



Discrimination, Harassment, Sexual Misconduct, Stalking, and Retaliation Policy

Policy Information

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References	<u>Titles IX, VI, and VII of the Civil Rights Act of 1964</u> <u>34 C.F.R. pt. 100</u> <u>Title IX of the Education Amendments of 1972</u> <u>28 C.F.R. pt. 54</u> <u>34 C.F.R. pt. 106</u> <u>Section 504 of the Rehabilitation Act; 34 C.F.R. pt 104</u> <u>Age Discrimination Act of 1975</u> <u>34 C.F.R. pt. 110</u> <u>Titles I and II of the Americans with Disabilities Act;</u> <u>C.F.R. pt. 35</u> <u>Montana Human Rights Act and Governmental Code of</u> <u>Fair Practices, Title 49, Montana Code Annotated</u> <u>Board of Regents Policy 507</u>

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Policy Statement¹

The University of Montana is committed to providing an environment that emphasizes the dignity and worth of every member of its community and that is free from harassment and discrimination based upon race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Such an environment is necessary to a healthy learning, working, and living atmosphere because discrimination and harassment undermine human dignity and the positive connection among all people at our University. The University will take appropriate action to eliminate, prevent and address the effects of discrimination, harassment, sexual misconduct, stalking and retaliation.

Consistent with state and federal law, reasonable accommodation will be provided to persons with disabilities.

It is important that members of the University community understand that the law does not just prohibit discrimination and harassment of employees by employers. The law also prohibits discrimination and harassment between members of the University community more generally: for example, between an instructor and a student, between two students, or between a student and an applicant or campus guest. The policy applies in all University programs and activities, including, but not limited to, discrimination in athletics, instruction, grading, university housing, and university employment. In addition, the law prohibits retaliation against an individual for opposing any practices forbidden under this policy, for bringing a complaint of discrimination or harassment, for assisting someone with such a complaint, for attempting to stop such discrimination or harassment, or for participating in any manner in an investigation or resolution of a complaint of discrimination or harassment. It is central to the values of this University that any individual who believes they may have been the target of unlawful discrimination or harassment feel free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution.

This policy shall not be construed or applied to restrict academic freedom at the University of Montana, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

Where to Report

All complaints or any concerns about conduct that may violate this policy and retaliation should be filed with the Equal Opportunity & Affirmative Action Director/Title IX Coordinator (“EO”):

Equal Opportunity and Affirmative Action/Title IX Coordinator
University Hall 006
University of Montana, Missoula, MT 59812
406-243-5710 | eoaa@umontana.edu | www.umd.edu/eo

Upon receiving a complaint, the EO will follow the procedures described in the Discrimination Grievance Procedures.

¹ This policy supersedes policy nos. 406.5; 406.5.1; 407.1; 406.4.

Important Note! Please do not wait to report conduct of concern until harassment becomes sufficiently serious (i.e., severe, pervasive, or persistent) to create a hostile environment. The Equal Opportunity and Affirmative Action/Title IX Coordinator, designees, and other University officials can take proactive steps to prevent harassment from continuing and perhaps escalating and to protect or otherwise assist the person harassed. For example, the University can talk with supervisors, arrange for trainings on discrimination, no-contact orders, counseling and changes in class schedules, living arrangements, class requirements, and testing schedules as needed. The EO office and designees can also provide expertise and advice to help identify conduct that might be a warning sign of or constitute sexual harassment or hostile environment harassment prohibited by this policy and address any concerns or complaints appropriately.

Discriminatory Conduct

I. Discrimination

Discrimination is conduct that is based upon an individual's:

- race,
- color,
- religion,
- national origin,
- creed,
- service in the uniformed services (as defined in state and federal law),
- veteran status,
- sex,
- age,
- political ideas,
- marital or family status,
- pregnancy,
- physical or mental disability,
- genetic information,
- gender identity,
- gender expression, or
- sexual orientation

and that conduct excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a University program or activity. Discrimination includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

II. Harassment

Harassment is covered under this policy if the harassment is based upon an individual's:

- race,
- color,
- religion,
- national origin,
- creed,
- service in the uniformed services (as defined in state and federal law),
- veteran status,
- sex,
- age,
- political ideas,
- marital or family status,
- pregnancy,
- physical or mental disability,
- genetic information,
- gender identity,
- gender expression, or
- sexual orientation.

Harassment based upon an individual's membership in one of the above classes violates this policy when it creates a hostile environment. Hostile Environment Harassment is as defined in Section II.B, below.

Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.

Sex-based harassment includes sexual harassment and non-sexual harassment based on stereotypical notions of what is female/feminine v. male/masculine or a failure to conform to those gender stereotypes. Sexual harassment is further defined below.

A. Sexual Harassment

Sexual Harassment can include unwelcome: sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual assault. Sexual harassment, including sexual assault, can involve persons of the same or opposite sex.

Consistent with the law, this policy prohibits two types of sexual harassment:

1. Tangible Employment or Educational Action

This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a University activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a University program or activity. Generally, perpetrators will be agents or employees with some authority from the University.

2. Hostile Environment

Sexual harassment may create a hostile environment as defined in section II.B below.

B. Hostile Environment Harassment

A Hostile Environment based on race, color, religion, national origin, creed, service in the uniformed services, veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation exists when harassment:

- is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the University's programs, services, opportunities, or activities ; or
- when such conduct has the purpose or effect of unreasonably interfering with an individual's employment.

Harassment that creates a hostile environment ("hostile environment harassment") violates this policy.

A hostile environment can be created by anyone involved in a university program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere

offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident, such as a sexual assault, even if isolated, can be sufficient.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

1. The degree to which the conduct affected one or more students' education or individual's employment;
2. The nature, scope, frequency, duration, and location of incident or incidents;
3. The identity, number, and relationships of persons involved;
4. The nature of higher education.

III. Sexual Misconduct

Sexual Misconduct includes sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, and relationship violence.²

A. Sexual Assault

Sexual Assault means an actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to:

1. Involvement in any sexual contact when the victim is unable to consent.
2. Intentional and unwelcome touching of, or coercing, forcing, or attempting to coerce or force another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks, or breast).
3. Sexual intercourse without consent, including acts commonly referred to as "rape."

Consent is informed, freely given, and mutual. If coercion, intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing future consent. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

B. Inducing Incapacitation for Sexual Purposes

Inducing Incapacitation for Sexual Purposes includes using drugs, alcohol, or other means with the intent to affect or having an actual effect on the ability of an individual to consent

² While sexual assault and other sexual misconduct is often considered a subset of "sexual harassment," for purposes of this policy and the consequences that may result from violating this policy, the terms are distinct.

or refuse to consent (as “consent” is defined in this policy) to sexual contact.

C. Sexual Exploitation

Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for anyone’s advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:

- Prostituting another person;
- Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- Non-consensual distribution of photos, other images, or information of an individual’s sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- Going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in non-consensual voyeurism;
- Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;
- Exposing one’s genitals in non-consensual circumstances, or inducing another to expose his or her genitals;
- Possessing, distributing, viewing or forcing others to view illegal pornography;

IV. Relationship Violence

Relationship Violence is abuse or violence between partners or former partners involving one or more of the following elements:

- Battering that causes bodily injury;
- Purposely or knowingly causing reasonable apprehension of bodily injury;
- Emotional abuse creating apprehension of bodily injury or property damage;
- Repeated telephonic, electronic, or other forms of communication -- anonymously or directly -- made with the intent to intimidate, terrify, harass, or threaten;

V. Stalking

Stalking includes repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death.

VI. Retaliation

Retaliation is action taken by an accused individual or an action taken by a third party against any person because that person has opposed any practices forbidden under this policy or

because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

Off-Campus Conduct

Conduct that occurs off campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy, e.g. if off-campus harassment has continuing effects that create a hostile environment on campus. Allegations of off-campus sexual misconduct are of particular concern and should be brought to the University's attention.

Required Employee Reporting of Sex-based Discrimination, Sexual Harassment and Sexual Misconduct Involving Students

In order to enable the University to respond effectively and to stop instances of sex-based discrimination, sexual harassment and sexual misconduct involving students at the University proactively, all University employees must, within 24 hours of receiving the information, report information they have about reported sex-based discrimination, sexual harassment, and sexual misconduct involving students to the EO. The information given to the EO must include all relevant details needed to determine what occurred and to resolve the situation. This includes the names of the respondent (if known), the complainant, other students involved in the incident, as well as relevant facts, including the date, time, and location.

Please note that this policy does not reach curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials.

Upon receiving a report of alleged or possible sex-based discrimination, sexual harassment, or sexual misconduct, the EO will evaluate the information received and determine what further actions should be taken. The EO will follow the procedures described in the Discrimination Grievance Procedures. The EO will take steps, either directly with the complainant or through a reporting employee, to provide information about the University's Discrimination Grievance Procedures, as well as available health and advocacy resources and options for criminal reporting.

Confidential Resources Exempt from Mandatory Reporting

Employees who are statutorily prohibited from reporting sex-based discrimination, sexual harassment and sexual misconduct involving students are exempt from mandatory reporting to the EO. Such confidential resources include SARC Advocates, Curry Health Center employees, other licensed medical health-care professionals, and clergy. Such persons may assist a student in obtaining interim measures as discussed in the Discrimination Grievance Procedures.

Sanctions and Corrective Action

Violations of this policy will be addressed through the [Discrimination Grievance Procedures](#). Consequences for violating this policy will depend upon the facts and circumstances of each particular situation. Sanctions and Corrective Action could include: a requirement not to repeat or continue the discriminatory, harassing, or retaliatory conduct, a reprimand, a no-contact order, denial of a merit pay increase, reassignment, suspension or termination. The severity of sanctions or corrective action will depend on the frequency and severity of the offense and any history of past discriminatory, harassing or retaliatory conduct. A finding of discrimination, harassment that creates a hostile environment or results in a tangible employment or educational action, or sexual misconduct may be cause for disciplinary action, up to and including the discharge of employees and the expulsion of students, in accordance with applicable University procedures and collective bargaining agreements.

Amnesty for Drug or Alcohol Possession and Consumption Violations

The University strongly encourages students to report instances of sex-based discrimination, sexual harassment, and sexual misconduct involving students. Therefore, students who report information about sex-based discrimination, sexual harassment, or sexual misconduct involving students will not be disciplined by the University for any violation of the University's drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident.

Free Speech and Academic Freedom

The University of Montana has a long tradition of, and a deep commitment to, academic freedom. The welfare and strength of the University and of society at large depend upon the ability to engage in free expression in the search for meaning. To this end, the University of Montana recognizes and protects full freedom of inquiry, teaching, research, discussion, study, publication, and for artists, the creation and exhibition of works of art, without hindrance, restriction, equivocation, or reprisal. This right extends to other facets of campus life to include the right of a faculty member or student to speak on general educational questions or about the Administration and operation of his/her own institution and the Montana University System.

Constitutionally protected speech and traditional notions of academic freedom are valued in higher education. These ideals help to create the stimulating and challenging learning environment that should characterize higher education. In the spirit of a true university environment, individuals are encouraged to invite, rather than inhibit, discourse on ideas. In addressing all complaints and reports under this policy, the University will take all permissible actions to ensure the safety of students and employees while complying with free speech requirements for students and employees.³ While the University will vigilantly protect students' and employees' rights against sex discrimination under this policy, this policy does not apply to curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials.

³ For more information about free speech requirements in the context of sexual harassment complaints, please see U.S. Department of Education, Office for Civil Rights, 2001 Revised Sexual Harassment Guidance at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html> at section XI.

External Complaints

If you filed a complaint with the EO and believe the University's response was inadequate, or you otherwise believe you have been discriminated against by the University on the basis of race, color, national origin, sex, including sexual harassment, disability, age, or retaliation, you may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education based in Seattle or the Educational Opportunities Section (EOS) of the Civil Rights Division of the U.S. Justice Department of Justice, and a complaint based on religion with EOS of the U.S. Justice Department.

As a student or employee, if you filed a complaint with the EO and believe the University's response was inadequate, or you otherwise believe you have been discriminated against by the University on the basis of race, color, national origin, sex, including sexual harassment, disability, age, religion, creed, pregnancy, marital status, familial status (housing only), or political beliefs, or retaliation, you may file a complaint with the Montana Human Rights Bureau: <http://erd.dli.mt.gov/human-rights-bureau.html>, 406-444-4356.

[Discrimination Grievance Procedures](#)