



## Board of Trustees

Policy Statement

University Policy Library

Operational Area:	Diversity and Inclusion
Responsible Executive:	Chief Executive Officer
Responsible Office:	Equal Opportunity Office
Effective:	August 14, 2020

# Discrimination, Harassment, Sexual Misconduct, Title IX Violations, and Retaliation

## Diversity and Inclusion

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### PDF Version: Discrimination, Harassment, Sexual Misconduct, Title IX, and Retaliation

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## I. Introduction

- A. **Authority:** Colorado Revised Statutes (C.R.S.) § 23-54-102, *et seq.* (2020) authorizes the Trustees of Metropolitan State University of Denver ("MSU Denver" or "University") to establish rules and regulations to govern and to operate the University and its programs. The MSU Denver Trustees retain authority to approve, to administer, and to interpret policies pertaining to University governance. The MSU Denver Trustees authorize the MSU Denver President to approve, to administer, and to interpret policies pertaining to University operations.
- B. **Purpose:** MSU Denver community members should be able to live, study, learn, and work in an environment free from unlawful discrimination and sexual misconduct. This policy is promulgated under:
1. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, *et seq.*, and its implementing rules and regulations ("Title IX");
  2. 34 C.F.R. Part 106; Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c) ("Title IV");
  3. The Violence Against Women Reauthorization Act ("VAWA");

4. The Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act ("Clery Act")
5. Title VII of the Civil Rights Act of 1964 ("Title VII");
6. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, *et seq.* and its implementing regulations at 34 C.F.R. Part 100 ("Title VI"); and
7. Colo. Rev. Stat. § 24-34-402.

### **C. Scope and Jurisdiction:**

1. The core purpose of this Policy is the prohibition of discrimination. Discrimination may involve exclusion from activities, such as admission, athletics, or employment. Additionally, discrimination may take the form of harassment or, in the case of sex-based discrimination, may encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, and/or domestic violence. When an alleged violation of this antidiscrimination policy is reported, the allegations are subject to resolution through either: 1) Title IX Procedures established by the University's Office of Equal Opportunity ("OEO")/Title IX Coordinator (when applicable, as further discussed below); or 2) Antidiscrimination Procedures established by the University's OEO/Title IX Coordinator, which will apply and be used for all discriminatory conduct that does not specifically fall under the definition of a Title IX violation. When the Respondent is a member of the University community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties, such as guests, visitors, volunteers, invitees, and campers. This Policy and the OEO/Title IX implementing procedures may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy.
2. This Policy applies to the education programs and activities of the University, to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by the University's recognized student organizations. The Respondent must be a member of the University community for its policies to apply. This policy also may apply to the effects of off-campus misconduct that effectively deprives someone of access to the University's educational program. The University also may extend jurisdiction to off-campus and/or to online conduct when the OEO/Title IX Coordinator determines that the conduct affects a substantial University interest. Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational programs or activities and/or has continuing effects on campus or in an off-campus, sponsored program or activity. A substantial University interest includes:
  - a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
  - b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, member, guest, or other individual;
  - c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
  - d. Any situation that is detrimental to the educational interests or mission of the University.
3. If the Respondent is unknown or is not a member of the University community, the OEO/Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report. Furthermore, even when the Respondent is not a member of the University's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator or the Dean of Students Office.
4. In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events. All vendors serving the University through third-party contracts are subject to the policies and

procedures of their employers and/or to Policy and the implementing procedures to which their employer has agreed to be bound by contractually.

5. When the Respondent is enrolled in, or employed by another institution, the OEO/Title IX Coordinator can assist the Complainant to contact the appropriate individual at that institution, because it may be possible to allege violations through that institution's policies. Similarly, the Title IX Coordinator may be able to assist a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.
6. All forms of discriminatory behavior listed in this Policy are prohibited, and will be responded to in accordance with guidance established in either the OEO/Title IX Anti-Discrimination or Title IX Procedures; however, the OEO/Title IX Coordinator's Title IX procedures apply only to alleged Title IX violations that occur while the Complainant is in the United States of America and is participating in, or attempting to participate in, an education program or activity of the University as has been described above. In situations when discriminatory behavior occurs, but is not subject to Title IX, but may still be considered discrimination as described in this Policy, such discrimination will be subject to the OEO/Title IX Coordinator's Anti-Discrimination Procedures but are not subject to the Title IX Procedures.

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## II. Roles and Responsibilities

- A. **Responsible Executive:** Chief Executive Officer
- B. **Responsible Administrator:** Chief Equal Opportunity Officer
- C. **Responsible Office:** Office of Equal Opportunity
- D. **Policy Contact:** Office of Equal Opportunity, 303-615-0036

Raúl M. Sánchez, J.D.

Executive Director, Office of Equal Opportunity

Title IX Coordinator

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## III. Policy Statement

This policy shall be known as the Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Title IX Violations, and Retaliation (hereinafter, the "Policy").

- A. **Discrimination is Prohibited.** MSU Denver is committed to maintaining work, study, learning, and recreational environments for all students, employees, and visitors free from discrimination, sexual misconduct, Title IX violations (described below in section III.B.), and discriminatory harassment. Therefore, in accordance with applicable local, state, and federal laws, MSU Denver shall not discriminate and prohibits discrimination in all of its programs and activities, including but not limited to, academics, in-person and online classroom instruction and discussions, extracurricular activities, athletics, University-sponsored student clubs, employment, promotion, admissions, and access to all academic, clinical, career, and technical programs on the basis of any of the following:

1. Race;
2. Creed;
3. Color;
4. Sex;
5. Gender;
6. Gender Identity or Expression;
7. Pregnancy;
8. National Origin;
9. Nationality;
10. Age;
11. Ancestry;
12. Marital, Domestic Partnership, or Civil Union Status;
13. Religion;
14. Affectional or Sexual Orientation;
15. Atypical Hereditary Cellular or Blood Trait;
16. Genetic Information;
17. Liability for Military Service;
18. Protected Veteran Status;
19. Mental or Physical Disability, including perceived disability, AIDS and HIV-related illnesses;
20. Harassment (related to any of the forgoing categories);
21. Retaliation for filing a complaint of, or participating in an investigation of discrimination and harassment; and/or
22. Any other category protected by law.

In addition to prohibiting discrimination on the basis of any of the categories listed above, this Policy specifically prohibits all forms of sexual misconduct, which includes, but is not limited to, discrimination based on gender or sex, sexual assault, sexual abuse, sexual harassment, other forms of nonconsensual sexual conduct, stalking, interpersonal violence, including domestic and dating violence, and sexual exploitation.

This Policy also prohibits discriminatory harassment, as described below in section III.B., a form of discrimination which is improper conduct toward a particular individual, individuals, or groups on the basis of one or more of the protected classes listed above.

- B. Harassment is Prohibited.** Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom or the First Amendment. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under this Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of this Policy; however, supportive measures will be offered to those affected.
- C. Sexual Harassment is Prohibited.** This Policy prohibits sexual harassment, a form of discrimination based on sex and/or actual or perceived gender. Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex and/or actual or perceived gender that satisfies one or more of the following:
1. *Quid Pro Quo*:
    - a. an employee of the University,
    - b. conditions the provision of an aid, benefit, or service to the individual,

- c. on an individual's participation in or cooperation with unwelcome sexual conduct; and/or
- 2. Sexual Harassment:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and
  - d. pervasive, and
  - e. objectively offensive,
  - f. that it effectively denies a person equal access to the University's education program, activity, or employment.
- 3. Sexual assault, defined as:
  - a. Sex Offenses, Forcible:
    - i. Any sexual act directed against another person,
    - ii. Without the consent of the Complainant,
    - iii. Including instances in which the Complainant is incapable of giving consent due to intoxication, lack of consciousness, disability, presence of coercion, or age.
  - b. Forcible Rape:
    - i. Penetration,
    - ii. no matter how slight,
    - iii. of the vagina or anus with any body part or object, or
    - iv. oral penetration by a sex organ, or any other object or body part, of another person,
    - v. without the consent of the Complainant.
  - c. Forcible Sodomy:
    - i. Oral, digital, or anal sexual intercourse with another person,
    - ii. forcibly,
    - iii. and/or against that person's will (non-consensually), or
    - iv. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age, intoxication, the presence of coercion, lack of consciousness, or because of temporary or permanent mental or physical incapacity.
  - d. Sexual Assault with an Object:
    - i. The use of an object or instrument to penetrate,
    - ii. however slightly,
    - iii. the oral, genital or anal opening of the body of another person,
    - iv. forcibly,
    - v. and/or against that person's will (non-consensually),
    - vi. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age, intoxication, the presence of coercion, lack of consciousness, or because of temporary or permanent mental or physical incapacity.
  - e. Forcible Fondling:
    - i. The touching of the private body parts of another person (buttocks, groin, breasts),
    - ii. for the purpose of sexual gratification,
    - iii. forcibly,
    - iv. and/or against that person's will (non-consensually),
    - v. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age, intoxication, the presence of coercion, lack of consciousness, or because of temporary or permanent mental or physical incapacity.
  - f. Sex Offenses, Non-forcible
    - i. Incest:
      - (a) Non-forcible sexual intercourse,
      - (b) between persons who are related to each other,
      - (c) within the degrees wherein marriage is prohibited by the laws of the State of Colorado.

ii. Statutory Rape:

- (a) Non-forcible sexual intercourse,
- (b) with a person who is under the statutory age of consent in Colorado.

4. Dating Violence, defined as:

- a. violence,
- b. on the basis of sex and/or actual or perceived gender,
- c. committed by a person,
- d. who is in, or has been in, a social relationship of a romantic or intimate nature with the Complainant.
- e. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
- f. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- g. Dating violence does not include acts covered under the definition of domestic violence.

5. Domestic Violence, defined as:

- a. violence,
- b. on the basis of sex and/or actual or perceived gender,
- c. committed by a current or former spouse or intimate or romantic partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate or romantic partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Colorado, or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of Colorado.
  - i. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate or romantic relationship.

6. Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex and/or actual or perceived gender,
- c. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. Suffer substantial emotional distress. For the purposes of this definition—
    - (a) *Course of conduct* means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
    - (b) *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant.
    - (c) *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

7. The following definitions and understandings apply to the above described forms of sexual harassment:

- a. Force: *Force* is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to

overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want."). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

b. *Coercion*: *Coercion* is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

c. *Consent* is:

- i. knowing, and
- ii. voluntary, and
- iii. clear permission
- iv. by word or action
- v. to engage in sexual activity.

(a) Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back. Consent can also be withdrawn once given through clear verbal or physical communication (e.g., saying "no," using an agreed upon safe word, pushing a sexual partner away, a previously engaged sexual participant becoming disengaged). If consent is withdrawn, that sexual activity should cease immediately. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship or experience is not sufficient to constitute consent. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of non-traditional intimacy, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying "no" may be part of the kink and thus consensual, so the University's evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default. Prior experiences with kink situations shall not be construed to be consent for future contact.

d. *Incapacitation*: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if the Respondent engages in sexual activity with someone who is incapable of giving consent. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective,

reasonable-person standard, which assumes that a reasonable person is both sober and exercising sound judgment. Incapacitation occurs when someone cannot make rational, reasonable decisions because the individual lacks the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the voluntary or forced consumption of incapacitating drugs.

8. Other Civil Rights Offenses. In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, the University additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.
  - a. Sexual Exploitation, defined as: when an individual takes non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
    - i. Sexual voyeurism, such as observing or allowing others to observe a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person being observed;
    - ii. Invasion of sexual privacy;
    - iii. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent, such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent, including the making or posting of revenge pornography;
    - iv. Prostituting another person;
    - v. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection;
    - vi. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity;
    - vii. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections;
    - viii. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity;
    - ix. Knowingly soliciting a minor for sexual activity;
    - x. Engaging in sex trafficking;
    - xi. Creating, possessing, or disseminating child pornography.
  - b. Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
  - c. Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
  - d. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
  - e. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation,



- pledging, joining, or any other group-affiliation activity;
- f. Violation of any other University policies may constitute a civil rights offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

#### **D. Retaliation is Prohibited.**

1. Retaliation against a person who reports a potential violation under this Policy, assists someone with a report of a violation, or participates in any manner in an investigation or in the resolution of a complaint made under this Policy is strictly prohibited and will not be tolerated. Retaliation includes, but is not limited to, threats, slander, intimidation, reprisals, and/or adverse actions related to an individual's employment or education. MSU Denver will take appropriate steps to ensure that a person who in good faith reports, complains about, or participates in an investigation pursuant to this Policy will not be subjected to prohibited retaliation. Individuals who believe they are experiencing retaliation are strongly encouraged to file a complaint with the Equal Opportunity Office and/or Title IX Coordinator or designee.
2. The University is obligated to ensure that the reporting, complaint, investigation, and grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described below, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but may, on occasion, also be made by individuals for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.
3. Counterclaims determined to have been reported in good faith will be processed using the OEO/Title IX Procedures and the procedures described below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

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## **IV. Implementation Requirements, Processes and Procedures**

In accordance with this Policy, MSU Denver will take immediate and appropriate action to investigate allegations of discrimination, harassment, sexual misconduct, Title IX violations, and retaliation. If, after an adequate, reliable and impartial investigation of those complaints there is a finding that this Policy has been violated, MSU Denver will impose appropriate disciplinary action on the individual found in violation. In making a determination of whether or not this Policy has been violated, a preponderance of the evidence standard will be used. Preponderance of evidence means that the evidence shows it is more likely than not that the conduct occurred or, stated another way, that there is a greater than 50% chance that the claim is true.

- A. Mandatory Reporting:** All University employees (faculty, staff, and administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, with some limited exceptions. To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information to be shared. If a Complainant expects formal action in response to a complaint, reporting to any Mandated Reporter will connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an

incident is reported to them. The following sections describe the reporting options at University for a Complainant or third-party (including parents/guardians when appropriate):

1. Confidential Resources: If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:
  - a. On-campus, licensed, professional counselors and staff;
  - b. On-campus, health service providers and staff;
  - c. On-campus, victim advocates;
  - d. On-campus members of the clergy/chaplains working within the scope of their vocation;
  - e. Athletic trainers (if licensed and privileged under state statute, and/or working under the supervision of a health professional); and
  - f. Off-campus (non-employees):
    - i. Licensed, professional counselors and other medical providers;
    - ii. Local, rape crisis counselors;
    - iii. Domestic violence resources;
    - iv. Local or state assistance agencies;
    - v. Clergy/chaplains; and
    - vi. Attorneys.
  - g. All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, role on campus, and/or professional credentials, except in extreme cases of immediate threat or danger; abuse of a minor/elder/individual with a disability; or when required to disclose by law or court order.
  - h. Campus counselors (and/or the Employee Assistance Program for employees) may be available to help and may be consulted.
  - i. University employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.
2. Anonymous Notice to Mandated Reporters: At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.
  - a. If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.
  - b. Anonymous notice will be investigated by the University to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.
  - c. However, anonymous notice typically limits the University's ability to investigate, to respond, and to provide remedies, depending on what information is shared.
  - d. When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator.
  - e. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on reporting of abuse requirements.
3. Mandated Reporters and Formal Notice/Complaints
  - a. All employees of the University (including student employees) (with the exception of those who are designated as Confidential Resources, above) are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment. Employees must also promptly share all details of behaviors under this policy that they observe or of which they have knowledge, even if not reported to them by a Complainant or third-party. Complainants may want to carefully consider whether

they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

- b. Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or desire to seek a specific response from the University.
- c. Supportive measures may be offered as the result of such disclosures without formal University action.
- d. Failure of a Mandated Reporter (as described above) to report an incident of harassment or discrimination of which they become aware is a violation of University policy and may be subject to disciplinary action for failure to comply.
- e. When a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct; however, the University is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report their own misconduct.
- f. Finally, it is important to clarify that a Mandated Reporter who is a target of harassment or other misconduct under this Policy is not required to report their own experience, but they are encouraged to do so.

**B. When a Complainant Does Not Wish to Proceed:** If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. The Title IX Coordinator's decision should be based on results of a violence risk assessment that shows a compelling risk to health and/or safety that requires the University to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The University may be compelled to act on alleged employee misconduct without regard to a Complainant's wishes. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue an investigation and/or a formal grievance process fairly and effectively. When the Title IX Coordinator executes the written complaint, the Title IX Coordinator does not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy. When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish; however, it may be difficult for the University and/or the Title IX Coordinator to become aware of all relevant facts or adequately resolve a Complaint if a Complainant does not participate in the process. The Complainant retains all rights of a Complainant under this Policy regardless of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant. Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community. In cases in which the Complainant requests confidentiality and/or no formal action, and the circumstances allow the University to honor that request, the University will offer informal resolution options under the OEO/Title IX Coordinator's procedures. Additionally, the Title IX Coordinator will offer supportive measures to the Complainant and the community but will not otherwise pursue formal action. If the Complainant elects to take no action, such individual can change that decision and pursue a formal

complaint at a later date. If a Complainant makes a formal complaint, the University will take such allegations seriously, and will investigate the alleged incidents and will seek to properly resolve them through this Policy and the OEO/Title IX procedures.

- C. Federal Timely Warning Obligations:** Parties who report sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University must issue timely warnings for incidents reported that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The University will ensure that a Complainant's name and other identifying information are not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.
- D. False Allegations/Evidence:** Deliberately false and/or malicious and/or frivolous accusations under this policy, as compared to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to investigation and appropriate disciplinary action. In addition, witnesses and parties who knowingly provide false evidence, tamper with, or destroy evidence after being directed to preserve such evidence, or who deliberately mislead an official who is conducting an investigation, may be subject to investigation and discipline.
- E. Notice/Complaint:** Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the University will initiate a prompt initial assessment to determine the next steps the University will take. The University will initiate at least one of three responses:
1. Offering supportive measures because the Complainant needs them and/or does not want to proceed formally; and/or
  2. An informal resolution; and/or
  3. A formal investigation and grievance process including an investigation and a hearing, if required.
  4. The investigation and grievance process will determine whether or not the Policy has been violated. If so, the University will promptly implement effective remedies designed to eliminate harassment or discrimination, and their potential recurrence or effects.
- F. Initial Assessment:** Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator will engage in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:
1. If notice is given, the Title IX Coordinator will seek to determine if the person affected wishes to make a formal complaint, and will assist them in doing so, if desired.
  2. If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety, or some other substantial University interest is threatened.
  3. If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to ensure a completed complaint.
  4. The Title IX Coordinator, or a designee, will reach out to the Complainant to offer supportive measures.
  5. The Title IX Coordinator works with the Complainant to ensure awareness of the right to an Advisor.
  6. The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  7. If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify needs and facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  8. If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation

best or is available and may seek to determine if the Respondent is also willing to engage in informal resolution.

9. If a formal investigation and grievance process is preferred, the Title IX Coordinator determines if the alleged misconduct falls within the scope of Title IX.
10. If the alleged conduct does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
  11. an incident, and/or
  12. a pattern of alleged misconduct, and/or
  13. a culture/climate issue, based on the nature of the complaint.
14. If the Title IX Coordinator determines that Title IX does not apply, they will either dismiss that aspect of the complaint (if any), or they will assess which policies may apply and the resolution process that is applicable, and will refer or reassign the matter accordingly (to the Dean of Students Office/Student Conduct for cases involving student Respondents, and to the office of Human Resources and/or appropriate Chairs, Deans, or the Provost for cases involving employee and/or Faculty Respondents).
15. Please note that dismissing a complaint under Title IX is procedural and does not limit the University's authority to address or reassign a complaint of discrimination or misconduct with appropriate process and remedies under other procedures.

#### **G. Dismissal of Complaint (Mandatory and Discretionary)**

1. The University must dismiss or reassign a formal complaint or any allegations therein alleging conduct that, if proved, would be considered a Title IX violation if, at any time during the investigation or hearing, it is determined that:
  2. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy hereinabove, even if proved; and/or
  3. The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
  4. The conduct did not occur against a person in the United States; and/or
  5. At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the University.
6. The University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:
  7. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
  8. The Respondent is no longer enrolled in or employed by the University; or
  9. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
10. Upon any dismissal or reassignment of a Complaint to be addressed outside of the realm of Title IX, the University will promptly send written notice of the dismissal or reassignment of the Complaint and the rationale for doing so simultaneously to the parties.
11. This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.
12. Notwithstanding anything above contained within this subsection, any conduct required to be dismissed under Title IX may still be investigated as a violation of other provisions of this Policy or other University policies and may result in disciplinary sanctions.

#### **H. Responsible Office for Conducting Investigation of Complaints**

1. *Title IX Investigations*: Upon receipt of notice or complaint of discriminatory conduct and after conducting a preliminary inquiry, as described above, if the Title IX investigator determines the alleged conduct could specifically constitute a Title IX violation, the Title IX Coordinator is responsible for coordinating and/or conducting the investigation and formal grievance procedure in accordance with this Policy and the OEO/Title IX Procedures.
2. *Non-Title IX Discrimination Investigations Involving Student Respondents*: Upon receipt of notice or complaint of discriminatory conduct and after conducting a preliminary inquiry, as described above, if the Title IX investigator determines the alleged conduct (if it were to be proved true) does NOT specifically constitute a Title IX violation but could still be considered discriminatory conduct under this Policy AND involves a student Respondent, the Title IX Coordinator will refer the matter to the Dean of Students and/or Student Conduct Office, who will be responsible for coordinating and/or conducting the investigation and formal grievance procedure in accordance with this Policy, the Student Code of Conduct, and any other relevant procedures.
3. *Non-Title IX Discrimination Investigations Involving Employee Respondents*: Upon receipt of notice or complaint of discriminatory conduct and after conducting a preliminary inquiry, as described above, if the Title IX investigator determines the alleged conduct (if it were to be proved true) does NOT specifically constitute a Title IX violation but could still be considered discriminatory conduct under this Policy and does NOT involve a student Respondent, the Title IX Coordinator is responsible for coordinating and/or conducting the investigation and formal grievance procedure in accordance with this Policy and the OEO Procedures that are not specific to the Title IX grievances and investigations.

I. **OEO Procedures**: In addition to the processes and implementation requirements discussed above, comprehensive procedures have been established by the Equal Opportunity Office and Title IX Coordinator to further clarify and implement this Policy (the "OEO Procedures"). The OEO Procedures should be interpreted in conjunction with this Policy, State and Federal law, and any and all implementing rules and regulations, including the U.S. Department of Education's Title IX Rules. The OEO/Title IX procedures can be found on the Office of Equal Opportunity website.

J. **Training**: The Title IX Coordinator will oversee ongoing training programs on the campus specifically designed to increase awareness of the issues with the ultimate goal of preventing discrimination, sexual misconduct, interpersonal violence, and retaliation within the MSU Denver community. The trainings will be comprehensive and specifically designed for the diverse audience of employees and students. Trainings will include definitions of prohibited conduct, bystander intervention strategies, reporting options and obligations, and resources available on campus. Additionally, all training materials that the Title IX Coordinator and their staff receives as part of the required trainings under the U.S. Department of Education's Title IX Rules will be published on the OEO website.

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## V. Related Information

- A. Equal Opportunity Office Procedures, **Office of Equal Opportunity**
- B. Dean of Students Office, **Dean of Students**
- C. File a Report with the Dean of Students Office, **Report an Incident**

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## VI. History

- A. **Effective**: August 14, 2020

B. **Revised:** This policy replaces and supersedes the following policies, which are no longer in effect: Sections 2.1 Antidiscrimination and 3.5 Harassment, Sexual Harassment, and Violence of the *MSCD Trustees Manual*, 2007; Board of Trustees Discrimination, Sexual Misconduct, and Retaliation Policy, July 1, 2019.

C. **Review:** This policy will be reviewed as deemed necessary by University leadership.

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## VII. Approval

This policy is approved by the MSU Denver Board of Trustees.

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