GUIDELINES ON SEXUAL HARASSMENT

600.020 Sex Discrimination, Sexual Harassment and Sexual Misconduct in Education/Employment Policy

Executive Order 40, 4-8-14; Revised 6-19-14; Revised 9-22-14 by Executive Order 41.

This policy is also available at http://www.umsystem.edu/ums/rules/collected_rules/equal_employment_educational_opportunity/ch600/600.020_sex_discrimination_sexual_harassment_and_sexual_misconduct

The policy set forth in this rule is intended to supplement the existing policies of the University of Missouri System and its respective campuses, as those policies relate to Title IX of the Education Amendments of 1972 (“Title IX”), 20 U.S.C. Sections 1881 et seq., and its implementing regulations, 34 C.F.R. Part 106, Title VII of the Civil Rights Act of 1964 and its implementing regulations, 29 C.F.R. Part 1604.11, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. 1092(f). In all informal or formal procedures involving allegations of Sex Discrimination, Sexual Harassment or Sexual Misconduct, regardless of any language found within the applicable procedural rules, the following shall apply:

1. Sex Discrimination, Sexual Harassment and Sexual Misconduct in Education

   Sex discrimination is prohibited by University policy and law in educational programs, activities and employment. Title IX applies to all students, employees, volunteers and visitors at the University and prohibits sexual harassment, sexual misconduct, and other forms of sex discrimination as defined in Section 600.020C of the Collected Rules and Regulations. Additionally, there is a specific application of Title IX in athletic programs to ensure gender equity and that women and men have equitable access to sports opportunities. As used in this policy, the word “sex” is also inclusive of the term “gender.”

2. Statement of Nondiscrimination

   As stated in its applicable rules and policies, the University of Missouri does not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, gender expression, age, disability or status as a protected veteran. The University affirms its commitment to providing equal opportunities by establishing the Equal Opportunity Policy statement in Section 320.010 of the Collected Rules and Regulations. The University’s nondiscrimination policies apply to any phase of its employment process, any phase of its admission or financial aid programs, and other aspects of its educational programs or activities. Additionally, this policy and the existing Title IX policies apply to allegations of sexual misconduct or allegations of other forms of sex discrimination, as defined in Section 600.020C below, occurring within the University’s educational programs and activities and instances occurring in other settings, including off-campus if there are effects of the conduct that interfere with or limit students’ ability to participate in or benefit from the University’s educational programs and activities. Notices of nondiscrimination are posted on the websites and at other locations for the UM System and each of the campuses.

3. Definitions

   a. Sex Discrimination. Sex discrimination occurs when a person has been treated inequitably based on sex, gender identity, or gender expression. Specifically, the University of Missouri System upholds Title IX, which states in part that “[n]o person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity.” Sexual harassment, sexual misconduct, sexual exploitation, stalking on the basis of sex and dating/intimate partner violence are forms of sex discrimination.

   b. Sexual Harassment. Sexual harassment is defined as:

      i. Unwelcome sexual advances or requests for sexual activity by a person or persons in a position of power or authority to another person, or

      ii. Other unwelcome verbal or physical conduct of a sexual nature by a person to another person, when:

         1) Submission to or rejection of such conduct is used explicitly or implicitly as a condition for academic or employment decisions; or

         2) Such conduct creates a hostile environment by being sufficiently severe or pervasive and objectively offensive that it interferes with, limits or denies the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits or opportunities.

   c. Sexual Misconduct. Sexual misconduct is: 1) nonconsensual sexual intercourse; 2) nonconsensual sexual contact involving the sexual touching of the genitals, breast or anus of another person or the nonconsensual sexual touching of another with one’s own genitals whether directly or through the clothing; 3) exposing one’s genitals to another under circumstances in which he or she should reasonably know that his or her conduct is likely to cause affront or alarm; or 4) sexual exploitation.

   d. Stalking on the Basis of Sex. Stalking on the basis of sex is following or engaging in a course of conduct on the basis of sex with no legitimate purpose that puts another person reasonably in fear for his or her safety or would cause a reasonable person under the circumstances to be frightened, intimidated or emotionally distressed.

   e. Dating/Intimate Partner Violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the recipient of the violent behavior.

   f. Sexual Exploitation. Sexual exploitation occurs when one person takes nonconsensual or abusive sexual advantage of another person for his/her own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited and which behavior does not constitute any other form of sexual misconduct. Examples of sexual exploitation include, but are not limited to, the following activities done without the consent of all participants:
Guidelines on Sexual Harassment

i. Invasion of sexual privacy;
ii. Prostitution of another person;
iii. Taping or recording of sexual activity;
iv. Going beyond the boundaries of consent to sexual activity (letting your friends hide to watch you engaging in sexual activity);
v. Engaging in voyeurism;
vi. Knowingly transmitting an STI, STD, venereal disease or HIV to another person;
vii. Inducing another to expose their genitals.

4. Consent to Sexual Activity. Consent to sexual activity is knowing and voluntary. Someone who is incapacitated cannot consent. Silence or absence of resistance does not establish consent. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent must be obtained at the time of the specific activity and can be withdrawn at any time. Lack of consent or withdrawal of consent may be communicated by words or non-verbal acts. Coercion and force, or threat of either, invalidates consent.

h. Incapacitated. Sexual contact with someone one knows to be or should know to be incapacitated is a violation of policy. An individual who is incapacitated lacks the capacity to give knowing consent. Incapacitation can be due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the individual from having the capacity to give consent.

i. Complainant. The person who is the alleged victim of discrimination under this policy.

j. Accused. The person, persons or student organizations alleged to have violated this policy.

4. Title IX Coordinators
Duties and responsibilities of the University’s Title IX Coordinators include monitoring and oversight of overall implementation of Title IX compliance at the University, including coordination of training, education, communications, and coordination with grievance procedures for faculty, staff, students and other members of the University community. The University may designate Deputy Coordinators as needed to assist in fulfillment of the Coordinator’s duties and responsibilities.

NOTE: All references to “Title IX Coordinator” throughout this policy refer to the Title IX Coordinator or the Coordinator’s designee (typically a Deputy Coordinator).

Any person having inquiries concerning the application of Title IX should contact their respective UM System or campus Title IX Coordinator. The following individuals serve as Title IX Coordinators and are designated to handle inquiries regarding the nondiscrimination policies and to serve as the coordinators for purposes of Title IX compliance:

University of Missouri System
Betsy Rodriguez, Ph.D.
Vice President Human Resources
Address: 215 University Hall
Columbia, MO 65211
Telephone Number: (573) 882-8279
Email Address: rodriguezea@umsystem.edu

Missouri University of Science and Technology
Shenethia Manuel, J.D.
Associate Vice Chancellor, Human Resource Services
Affirmative Action, Diversity, and Inclusion
Address: 113 Centennial Hall
300 W. 12th Street
Rolla, MO 65409
Telephone Number: (573) 341-4920
Email Address: manuels@mst.edu (manuals@mst.edu)
http://titleix.mst.edu/

University of Missouri-Columbia
Ellen Eardley, JD
Title IX Administrator
Address: 202 Jesse Hall
Columbia, MO 65211
Telephone Number: (573) 882-7915
Email Address: EardleyE@missouri.edu
http://title9.missouri.edu/
5. Reporting Sexual Harassment including Sexual Misconduct

a. Students, Employees, Volunteers and Visitors. Students, employees, volunteers and visitors of the University who have experienced any form of sex discrimination, including sexual harassment or sexual misconduct, are encouraged to report the incident promptly to the appropriate Title IX Coordinator listed in Section 600.020D above. For questions regarding confidentiality or requests that the complaint not be pursued, see Section 600.020F below. In order to foster reporting and participation, the University may provide amnesty to Complainants and witnesses for minor student conduct violations ancillary to the incident.

b. Mandated Reporters. Any employee of the University who becomes aware of sex discrimination as defined in this policy (including sexual harassment, sexual misconduct, stalking on the basis of sex, dating/intimate partner violence or sexual exploitation) is a Mandated Reporter, regardless of whether the recipient of the behavior is a student, employee, volunteer or visitor of the University. Exception: Employees with a legal obligation or privilege of confidentiality (including health care providers, counselors, lawyers, and their associated staff) are not considered Mandated Reporters and are not required to report when the information is learned in the course of a confidential communication. This also means that the employee seeking the exemption is employed by the University for that specific purpose and was acting in that capacity when the confidential disclosure was made. If the information is not learned in the course of confidential communication (for example, behavior is observed in class) then the employee has the same obligation as a Mandated Reporter. Consistent with the law and upon approval from the Office of General Counsel, campuses may also designate non-professional counselors or advocates as confidential for purposes of this policy and, therefore, excluded from the definition of Mandated Reporters. However, these individuals are required once per month to report to the Title IX Coordinator aggregate, non-personally identifiable information regarding incidents of sex discrimination reported to them. The aggregate data report should contain general information about individual incidents of sexual violence such as the nature, date, time, and general location of the incident. Confidentiality in this context is not the same as privilege under the law.

c. Required Reporting and Disclosure. A Mandated Reporter is required to promptly report the information to the appropriate Title IX Coordinator. The Mandated Report must be made regardless of whether the person reporting the information to the Mandated Reporter requests confidentiality and regardless of how the Mandated Reporter becomes aware of the offensive behavior (personal observation, direct information from the subject of the behavior, indirect information from a third party, etc.). If the Complainant requests confidentiality or that the charges not be pursued, the Mandated Reporter should warn the Complainant that, at this stage in the process, the Mandated Reporter must report all known information to the Title IX Coordinator.

d. Content of Mandated Report to Title IX Coordinator. Mandated Reporters must report all details that they possess. This includes names of the parties, if known, and all other information in the mandated reporter’s possession.

6. Requests for Confidentiality or Not to Pursue a Preliminary Investigation

a. The Title IX Coordinator or other appropriate official should inform and obtain the consent from the Complainant before beginning a preliminary investigation. If the Complainant requests confidentiality or asks that the complaint not be pursued, the Title IX Coordinator should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a Complainant insists that identifiable information, such as the Complainant’s name, not be disclosed to the Accused, the Title IX Coordinator should inform the Complainant that the institution’s ability to respond may be limited. The Title IX Coordinator should evaluate the Complainant’s request in the context of providing a safe and nondiscriminatory environment for all students.
b. After due deliberation of the Complainant’s request, and in accordance with Title IX, the Title IX Coordinator may decide not to proceed with an investigation or referral to the appropriate procedural process. Such a decision should be well-reasoned and documented. If, after due deliberation, the Title IX Coordinator decides the University cannot or should not take disciplinary action with respect to the Accused, the Title IX Coordinator should consider other steps to limit the effects of the alleged harassment and prevent its recurrence, and remedy its effects on the victim and the University community.

7. Cooperation with Law Enforcement
In accordance with federal law, the Title IX Coordinator will not wait for the conclusion of a criminal investigation or criminal proceeding to begin the Title IX preliminary investigation. It may be necessary to delay temporarily the fact-finding portion of a Title IX preliminary investigation while the police are gathering evidence. The Title IX Coordinator will promptly resume the preliminary Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence-gathering process. The Title IX Coordinator will implement appropriate interim steps during the law enforcement agency's investigation period to provide for the safety of the Complainant and the campus community and the avoidance of retaliation.

8. Interim Remedies Available During Investigation
During the preliminary investigation and procedural process and prior to a determination whether the alleged violation has occurred, the Title IX Coordinator or other authorized administrators may provide interim remedies including, but not limited to, one or more of the following:

a. Referral and facilitating access for Complainant to counseling, medical services and/or mental health services.

b. Implementing contact limitations on the Accused or on all parties.

c. Referral of Complainant to victim advocacy and support services either on and/or off-campus.

d. Referral of Complainant to academic support services and any other services that may be beneficial to the Complainant.

e. Adjusting the courses, assignments, exam schedules of the Complainant and/or the Accused.

f. Adjusting the work schedules, work assignments, supervisory responsibilities, supervisor reporting responsibilities or work arrangements of the Complainant and/or the Accused.

g. Altering the on-campus housing assignments, dining arrangements, or other campus services for either the Complainant and/or the Accused.

h. Altering the extracurricular activities of either the Complainant and/or the Accused.

i. Providing transportation accommodations for the Complainant.

j. Informing the Complainant of the right to notify law enforcement authorities of the alleged incident and offering to help facilitate such a report.

k. Suspending, on an interim basis, the Accused from University housing, classes, the University campus/facilities/events and/or all other University activities or privileges for which the Accused might otherwise be eligible, when the Appropriate Administrative Officer or designee finds and believes from the available information that the presence of the Accused on campus would seriously disrupt the University or constitute a danger to the health, safety, or welfare of members of the University community. The appropriate procedure to determine the status of the student will be initiated within seven business days.

i. In all cases in which an interim suspension is imposed, the Accused will be given the opportunity to meet with the Appropriate Administrative Officer prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented.

ii. At the discretion of Appropriate Administrative Officer, alternative coursework options may be pursued to ensure as minimal an impact as possible on the Accused.

iii. The Appropriate Administrative Officer has sole discretion to implement or stay an interim suspension and to determine its conditions and duration.

iv. Violation of an interim suspension under this policy will be grounds for expulsion.

l. Institute leave from work with or without pay for the Complainant and/or Accused.

9. Preliminary Investigation
A preliminary investigation into the report shall be conducted by the Title IX Coordinator or designee. For questions regarding confidentiality or requests that the complaint not be pursued, see Section 600.020F above. The purpose of the preliminary investigation is to gather enough information to refer the matter to the appropriate procedural process and to provide appropriate interim remedies. The preliminary investigation shall be conducted promptly (typically 2-3 days).

At the conclusion of the preliminary investigation the Complainant will be provided written information regarding the appropriate procedural process and interim remedies.

10. Procedures
In all informal or formal procedures involving allegations of Sex Discrimination, Sexual Harassment or Sexual Misconduct, regardless of any language found within the applicable procedural rules, the following shall apply:

a. The standard of proof shall be “preponderance of the evidence”, defined as determining whether evidence shows it is more likely than not that a policy violation occurred.

b. The Title IX Coordinator will determine if conflict resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to conflict resolution. Conflict resolution is often used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Informal Resolution or Formal Resolution processes to resolve conflicts. Mediation is never utilized in cases involving allegations of nonconsensual sexual intercourse or nonconsensual sexual contact. In a conflict resolution meeting, the Appropriate Administrative Officer will facilitate a dialogue with the parties to an effective resolution, if possible. The Appropriate
Administrative resolution procedures are optional and may be used when the University determines that it is appropriate and both the Complainant and the Accused are agreeable. Either the Complainant or the Accused may end the informal procedure at any time prior to a finding being rendered, and move to the formal procedure. Once a finding is rendered in the informal process, then the right to the formal process is waived and the informal process is complete. The finding of the informal process remains subject to appeal.

Both the Complainant and the Accused will be given notice of the procedure, a hearing (if applicable), and equal opportunity to present witnesses and evidence.

The Complainant and the Accused will be notified in writing of the outcome of the resolution process.

Remedies available once Investigation is concluded. The Title IX Coordinator or other authorized administrators may immediately provide the Complainant with appropriate remedies including, but not limited to, one or more of the following:

(a) Providing escort services to assure that the Complainant can move safely between classes and activities;

(b) Removing the person found responsible from classes or extracurricular activities which include the Complainant or otherwise assuring that the Complainant and the person found responsible are not required to share the same classes or extracurricular activities;

(c) Moving the person found responsible to a different residence hall to assure that the Complainant and the person found responsible are not required to share the same residence hall;

(d) Providing the Complainant with comprehensive victim services including medical services, counseling and academic support services such as tutoring;

(e) Arranging for the Complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and

(f) Any of the interim remedies outlined in Section 600.020H above.

The Title IX Coordinator or other authorized administrator may also provide additional remedies as may be appropriate for the University community.

Any available appeals process must be equally available for both the Complainant and the Accused.

Sanctions for those found responsible for violating the University’s sex discrimination, sexual harassment or sexual misconduct policies range from warning up to and including expulsion for students, and for employees and faculty, range from a warning up to and including termination of employment. Generally speaking, the University considers Non-Consensual Sexual Intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions, including suspension, dismissal, or expulsion for students and termination for employees. However, the University reserves the right to impose any level of appropriate sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sex discrimination, sexual harassment or sexual misconduct, including dating/ intimate partner violence, non-consensual sexual contact and stalking based on the facts and circumstances of the particular complaint.

Failure to comply with this policy can result in disciplinary action. Employees also are cautioned that non-compliance with this policy may increase their risk of personal liability. Further, an individual who fails to report as required under this policy may be determined to be ineligible for defense or protection under Section 490.010 of the Collected Rules and Regulations for any associated claims, causes of action, liabilities or damages.

Retaliation is any adverse action taken against a person because of that person’s participation in protected activity. The University strictly prohibits retaliation against any person for making a report required by this policy, for making any good faith report to a Title IX Coordinator or for filing, testifying, assisting, or participating in any investigation or proceeding involving allegations of sex discrimination, sexual harassment or sexual misconduct. Any person who engages in such retaliation shall be subject to disciplinary action in accordance with applicable procedures. Examples of prohibited retaliation include, but are not limited to, giving a lesser grade than the student's academic work warrants because the student filed a complaint of sexual harassment; giving lower than justified performance appraisals because a person was a witness in an investigation of alleged sexual harassment; and threatening to spread false information about a person for filing a complaint of sexual harassment.

False reporting is making an intentional false report or accusation in relation to this policy as opposed to a report or accusation, which, even if erroneous, is made in good faith. False reporting is a serious offense subject to appropriate disciplinary action ranging from probation up to and including expulsion or termination.
14. **Office of Civil Rights** – Inquiries concerning the application of Title IX also may be referred to the United States Department of Education’s Office for Civil Rights. For further information on notice of nondiscrimination, visit http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm and for the address and phone number of the U.S. Department of Education office which serves your area, or call 1-800-421-3481. The State of Missouri regional Office of Civil Rights is located in Kansas City and is available to provide assistance.

Office for Civil Rights  
U.S. Department of Education  
One Petticoat Lane  
1010 Walnut, 3rd Floor, Suite 320  
Kansas City, MO 64106  
Telephone: 816-268-0550  
FAX: 816-268-0599  
TDD: 800-877-8339  
Email: OCR.KansasCity@ed.gov