

# Nondiscrimination Policies

**Collected Rules and Regulations 600.010 & 600.020**

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# Learning Objectives

- This presentation will review:
  - Definitions of discrimination and harassment as defined in the CRRs
  - Protected classes covered by UM System policy
  - Sexual harassment definitions covered under Title IX
  - Jurisdiction and scope of our educational programs and activities
  - Definitions of consent and incapacitation
  - Retaliation, false reporting, and witness intimidation/harassment
  - Other possible standards which may be applicable



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# Discrimination

- **Discrimination** – Conduct that is based upon an individual's protected class that **adversely affects** a term or condition of employment, education, living environment or participation in a University activity.

*Treating someone differently based on protected class or status  
Often passive in nature, resulting in unfair or prejudicial treatment*



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# Harassment

- **Harassment** – Conduct that is based upon an individual's protected class that **creates a hostile environment** by being sufficiently severe or pervasive and 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.

1. (Severe **OR** Pervasive) **AND**
2. (Objectively Offensive) **AND**
3. (Interferes With **OR** Limits **OR** Denies)



## What are the Protected Class?

- Color
- Race
- National Origin
- Ancestry
- Religion
- Sex
- Pregnancy
- Sexual Orientation
- Gender Identity
- Gender Expression
- Age
- Disability
- Veteran Status
- Other status protected by applicable state or federal law

*CRR 600.010 – ADA – Title VI – Title VII – Title IX ...*



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## What About Sexual Harassment under Title IX?

Federal regulations identify a specific set of sexual harassment conditions that are to be resolved using specific processes

- Quid Pro Quo
- Hostile Environment (severe **and** pervasive)
- Sexual Assault (Rape; Sodomy; Sexual Assault with an Object; Fondling; Incest; Statutory Rape)
- Dating Violence
- Domestic Violence
- Stalking



# Jurisdiction

Authority for the University to act concerning prohibited conduct

- University premises, sponsored, or supervised functions including in any phase of the employment or admissions processes or financial aid programs
  - Includes buildings owned or controlled by recognized student organizations
- Action may be taken for conduct in other settings, including off-campus:
  - To protect physical safety of students, employees, and visitors or other members of the University community
  - If affects of the conduct interfere with or limit any person's ability to participate in or benefit from the University's educational programs, activities, or employment
  - If conduct is related to a faculty member's fitness or performance in the professional capacity of teacher or researcher
  - If conduct occurs when a faculty/staff member is serving in a role of a university employee



# Jurisdiction

## Sexual harassment under Title IX limitations

- Includes any phase of the University's employment or admissions processes or financial aid programs in addition to all other aspects of our education programs and activities, where:
  - the conduct occurred against a person in the United States
  - the educational program or event is within a location, at an event, or the circumstance is one which the University exercises substantial control over both the respondent and the context in which the conduct occurs
  - Includes buildings owned or controlled by a student organization that is officially recognized by the University





# Consent to Sexual Activity

- Requires all involved a conscious, knowing, and voluntary agreement to engage in sexual activity
- Persons engaged must meet legal age of consent
- Each person is responsible to ensure all engaged consented
- Consent must be obtained at the time of the specific activity
- Consent can be withdrawn at any time
- Consent, lack of consent, or withdrawal of consent may be communicated by words or non-verbal acts



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# Consent to Sexual Activity (cont.)

- Someone incapacitated cannot consent
- Silence or absence of resistance does not establish consent
- Existence of a dating relationship/past sexual relationship, by itself, be assumed to be an indicator of consent
- Consent to one form of sexual activity does not imply consent to other forms of activity
- Coercion and force, or threat of either invalidates consent



# Incapacitation

- A state which rational decision-making/consenting is rendered impossible due to temporary or permanent physical/mental impairment due to, but not limited to:
  - Drugs
  - Alcohol
  - Disability
  - Sleep
  - Unconsciousness
  - Illness

Incapacitation is more than intoxication, but intoxication can cause incapacitation



# Factors to Consider for Incapacity

- 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)
- Inability to physically or verbally communicate coherently, particularly with regard to consent (e.g., slurred or incoherent speech)
- Lack of full control over physical movements (e.g., difficulty walking or standing without stumbling or assistance)
- Physical symptoms (e.g., vomiting or incontinence)

Consent does not exist when Respondent knew or should have known of the other individual's incapacitation



What  
additional  
conduct  
factors are  
included in  
CRR  
600.010 and  
600.020?

- **Retaliation** - adverse action taken against a person because of that person's participation or refusal to participate in the resolution process
- **False Reporting** - making an intentional false report or accusation as opposed to a report or accusation, which, even if erroneous, is made in good faith
- **Witness Intimidation/Harassment** – attempted or actual intimidation/harassment, directly or through others, which may interfere with the resolution process



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May other  
Univeirsty  
standards be  
considered  
in equity and  
Title IX  
cases?

YES, where another University policy violation may have occurred in concert with an alleged violation of the University's antidiscrimination policies.

Policies include, but not limited to:

- 200.010 Standard of Conduct (Student)
- 330.110 Standards of Faculty Conduct
- 330.010 Personal Conduct of Employees
- 110.005 Acceptable Use Policy
- and many other Univeirsty and campus specific established standards and policies



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