

Massachusetts Department of Higher Education

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Information for Applicant Institutions: Legal Obligations of Massachusetts Approved Institutions of Higher Education

Once an institution of higher education is approved by the Massachusetts Board of Education ("BHE" or "Board"), it will be bound to follow the same laws and regulations under the Board and Department of Higher Education's purview as apply to all such institutions chartered or approved in the Commonwealth. This document does not constitute legal advice; this document only services to summarize, for educational purposes, the Board and Department's laws and regulations and is current as of the date on which it is issued. Institutions applying for degree-granting authority from the Board, or institutions already authorized to grant degrees in the Commonwealth seeking assistance in complying with such laws and regulations, should seek and retain legal counsel to advise the institution in such matters as may be applicable.

1. An Act to Support Improved Financial Stability in Higher Education¹

This Act, commonly referred to as "FARM" (Financial Assessment and Risk Monitoring), established several requirements for independent institutions of higher education intended to increase transparency about institutional finance and to avert precipitous institutional closures and their unfortunate impacts.

The FARM law guarantees the confidentiality of "any information submitted to, or developed by, the board [and department] in furtherance of" the law." Such information provided to the DHE related to FARM **is not subject to Massachusetts Public Records Law** and cannot be produced by the DHE in response to a request made under the Public Records Law. This provision is essential to ensuring open and frank information sharing.

A. Annual Financial Screenings and Evaluations. All approved Massachusetts institutions are screened annually to determine whether they may be at risk of imminent closure. If screening indicates that risk, the DHE will require risk mitigation and contingency planning, and, in certain circumstances, may require public notification.

The BHE may conduct these annual screenings directly or through a memorandum of understanding ("MOU") with an accrediting agency. The BHE currently has one approved MOU, with the New England Commission of Higher Education ("NECHE"). NECHE member institutions have their annual screening conducted by NECHE, which shares the results with the DHE; the DHE in turn, follows up with screened-in institutions. Institutions that are not accredited by NECHE are directly screened by the DHE.

¹ [Ch. 113 of the Acts of 2019](#)) and is codified at [M.G.L. c. 69, s. 31B](#). See: BHE regulations ([610 CMR 13.00](#)), and DHE [procedures](#), which provide greater detail about this process.

- B. Immediate Notification of Financial Liabilities and Risks.** Every institution located and authorized to grant degrees in the Commonwealth has an affirmative obligation to immediately inform the BHE of “any known financial liabilities or risks that are reasonably likely to result in the imminent closure of the institution *or* otherwise negatively affect the institution’s ability to fulfill its obligations to current and admitted students.” A detailed list of liabilities and risks will be shared upon request.
- C. Posting of Audited Financial Statements.** Each approved institution must “post on its website a copy of its annual financial report or statement...and a summary of the report, however termed, that is written in terms that are understandable by the general public.” The institution must also post at least three (3) years of its audited financial statements on a designated and searchable website.
- D. Required Training for Institutional Trustees.** Each member of the institution’s governing body must receive training in higher education financial metrics, legal and fiduciary responsibilities and applicable standards for accreditation at least once every four (4) years. Guidelines for implementing this requirement can be found [here](#) and [here](#). All approved independent institutions will be required to annually report progress in meeting trustee training requirements. More detailed information on timelines for training boards and an option to satisfy this requirement through a no-cost asynchronous training will be shared once an institution is approved.
- E. Institutional Contact.** Every approved institution must designate a contact for future DHE communications related to FARM.

2. Hazing Reporting

All approved institutions must file annual reports attesting to their compliance with the Commonwealth’s anti-hazing law.²

3. An Act Relative to Sexual Violence on Higher Education Campuses³

This Act requires: 1) that all institutions conduct sexual misconduct climate surveys at least once every four years; and 2) specific policies, procedures, and reporting on institutions’ efforts to identify, prevent, and respond to sexual misconduct. There are three key components embedded within the annual reporting requirement:

A. Annual Data Collection Report

Institutions submit an annual report that includes sexual misconduct incidence data.

B. Local Law Enforcement MOUs

Each institution must, to the extent feasible, adopt an MOU with local law enforcement agencies (“LEAs”) regarding respective roles and responsibilities of each party related to the prevention of and response to on-campus and off-campus sexual misconduct. This responsibility to enter into an MOU with LEAs is limited to operations in Massachusetts.

C. MOUs with Local Sexual Assault Crisis Service Centers and Domestic Violence Programs

² M.G.L. c. 269, §§ 17, 18, & 19; 610 CMR 5.00.

³ *An Act Relative to Sexual Violence on Higher Education Campuses* ([Ch. 337 of the Acts of 2020](#)), also known as the 2021 Campus Sexual Assault Law and codified at [M.G.L. c. 6, §§ 168D](#) and [168E](#).

An institution that does not provide its own sexual assault crisis service center must enter into and maintain an MOU with a community- based sexual assault crisis service center funded by the Massachusetts Department of Public Health ("DPH") and a community-based domestic violence program funded by DPH. This responsibility is limited to operations in Massachusetts.

The DHE has published a [website](#) and [guidance](#) to provide a roadmap for institutions.

4. Annual Fees

New approved institutions are required to pay an annual fee of \$4,000.00 for the first five (5) years following initial approval. The Department bills the institution annually.