

## 600.020 Sex Discrimination, Sexual Harassment and Sexual Misconduct in Education/Employment Policy - for matters involving conduct alleged to have occurred prior to August 14, 2020

Executive Order 40, 4-8-14; Revised 6-19-14; Revised 9-22-14 by Executive Order 41.  
Revised 2-9-17 with an effective date of 3-1-17.

**A. Sex Discrimination, Sexual Harassment and Sexual Misconduct in Education.** The University is committed to affording equal employment and education opportunities to its employees and students, and to creating an environment free from discrimination (see Section 600.010 of the Collected Rules and Regulations). In furtherance of these commitments, both University policy and applicable state and federal law, prohibit all students, employees, volunteers and visitors at the University from engaging in discrimination on the basis of any protected characteristic, including sex, pregnancy, gender identity, and gender expression. In addition, University policy and the law prohibit sexual misconduct, sexual harassment, stalking on the basis of sex, dating/intimate partner violence, and sexual exploitation, as defined in Section 600.020.B. As used in this policy, the word "sex" is also inclusive of the term "gender." This policy applies to any phase of its employment process, any phase of its admission or financial aid programs, and all other aspects of its educational programs or activities. Additionally, this policy applies to allegations of sexual misconduct or allegations of other forms of sex discrimination, as defined in Section 600.020.B., occurring in other settings, including off-campus, if there are effects of the conduct that interfere with or limit any person's ability to participate in or benefit from the University's educational programs, activities or employment. Notices of nondiscrimination are posted online and in physical locations for the UM System and each of the campuses.

### **B. Definitions**

1. **Sex Discrimination.** Sex discrimination is conduct that is based upon an individual's sex, pregnancy, gender identity, or gender expression that adversely affects a term or condition of an individual's employment, education, living environment, or participation in a University activity. In addition, sexual harassment, sexual misconduct, sexual exploitation, stalking on the basis of sex and dating/intimate partner violence, as further defined below, are forms of sex discrimination which are prohibited under this policy.
2. **Sexual Harassment.** Sexual harassment is defined as:
  - a. Unwelcome sexual advances or requests for sexual activity by a person or persons in a position of power or authority to another person; or

REDLINE

- b. Other unwelcome verbal or physical conduct of a sexual nature or because of sex, pregnancy, gender identity, or gender expression 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 or objectively offensive that it interferes with, limits or denies the ability to participate in or benefit from the University's educational programs, activities, or employment.
3. **Sexual Misconduct.** Sexual misconduct includes: 1) Nonconsensual sexual intercourse; 2) Nonconsensual sexual contact involving the sexual touching of a body part (i.e., the lips, genitals, breast, anus, groin, or buttocks 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 one should reasonably know that the conduct is likely to cause affront or alarm; or 4) Sexual exploitation.
4. **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 knowing or consciously disregarding a substantial and unjustifiable risk that the course of conduct makes another person reasonably concerned for their safety or would cause a reasonable person under the circumstances to be frightened, intimidated or emotionally distressed.
5. **Dating/Intimate Partner Violence.** Violence, threats of violence, intimidation and acts of coercion 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.
6. **Sexual Exploitation.** Sexual exploitation occurs when one person takes nonconsensual or abusive sexual advantage of another person for one's 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:
  - a. Invasion of sexual privacy;
  - b. Prostituting another person;
  - c. Taping or recording of sexual activity;
  - d. Going beyond the boundaries of consent to sexual activity (e.g., letting your friends hide to watch you engaging in sexual activity);
  - e. Engaging in voyeurism;
  - f. Knowingly transmitting an STI, STD, venereal disease or HIV to another person;
  - g. Inducing another to expose their genitals;
  - h. Nonconsensual distribution of intimate images;

Deleted: that

REDLINE

- i. Use or distribution of drugs or alcohol with intent to facilitate sexual contact without consent (i.e., predatory drugs or alcohol).

7. **Consent to Sexual Activity.** Consent to sexual activity is knowing and voluntary. Consent to sexual activity requires of all involved persons a conscious and voluntary agreement to engage in sexual activity. Each person engaged in the sexual activity must have met the legal age of consent. It is the responsibility of each person to ensure they have the consent of all others engaged in the sexual activity. Consent must be obtained at the time of the specific activity and can be withdrawn at any time. Consent, lack of consent or withdrawal of consent may be communicated by words or non-verbal acts. Someone who is incapacitated cannot consent. Silence or absence of resistance does not establish consent. The existence of a dating relationship or past sexual relations between the Parties involved should never by itself be assumed to be an indicator of consent. Further, 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. Coercion and force, or threat of either, invalidates consent.

8. **Incapacitated or incapacitation.** A state in which rational decision-making or the ability to consent is rendered impossible because of a person's temporary or permanent physical or mental impairment, including but not limited to physical or mental impairment resulting from drugs or alcohol, disability, sleep, unconsciousness or illness. Consent does not exist when the Respondent knew or should have known of the other individual's incapacitation. Incapacitation is determined based on the totality of the circumstances. Incapacitation is more than intoxication but intoxication can cause incapacitation. Factors to consider in determining incapacity include, but are not limited to, the following:

- a. Lack of awareness of circumstances or surroundings (e.g., an inability to understand, either temporarily or permanently, the who, what, where, how and/or why of the circumstances; blackout state)
- b. Inability to physically or verbally communicate coherently, particularly with regard to consent (e.g., slurred or incoherent speech)
- c. Lack of full control over physical movements (e.g., difficulty walking or standing without stumbling or assistance)
- d. Physical symptoms (e.g., vomiting or incontinence).

C. **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 the Equity Resolution Processes for faculty, staff, students and other members of the University community and investigation of complaints of sex discrimination. 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.

REDLINE

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 Anti-Discrimination policies and to serve as coordinators for purposes of Title IX compliance:

**University of Missouri System and University of Missouri-Columbia**

Andy Hayes, J.D.  
Title IX Coordinator

**Address:**

University of Missouri  
320 Jesse Hall  
Columbia, MO 65211

**Telephone:** (573) 882-2824

**Email:** [hayesas@missouri.edu](mailto:hayesas@missouri.edu)  
[equity.missouri.edu](http://equity.missouri.edu)

**University of Missouri-Kansas City**

KC Atchinson, J.D.  
Title IX Coordinator

**Address:**

Administrative Center  
5115 Oak Street, Room 212D  
Kansas City, MO 64112

**Telephone:** 816-235-6705

**Email:** [atchinsonk@umkc.edu](mailto:atchinsonk@umkc.edu)  
[www.umkc.edu/titleix](http://www.umkc.edu/titleix)

**Missouri University of Science and Technology**

Paul Hirtz, Ph.D.  
Title IX Coordinator

**Address:**

Technology Development Center  
900 Innovation Drive, Suite 500  
Rolla, MO 65409-1040

**Telephone:** 573-341-4655

**Email:** [hirtz@mst.edu](mailto:hirtz@mst.edu)  
[titleix.mst.edu](http://titleix.mst.edu)

**University of Missouri-St. Louis**

Jessica Swederske  
Acting Title IX Coordinator

**Address:**

One University Boulevard  
153 JC Penney North  
St. Louis, MO 63121

**Telephone:** 314-516-4538

**Email:** [swederskej@umsl.edu](mailto:swederskej@umsl.edu)  
[www.umsl.edu/title-ix](http://www.umsl.edu/title-ix)

**University of Missouri Health System**

Julia Ware, M.D., J.D., CPHRM, CPPS  
Title IX Coordinator

**Address:**

One Hospital Drive  
Columbia, MO 65212

**Telephone:** 573-882-8187

REDLINE

**Email:** [wareja@health.missouri.edu](mailto:wareja@health.missouri.edu)

If the Complaint involves the University's Title IX Coordinator, Complaints may be made to the System Title IX Coordinator. If the Complaint involves the System Title IX Coordinator, reports may be made to the System President. The contact information for the System President is:

Office of the President

105 Jesse Hall

Columbia, MO 65211

**Telephone:** (573) 882-2011

**Email:** [president@umsystem.edu](mailto:president@umsystem.edu)

NOTE: The above-listed contact information for Title IX Coordinators may be updated as needed and without requiring the approval of the Board of Curators.

**D. Reporting Sex Discrimination, Including Sexual Harassment and Sexual Misconduct**

- 1. Students, Employees, Volunteers, Visitors, and Patients.** Students, employees, volunteers, visitors, and patients of the University who have experienced any form of sex discrimination, sexual harassment or sexual misconduct, are encouraged to report the incident promptly to the appropriate Title IX Coordinator listed in Section 600.020.C. above. In addition, students, volunteers, visitors, and patients of the University who have witnessed such conduct are encouraged to report the incident promptly to the appropriate Title IX Coordinator. The University will investigate and appropriately resolve all such reports pursuant to one of its Equity Resolution Processes (see Sections 600.030, 600.040, 600.050, 600.060). For questions regarding confidentiality or requests that the Complaint not be pursued, see Section 600.020.E. 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.
- 2. Mandated Reporters.** Any employee of the University, except as noted below, 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.
- 3. Employees with a Legal Obligation or Privilege of Confidentiality.** 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.
- 4. Designated Confidential Employees.** Consistent with the law and upon approval from the Office of the 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.

5. **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.
6. **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.

#### **E. Requests for Confidentiality or Not to Pursue an Investigation**

1. The Title IX Coordinator or other appropriate official should inform and obtain the consent from the Complainant before beginning an 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 requests confidentiality or insist that identifiable information, such as the Complainant's name, not be disclosed to the Respondent, 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 the University community.
2. If, after due deliberation and based on the nature and severity of the Complaint, the Title IX Coordinator determines there is a sufficient basis to proceed with the Complaint, the Title IX Coordinator may initiate an investigation notwithstanding a Complainant's request that the Complaint not be pursued. Such a decision should be well-reasoned and documented. Documentation of the decision will be maintained by the Title IX Coordinator. In such cases, the Title IX Coordinator will inform the Complainant of the decision to commence an investigation. Alternatively, if after due deliberation and based on the nature and severity of the Complaint, the Title IX Coordinator determines there is not a sufficient basis to proceed with the Complaint, the Title IX Coordinator may decide not to initiate an investigation and/or may also refer the Complaint to the appropriate procedural process. Such a decision should be well-reasoned and documented. Documentation of the decision will be maintained by the Title IX Coordinator. If, after due deliberation, the Title IX Coordinator decides the University cannot or should not take

REDLINE

disciplinary action with respect to the Respondent, 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.

- F. **Impact of Optional Report to 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.
- G. **Non-compliance.** 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 for any associated claims, causes of action, liabilities or damages.
- H. **Retaliation.** 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 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, up to and including expulsion or termination, in accordance with applicable procedures. Any person who believes they have been subjected to retaliation is encouraged to promptly notify the Equity Officer or Title IX Coordinator. The University will promptly investigate all claims of retaliation.  
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.
- I. **False Reporting.** 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 up to and including expulsion or termination.
- J. **Witness Intimidation or Harassment.** No individual participating in an investigation relating to a report or Complaint that a violation of this policy has occurred should, directly or through others, take any action which may interfere with the investigation. The University prohibits attempts to or actual intimidation or harassment of any potential witness. Failure to adhere to these requirements may lead to disciplinary action, up to and including expulsion or termination.
- K. **U.S. Department of Education—Office for 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.

REDLINE

The State of Missouri regional Office for 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, 3<sup>rd</sup> Floor, Suite 320  
Kansas City, MO 64106  
Telephone: 816-268-0550  
**FAX:** 816-268-0599  
**TDD:** 800-877-8339  
**Email:** OCR.KansasCity@ed.gov