Appendix Q

MSUN Policy 1001.7

MONTANA STATE UNIVERSITY NORTHERN

1001.7 Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, Stalking, and Retaliation

Section 1000: Campus Policy

Subject: Students, Personnel
Effective: August 2014
Revised: October 2015
Review Date: October 2017
Responsible Party: Title IX Coordinators

Scope

This Policy Applies to the following MSU Campuses:

MSU Bozeman (including Gallatin College)
MSU Billings (including City College)
MSU-Northern
Great Falls College MSU

For the purpose of this policy, the term "University" means all campuses listed above.

Introduction and Purpose

State and federal laws and regulations prohibit certain kinds of discrimination in employment and in educational services. This policy is intended to comply with the following laws and regulations: Titles IV, VI, and VII of the Civil Rights Act of 1964; 34 C.F.R. pt. 100; Title IX; 28 C.F.R. pt. 54 and 34 C.F.R. pt. 106; Section 504 of the Rehabilitation Act; 34 C.F.R. pt. 104; Age Discrimination Act of 1975; 34 C.F.R. pt. 110; and Titles I and II of the Americans with Disabilities Act; 28 C.F.R. pt. 35; Montana Human Rights Act and Governmental Code of Fair Practices, Title 49, Montana Code Annotated.

In addition, this Policy is intended to comply with Title IX of the Education Amendments of 1972 and its implementing regulation, at 34 C.F.R. § 106.31 (a), which provide that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by the university.

100.00 Policy Statement

Montana State University's campuses are 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. Acts of discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking, and retaliation will be addressed consistent with this policy.

100.10 Disability Discrimination

The University is committed to eliminating disability-based discrimination against persons with disabilities and making reasonable accommodation for any known disability that interferes with an applicant's ability to compete in a selection process, an employee's ability to perform the essential functions of a job, a student's ability to meet the essential requirements of an academic program, or a person's ability to benefit from a University service or participate in a University sponsored or hosted event. Applicants, employees, students or participants with a disability seeking an accommodation shall contact the University's disability services office.

100.20 Retaliation Prohibited

Retaliation against an individual for taking any of the actions in support of this policy as defined in Section 128.00 below is prohibited. 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.

100.30 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.

100.40 Remedying Effects of Past Discrimination

The University is committed to taking positive and effective actions in the recruitment, hiring, training, and promotion of persons in all classes of employment to help overcome the present effects of past discrimination and increase opportunities for qualified women and minorities, persons with disabilities, and covered veterans. In addition, campuses of Montana State University assumes particular responsibility for providing opportunities for education and training for the state's Native American peoples in the various disciplines and professions at the University.

100.50 Applicability

This policy prohibits discrimination and harassment of employees by the employer and 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.

110.00 Reporting Violations Of This Policy

All reports or any concerns about conduct that may violate this policy and retaliation should be reported to the campus official responsible for receiving reports of discrimination referred to throughout this Policy as the Responsible Official ("RO").

The campus Responsible Officials (ROs) are:

MSU Bozeman

Director, Office of Institutional Equity/Title IX
Coordinator Office of Institutional Equity/Title IX
Montana State University
P.O. Box 172430
Bozeman, MT 59717-2430
Tel: (406) 994-2042
Fax: (406) 994-7999
E-mail: discrimination@montana.edu [mailto:discrimination@montana.edu]
Location: 118 Hamilton Hall

MSU Billings

Director of Human Resources/Title IX Coordinator
Human Resources Office
Montana State University Billings
1500 University Drive
Billings MT 59101
Tel: (406)657-2278
Fax: (406)657-2120
Email:
Location: McMullen Hall 310

Great Falls College MSU

Executive Director, Human Resources/Title IX Coordinator
Tel: 406-771-5123
Fax: 406-268-3709
mbonilla@gfcmsu.edu [mailto:mbonilla@gfcmsu.edu]
Associate Dean of Student Services/Title IX Coordinator
Tel: 406-771-5133
Fax: 406-268-3709
camille.consolvo@gfcmsu.edu [mailto:camille.consolvo@gfcmsu.edu]
G-1 Administrative Area
2100 16th Ave. South
Great Falls, MT 59401

MSU-Northern

Director of Human Resources/Title IX Coordinator
Human Resources Office
Montana State University-Northern
300 W 11th Street
PO Box 7751
Havre, MT 59501

Tel: (406) 265-4147
Fax: (406) 265-3530
Email: hr@msun.edu [mailto:hr@msun.edu]
Location: Cowan Hall Rm 208
Dean of Student Engagement/Title IX Deputy
Student Union Building
Montana State University-Northern
300 W 11th Street
PO Box 7751
Havre, MT 59501
Tel: (406) 265-4113
Fax: (406) 265-3785
Email: kimberly.watson5@msun.edu [mailto:kimberly.watson5@msun.edu]
Location: SUB Rm 204

Guidance concerning means and methods of reporting, criminal reporting, confidentiality and anonymous reporting are found in the Discrimination Grievance Procedure [/admin/policies/1000/1001-7-1.aspx] . Upon receiving a report, the RO will follow the procedures described in the Discrimination Grievance Procedure [/admin/policies/1000/1001-7-1.aspx] .

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 RO can take proactive steps to prevent harassment from continuing and perhaps escalating and to protect or otherwise assist the person harassed. For example, in the case of a student experiencing harassment, the University can arrange for no-contact orders, counseling and changes in class schedules, living arrangements, class requirements, and testing schedules as needed. The RO 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 concerns appropriately.

110.10 Mandatory Employee Reporting of Sexual Harassment and Sexual Misconduct Involving Students.

To enable the University to respond effectively and to stop instances of sexual harassment and sexual misconduct involving students at the University proactively, all University employees must promptly (normally within 24 hours) report information they have about alleged or possible sexual harassment and sexual misconduct involving students to the RO. Employees, such as licensed health-care professionals and victim advocates [University Police] who have a statutory privilege under Montana law, are exempt from these reporting requirements.

Upon receiving a report of alleged or possible sexual harassment, or sexual misconduct, the RO will evaluate the information and determine what further action should be taken, following the procedures described in the Discrimination Grievance Procedures [/admin/policies/1000/1001-7-1.aspx] . The RO will take steps, either directly or through a reporting employee, to provide information about the University's Discrimination Grievance Procedures [/admin/policies/1000/1001-7-1.aspx] , as well as available health and advocacy resources and options for criminal reporting.

120.00 Definitions

121.00 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 that 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. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.

122.00 Harassment is covered under this policy if it 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. Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones, social media, 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, which is further defined below, 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.

123.00 Sexual Harassment can include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual misconduct. Sexual harassment, including sexual misconduct, 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 program 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. Generally, this type of sexual harassment will involve agents or employees with some authority from the University.

2. Hostile Environment [as defined in 124.00 below]

124.00 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 or academic performance.

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 creates a hostile environment, the harassment will be considered not only from the perspective of the individual who feels harassed, but also from the perspective of a reasonable person in a similar situation. Also, the following factors will be considered:

- The degree to which the conduct affected one or more student's education or individual's employment;
- The nature, scope, frequency, duration, and location of incident or incidents;
- The identity, number, and relationships of persons involved;
- The perspective of a "reasonable person" in the same situation as the person harassed; and
- The nature of higher education.

125.00 Sexual Misconduct includes sexual assault, inducing incapacitation for sexual purposes, and sexual exploitation.[1]

1. *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:
   - Involvement in any sexual contact when the victim is unable to consent.
   - Intentional and unwelcome contact with the breasts, buttock, groin or genitals or touching another with any of these body parts or coercing or forcing or attempting to coerce or force another to touch the perpetrator or themselves with or on any of these body parts.
   - Any other intentional bodily contact in a sexual manner, including contact by a penis, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact).
   - Sexual intercourse without consent, including acts commonly referred to as "rape."

2. *Consent* is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. If coercion, intimidation, threats, or physical force are used there is no consent.

   There is no consent if a person is mentally or physically incapacitated so that such person cannot understand the fact of, or make a reasonable judgment as to the nature or harmfulness of the conduct, or extent of the sexual situation. This includes incapacitation due to mental disability, alcohol or drug consumption, or being asleep or unconscious. A person who knows or reasonably should have known that another person is incapacitated may not engage in sexual activity with that person.

   There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim. In the absence of mutually understandable words or actions, it is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity to make sure that he/she has the consent from his/her partner(s).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. Effective consent may not be given by minors less than 16 years old.

3. *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 or refuse to consent (as "consent" is defined in this policy) to sexual

contact.

4. *Sexual Exploitation/coercion 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 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 a sexually transmitted disease, such as HIV to another;
   - Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals; and
   - Possessing, distributing, viewing or forcing others to view illegal pornography.

126.00 Dating Violence is abuse or violence between, partners or persons in a social relationship of an intimate or romantic nature involving one or more of the following elements:

- Battering that causes 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.

The existence of such a relationship shall be determined based on consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction.

To the extent applicable as provided in Sections 100.30 and 100.50 above, allegations of dating violence, regardless of whether they are based on discrimination, shall be addressed and considered in accordance with this Policy and the Discrimination Grievance Procedure [/admin/policies/1000/1001-7-1.aspx] .

127.00 Domestic Violence is an act of violence committed by a current or former spouse of the victim, by a person with whom the victim share a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic and family violence laws of Montana [Title 40, Ch. 15, MCA] or by any other person against an adult or youth victim who is protected under the domestic or family violence laws of Montana. Persons protected include mothers, fathers, brothers, sisters, and other past and present family members of a household. To the extent applicable as provided in Sections 100.30 and 100.50 above, allegations of domestic violence, regardless of whether they are based on discrimination, shall be addressed and considered in accordance with this Policy and the Discrimination Grievance Procedure [/admin/policies/1000/1001-7-1.aspx] .

128.00 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. To the extent applicable as provided in Sections 100.30 and 100.50 above, allegations of stalking, regardless of whether they are based on discrimination, shall be addressed and considered in accordance with this Policy and the Discrimination Grievance Procedure [/admin/policies/1000/1001-7-1.aspx] .

129.00 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.

130.00 Sanctions and Corrective Action

Violations of this policy will be addressed through the Discrimination Grievance Procedures [/admin/policies/1000/1001-7-1.aspx] . Consequences for violating this policy will depend upon the facts and circumstances of each particular situation.

In determining the severity of sanctions or corrective actions, factors such as the frequency and severity of the offense and any history of past discriminatory, harassing or retaliatory conduct are relevant. 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 policies and procedures and collective bargaining agreements.

140.00 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 provide information about sex-based discrimination, sexual harassment, sexual misconduct, dating violence, domestic violence, or stalking 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.

150.00 Free Speech and Academic Freedom

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

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.[2]

160.00 External Complaints

If you are a student and have filed a complaint with the RO and believe the University's response was inadequate, or as a student, 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. Contact information for the Office for Civil Rights is as follows:

U.S. Department of Education Office for Civil Rights
Seattle Office
915 Second Avenue, Room 3310
Seattle, WA 98174-1099
OCR.Seattle@ed.gov [mailto:OCR.Seattle@ed.gov]
Voice: 206-607-1600
Fax: 206-607-1601
TDD: 206-607-1647

As a student or employee, if you filed a complaint with the RO 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. Contact information is as follows:

Montana Human Rights Commission
1625 11th Ave.
PO Box 1728
Helena, MT 59624-1728
Voice: 406-444-2884
Toll free: 800-542-0807
http://erd.dli.mt.gov/human-rights [http://erd.dli.mt.gov/human-rights]

170.00 Training

To educate staff and faculty on the importance of non-discrimination and the prevention of sexual harassment in the work environment and classroom, each Montana State University campus requires all employees (faculty, all Graduate Teaching Assistants, Graduate Research Assistants, Administrators and staff members) to:

- complete discrimination and harassment prevention training on a biennial basis; and
- complete MSU's Title IX on-line training in accordance with Montana Board of Regents Policy 507.

New employees must complete the training within 45 days of employment. Temporary employees and student employees are required to complete the training program only at the discretion of the RO or Human Resources and/or in conjunction with the department of hire.

Supervisors shall support the employee in providing a reasonable amount of work time for the employee to complete the training program. Training programs can be selected from resources such as online programs, presentations or self-study options as

determined and pre-approved by the responsible University Officials.

The University also requires primary prevention, risk reduction and awareness training programs for all incoming students and new employees concerning sexual misconduct, dating violence, domestic violence, and stalking. And, the University shall maintain ongoing primary prevention, risk reduction, and awareness campaigns concerning sexual misconduct, domestic violence, and stalking for students and employees.

180.00 Consensual Relationships

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the person whose position confers power. A consensual romantic relationship in which one party has a supervisory or evaluative responsibilities for the other is a conflict of interest and, as such, and as provided in the University Conflict of Interest (COI) Policy the party in the evaluative or supervisory position must promptly disclose the relationship to his or her supervisor and to the campus official responsible for COI reporting. The supervisor and the University official responsible for COI management shall take steps to ensure that the situation is appropriately managed in accordance with the campus COI Policy. This could result in the removal of the employee or student from the supervisory or evaluative responsibilities by their romantic partner. As provided in the COI Policy, an employee's failure to promptly disclose a conflict of interest may result in discipline.

Discrimination Grievance Procedures [/admin/policies/1000/1001-7-1.aspx]

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