolution process will begin when the Complainant contacts one or more of the Coordinators and expresses a desire to pursue a complaint. The initial contact can be either verbal or written (by letter, email, or other means of written communication).
- b. The Initial Meeting. Within a reasonable time after the initiation of the complaint, the Coordinator(s) will meet with the Complainant either live or via private Zoom conference, will listen to the details of the complaint, and discuss whether the complaint is best handled informally or formally. The Coordinator(s) will share their suggested methods of proceeding with the informal resolution process that are listed below. The Coordinator(s) will allow the Complainant to have input into whether the informal process or formal process is the better way to proceed, but it will be the Coordinators who will ultimately determine whether there is good cause to proceed at all or whether the situation constitutes such a serious violation of applicable law, or poses a significant risk of danger to the safety, health, and wellbeing of members of the MSL community, that the matter must be handled as a formal complaint under the rules articulated below..
- c. The Coordinators' Investigation. After receiving a complaint initiating an informal sexual/gender-based harassment resolution, the Coordinators or their designee shall undertake an investigation into the Complainant's charges. Such an investigation may include interviewing witnesses, reviewing documents, researching facts, and all other methods normally available to persons conducting an investigation of allegedly inappropriate conduct. If they determine that there are insufficient facts to support a claim of sexual or gender-based harassment and it would be inappropriate to continue with informal or formal charges, they shall terminate the process and dismiss the complaint.
- d. The Method of Resolution. If/when the Coordinators determine that the matter will proceed informally, they will contact the Respondent and will allow both the Complainant and Respondent input about the method of proceeding informally. The ultimate decision will belong to the Coordinators. Below is a list of different approaches to

resolving a matter informally. This list is not exhaustive; other approaches may be appropriate depending on the particular facts and circumstances:

- *In the presence of a Coordinator or designee appointed by the Coordinators*, the Complainant may meet with the Respondent to discuss the situation, identify the unwanted behavior, and make it clear that the behavior must cease. Given the nature of these types of complaints, and that the Complainant clearly believes the matter to be serious enough to get the school involved, any such meeting between a Complainant and Respondent *must* occur with a Coordinator or designee present, if such meeting occurs at all.
- A Coordinator or designee appointed by the Coordinators may discuss the alleged conduct with the Respondent without the Complainant being present, reminding the Respondent of MSL's policies against harassment, and seeking a commitment by the Respondent to comply with this Policy.
- The Respondent's academic advisor may be contacted and asked to help address the situation with the Respondent.

iii. The Form of an Informal Resolution

Bearing in mind that the informal resolution process is meant to be flexible, one of the following informal resolutions (or one of the following informal resolutions with appropriate modifications) will be reached after a Complainant has initiated the informal complaint process:

- The Coordinators determine that the matter will be transferred to be handled through the formal resolution process, which will then proceed in the manner described below.
- The Complainant acknowledges in writing satisfaction that the matter was merely brought to the attention of the Respondent.
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- The Complainant acknowledges in writing satisfaction that the Respondent has agreed to participate in education, training, counseling, or some other activity designed to raise awareness and lessen the chance of further issues of this kind.
- The Complainant and Respondent enter into a written agreement setting forth the terms of their resolution of the complaint, a copy of which will be retained by the school. When written agreements are reached, a Coordinator will sign it as confirmation that: (1) the agreement has been reviewed by the parties, (2) the parties have acknowledged that they understand the terms of the agreement, (3) the agreement constitutes the entire understanding between the parties, and (4) the parties understand that the agreement constitutes final resolution and the matter will be permanently closed in regard to this complaint (but not as to future conduct or communications that lead to a new complaint).
- The Complainant decides to terminate the informal resolution process for any reason. (This will require the Complainant to sign a Request for No Action.)
- The Complainant ceases to participate in the informal resolution process and a Coordinator places a memorandum in the file indicating that the informal resolution process can no longer proceed without the Complainant's participation.
- The Coordinators determine that there are insufficient facts to support a claim of sexual or gender-based harassment and it would be inappropriate to continue with informal or formal charges.
- After full review, and after being fully apprised of the facts, the Coordinators determine that the complaint was initiated in bad faith and/or upon knowingly false claims. (In such event, the Coordinators may in their discretion proffer disciplinary charges against the Complainant in accordance with the Student Code.)
- A Coordinator places a memorandum in the file indicating some other valid reason why the informal resolution process can no longer continue.

iv. Miscellaneous Matters Pertaining to Informal Resolutions.

- a. One of the primary goals of the informal resolution process is to attempt to achieve resolutions between parties when a situation occurs that should be deemed relatively minor, or on the rare occasion that the situation might even be based on a misunderstanding. It is the intent of this policy, therefore, that matters arising under the informal resolution process be deemed not to constitute a disciplinary process that should become part of the Respondent's permanent academic record. For this reason, unless the Coordinators transfer the matter for consideration under the formal complaint process, all procedures and resolutions achieved under the informal resolution process are not disciplinary procedures, and will not become part of the permanent record of a Respondent.
- b. Although the Coordinator(s) may implement temporary measures during the pendency of the investigation and informal complaint process such as "stay away" orders, etc., such will not be deemed to be sanctions that will become part of the Respondent's school record unless the matter is transferred to be handled as a formal complaint. Additionally, the fact that an informal complaint has occurred in and of itself will not result in school-issued sanctions being imposed against the Respondent; school-issued sanctions may only be issued through the formal resolution process described below.
- c. An informal resolution achieved, or an agreement signed by the parties, will not be construed by any party to constitute a finding of harassment. However, the fact that a complaint was filed and that an informal resolution was reached may be admitted at, and considered by, school officials in regard to the consideration of subsequent sexual/gender-based harassment claims issued by any member of the MSL community against the Respondent. The fact that a complaint was filed and that an informal resolution was reached may also be considered by school officials in a subsequent disciplinary proceeding against the Respondent, even if those charges are unrelated to sexual/gender-based harassment.
- d. Alleged breaches of any written agreements reached between the parties that cannot be resolved between the parties (after receiving the input of the Coordinator) shall result in a transfer of the matter for resolution under the formal complaint procedure described below.

- e. As long as the matter is being handled through the informal resolution process, and if they deem it to be appropriate given the circumstances, the Coordinators or designees may, upon the written request of the Complainant, keep the identity of the Complainant anonymous from the Respondent and all members of the MSL community who are not required to participate in the informal resolution process. If a Coordinator or a designee determines that that informal process cannot effectively or properly continue without revealing to the Respondent the identity of the Complainant, the Coordinator shall so inform the Complainant and provide to the Complainant the option to withdraw the complaint without revelation of the Complainant's identity. (For example, some of the methods of achieving an informal resolution listed above cannot practically proceed without the Respondent knowing the identity of the Complainant.) Although informal resolutions may proceed with an anonymous Complainant, no complaint requesting action under the formal resolution procedure will be accepted from a Complainant who desires to remain anonymous.

C. Formal Complaints of Sexual/Gender-Based Harassment.

- i. If any student believes s/he (and all other applicable pronouns) has been subjected to sexual/gender-based harassment as defined herein, the student has the right to file a formal complaint with one or more of the Coordinators identified above. In addition, and in accordance with the factors stated above in section B regarding the informal resolution of complaints, actions proceeding under the informal process may be transferred for handling under the formal process.
- ii. As stated above, unless the charges appear to involve serious allegations that Title IX of the Civil Rights Act of 1964 and/or Chapter 151C of the Massachusetts General Laws have been violated, or there are allegations of rape, sexual assault, or other claims involving violence, MSL prefers that complaints at least initially proceed under the informal resolution process.
- iii. Interim Measures.

If the facts giving rise to a formal or informal complaint under this Policy cause the Coordinators to believe that there exists a danger to the safety, health, or wellbeing of any members of the MSL community, or may substantially and negatively affect the educational environment at MSL, the school is authorized to take the following interim measures against a Respondent during the

pendency of proceedings on an informal or formal complaint of sexual or gender-based harassment:

- It may place restrictions on the Respondent's contact with particular students, faculty, staff or employees;
- It may change the Respondent's course schedule;
- It may increase the monitoring of certain areas of campus; and
- It may order that a Respondent take a mandatory leave of absence. (This will not be imposed on a law student as an interim measure except in the rare cases where the potential risks to the community are clear).
- It may take such other actions as are reasonably necessary to protect the safety, health, or wellbeing of any members of the MSL community, or as will prevent a substantial and negative impact on the educational environment at MSL.

If, during the course of the informal or formal sexual/gender-based harassment resolution process, the Coordinators determine that a Complainant has also engaged in conduct that may affect the safety, health, or wellbeing of any members of the MSL community, or may substantially and negatively affect the educational environment at MSL, they may take the same actions against a Complainant as those listed above in regard to a Respondent.

iv. The Formal Complaint Process

- a. The formal complaint process will commence either when: (1) the Complainant files a formal complaint on the form provided by the Coordinators, or (2) the matter has been transferred over after an informal process has begun.
- b. Unless they have already done so under an informal complaint process, the Coordinators or their designees shall conduct an investigation into the Complainant's charges. Such an investigation may include interviewing witnesses, reviewing documents, researching facts, and all other methods normally available to persons conducting an investigation of allegedly inappropriate conduct.
- c. If, after investigation, the Coordinators determine that there are insufficient facts to support a claim of sexual or gender-based

harassment and it would be inappropriate to continue with informal or formal charges, they shall terminate the process and dismiss the complaint.

- d. If, on the other hand, the Coordinators determine that there is good cause to proceed with formal charges, they will refer the complaint to the Disciplinary Committee and the matter will proceed in accordance with Rule 9 of the Code of Student Conduct. See Student Guidebook. The matter will thereafter be handled by the Disciplinary Committee as a disciplinary matter under Rule 9 until its resolution. As stated in Rule 9.b., the Respondent “has a right to notice and a hearing before a disciplinary committee, where he or she can present evidence and argument, can confront his or her accusers, and can be questioned.”
- e. In accordance with school procedure, the Disciplinary Committee will conduct a hearing, issue a written decision after the hearing has closed, and refer its findings and recommendations contained in the written decision to the Dean, who shall make the final decision regarding responsibility and/or punishment in writing. If the Committee finds the Respondent responsible for sexual or gender-based harassment, both the decision and Dean’s written determination will be placed in the Respondent’s student file and become a permanent part of the Respondent’s student record. As stated in Rule 9.c., penalties can range from censure to expulsion.
- f. If the Respondent is found to be not responsible for sexual or gender-based harassment, the decision will not be placed in the Respondent’s student file and will not become a permanent part of the Respondent’s student record. Moreover, no mention of the proceeding will appear on the Respondent’s student transcript or elsewhere in the student file. However, the Coordinators shall keep the decision separate from the student file in order to document that the claim of harassment was made and that a decision found the Respondent to be not responsible. This documentation may be used:
 1. In the case of a student-Respondent, Massachusetts (and perhaps other jurisdictions) requires the Dean of MSLAW to report all disciplinary proceedings to the state’s Board of Bar Examiners as part of the admissions review process for applicants to the Massachusetts bar. In such event, the Dean will accurately report the required information

pertaining to a formal complaint against a Respondent who later applies for admission to the Massachusetts bar, including a finding that the Respondent was found to be not responsible.

2. If the Complainant raises a question about how the claim was handled.
3. If the Respondent wishes to establish that the matter which the same Complainant now seeks to pursue formally (by the same or a later complaint) was already resolved.
4. If the school initiates further disciplinary charges against the Respondent.
5. In response to a subpoena issued by a court of law, an administrative agency, or a government agency authorized to issue such subpoenas, provided however, that MSL shall first use reasonable efforts to attempt to contact both the Complainant and Respondent to afford each of them the ability to attempt to properly oppose the issuance of the subpoena before MSL is required to deliver the documents demanded thereunder.

Available Resources

Here is a list of resources a student may wish to consult if the student believes that sexual or gender-based harassment has occurred:

James F. Cropper, JD, LMHC

MSL works with Attorney James Cropper, JD, LMHC, who is an alumnus and a licensed Mental Health Counselor. Mr. Cropper can provide consultation and individual therapy sessions to aid in processing the situation. He graduated from MSLAW in 1992, and has over 39 years of diverse experience, especially in Clinical Social Worker. Attorney James Cropper, JD, LMHC provides MSL with Private and group discussion sessions on current topics taking place in our society. Call: 978 852 2340

Other Nearby Counseling Centers:

- (1) Family Services Inc. -- 978.327.6611
- (2) Victim /Witness Assistance -- 978.683.4300
- (3) Merrimack Valley Legal Service -- 888-657-2889

- (4) National Sexual Assault Hotline -- 800-656-4673
- (5) Love is Respect -- 866-331-9474
- (6) National Domestic Violence Hotline -- 800-799-7233

Massachusetts Commission Against Discrimination

<https://www.mass.gov/orgs/massachusetts-commission-against-discrimination>

Boston Area Office of the U.S. Equal Employment Opportunity Commission

<https://eeoc.gov>

Massachusetts Law Pertaining to Sexual Harassment:

<https://www.mass.gov/info-details/massachusetts-law-about-sexual-harassment>

Equal Rights Advocates:

<https://www.equalrights.org/enough/>