

Policies of Colorado State University

University Policy



Policy Title: Discrimination and Harassment	Category: Equal Opportunity
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Contact: Office of Equal Opportunity Web: http://oeo.colostate.edu/ Email: oeo@colostate.edu Phone: <u>(970) 491-5836</u>	Original Effective Date: 8/8/2014 Last Revision: 8/13/2020

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SECTION 1. POLICY STATEMENT

Colorado State University(CSU) is a land-grant institution committed to offering access in its educational, scholarly and outreach activities to all individuals representative of our multi-cultural society and providing an environment of

excellence in which all individuals can participate to the full level of their capabilities, realize their aspirations and contribute to the global society in which we live. In this pursuit, the University is committed to providing an environment that respects the dignity and worth of every member of its community and strives to create and maintain a work and study environment that is equitable, inclusive, and responsible so that each member of the University community is treated with dignity and respect and is rewarded for relevant considerations such as ability and performance. As a means of achieving these goals and to prevent harm arising from discrimination and harassment, the University prohibits discrimination and harassment, including sexual harassment and retaliation, as defined in this policy, by or against any member of or visitor to CSU.

Colorado State University is committed to providing an environment that is free from discrimination and harassment based on race, age, creed, color, religion, national origin or ancestry, sex, gender, disability, veteran status, genetic information, sexual orientation, gender identity or expression, or pregnancy and will not discharge or in any other manner discriminate against employees or applicants because they have inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. Such an environment is necessary to a healthy learning, working, and living atmosphere because discrimination and harassment undermine human dignity and the positive connections among all people at our university. Acts of discrimination and harassment will be addressed consistent with this policy.

Consistent with state and federal law, reasonable accommodation will be provided to persons with disabilities.

Discrimination and harassment are very serious matters that can have far-reaching, current and future impact on the lives, educational experience, and careers of individuals. Intentionally false accusations can have a similar impact. Discrimination and harassment are strictly prohibited by the University and will not be tolerated. An individual who impermissibly discriminates against another, or an individual who knowingly and intentionally files a complaint under this policy containing false statements or information, is subject to university discipline.

SECTION 2. DEFINITIONS USED IN THIS POLICY

For the purposes of determining whether a particular course of conduct constitutes discrimination or harassment under this policy, the following definitions will be used:

Complainant: The person who reports or is reported by another person as having been subjected to acts potentially constituting discrimination, harassment, sexual harassment, or retaliation by another.

Discrimination is conduct that is based upon an individual's race, age, creed, color, religion, national origin or ancestry, sex, gender, disability, veteran status, genetic information, sexual orientation, gender identity or expression, or pregnancy that (a) excludes an individual from participation in, (b) denies the individual the benefits of, (c) treats the individual differently from others in, or (d) otherwise adversely affects a term or condition of an individual's employment, education, living environment or university program or activity. It is unlawful discrimination for an employer to refuse to hire, to discharge, to promote or demote, to harass during the course of employment, or to discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified because of any of the listed protected identities. Consistent with state and federal law, this includes failing to provide reasonable accommodations to persons with disabilities or to accommodate religious practices.

Harassment is a form of discrimination and is conduct based upon an individual's race, age, creed, color, religion, national origin or ancestry, sex, gender, disability, veteran status, genetic information, sexual orientation, gender identity or expression, or pregnancy that is unwelcome and sufficiently severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or offensive, or that substantially interferes with an individual's work or education. Intent is irrelevant in the determination of prohibited harassment. Depending upon the facts, harassment could include, but is not limited to threats, physical contact or violence, pranks, jokes, bullying, epithets, derogatory comments, or vandalism.

Even if actions are not directed at specific persons, a hostile environment may be created when the conduct is sufficiently severe or pervasive so as to substantially interfere with or limit the ability of an individual in the environment to work, study, or otherwise participate in activities of the University.

Conduct alleged to be harassment, including sexual harassment (defined below), will be evaluated by considering the *totality of the particular circumstances*, including the nature, frequency, intensity, location, context, and duration of the conduct. Although repeated incidents generally create a stronger claim of harassment, a serious incident, even if isolated, can be sufficient.

Sexual Harassment* is any unwelcome sexual advance, request for sexual favors, or other conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, education or participation in a university

- activity;
2. Submission to or rejection of such conduct by an individual is used as the basis for, or a factor in, decisions affecting that individual's employment, education or participation in a university activity; or
 3. Such conduct is sufficiently severe or pervasive to unreasonably interfere with an individual's employment or academic performance or create an intimidating, hostile or offensive environment for that person's employment, education or participation in a university activity.

Depending upon the facts, examples of sexual harassment could include, but are not limited to: unwelcome sexual advances; repeated and unwelcome sexually-oriented bullying, teasing, joking, or flirting; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess, or sexual deficiencies; leering, touching, pinching, or brushing against another's body; or displaying objects or pictures, including electronic images, which are sexual in nature and which create a hostile or offensive work, education, or living environment.

The fact that a consensual relationship exists, in and of itself, is not a defense to a charge of sexual harassment. Conduct may occur within a consensual relationship or following termination of a consensual relationship that is unwelcome and meets the definition of sexual harassment under this policy or as defined by the University's Title IX policy. *

The University's Consensual Relationship Policy prohibits faculty from entering into new consensual relationships with a student over whom they have any evaluative authority. The asymmetry of the faculty-student relationship means that any sexual relationship between a faculty member and a student is potentially exploitative. In the event of a charge of sexual harassment, the University will in general be unsympathetic to a defense based upon consent when the facts establish that a professional faculty-student, staff-student, or supervisor-employee power differential existed within the relationship.

*For the definition of sexual harassment pursuant to Title IX of the Education Amendments Act of 1972, see the CSU Policy on Sexual Harassment. Sexual harassment is prohibited by both Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments Act of 1972, and by both this policy and the CSU Policy on Title IX Sexual Harassment. The Office of Equal Opportunity will explain the applicability of these laws and policies to parties involved in a complaint and grievance procedure involving sexual harassment.

Respondent: The person reported to have engaged in one or more acts that may constitute a violation of this policy, including discrimination, harassment, sexual harassment, or retaliation.

Retaliation is any materially adverse action taken against an individual or someone associated with that individual because they have participated or may participate in a protected activity, such as making a complaint or report; serving as a witness; assisting in an investigation, grievance procedure, hearing, or related activity concerning an unlawful practice or violation of university policy; or opposing a discriminatory practice. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy or participating in the complaint processes under this policy. For there to be retaliation, there must be a causal connection between the protected activity and the materially adverse action. The University strictly prohibits retaliation. Depending upon the facts, examples of conduct that may be retaliation may include, but are not limited to demotion, denial of raise, termination, threats, harassment, and intimidation.

Third-Party Harassment is harassment committed by an individual or persons not employed by or enrolled as students at the University such as a vendor, contractor, guest lecturer or other visitor to campus.

SECTION 3. JURISDICTION & APPLICABILITY

All University community members are prohibited from engaging in or assisting another's engagement in conduct prohibited by this policy. This includes, without limitation, students, employees (including faculty), affiliates, volunteers, visitors, and (where provided by law or contract) agents, contractors, subcontractors, and grantees of the University. The University's disciplinary response may be limited if the conduct is by a visitor or other third-party not subject to the University's jurisdiction. When alleged discrimination or harassment is by an individual or external entity (for example, an individual employed by an outside contractor, program provider, or internship provider) doing business with the University and it reasonably appears that a violation has occurred, the matter will be referred to the appropriate official or department for further action, which may include termination of the contract or relationship.

This policy applies to alleged discrimination or harassment that takes place on university property or at university-sponsored events, regardless of their location. This policy may also apply to alleged discrimination or harassment that occurs off university property and outside the context of a university employment or education program or activity but nevertheless has a continuing adverse impact on or creates a hostile environment for students, employees, or third parties in any university

employment, living or academic environment. Depending upon the facts, examples of where such conduct may occur include, but are not limited to, study abroad programs, conferences, social gatherings and virtual spaces.

SECTION 4. FIRST AMENDMENT

As a public institution of higher education, Colorado State University is required to follow the First Amendment to the U.S. Constitution, which broadly protects speech and expression from governmental interference. Depending on the facts, certain speech or expression may be protected by the First Amendment and, therefore, will not be actionable under this Policy.

SECTION 5. CONFIDENTIALITY

The University recognizes the importance of confidentiality and privacy. Although the confidentiality of the information received and the privacy of the individuals involved cannot be guaranteed, they will be protected to the extent feasible and as permitted by law. Information received in connection with the reporting, investigation, and resolution of allegations will be treated as confidential and will only involve individuals whom the University determines are necessary to conduct an appropriate investigation, to provide assistance and resources to parties, to perform other appropriate university functions, or when the University is required to provide information under the law.

The expressed request of the complainant not to proceed with a complaint or investigation will be considered in the context of the University's legal obligation to act upon the allegations and the right of the responding party to be informed concerning the charge(s). The University will evaluate the request to determine whether the University can honor the request while still providing a safe and nondiscriminatory environment. A decision to proceed despite a complainant's request not to will be made on a case-by-case basis after an individualized review, and the complainant will be notified of the decision to proceed.

All individuals involved in the process should observe the same standard of discretion and respect for everyone involved in the process.

SECTION 6. REPORTING DISCRIMINATION OR HARASSMENT

Any university community member or individual who is directly involved in, observes, or reasonably believes that discrimination or harassment may have occurred can submit a report to the Office of Equal Opportunity.

How to Report

Anyone may report an incident of discrimination, harassment or sexual harassment as follows:

In person: Office of Equal Opportunity 101 Student Services Building Colorado State University Fort Collins, CO 80523

By telephone: 970-491-5836

By postal mail: Office of Equal Opportunity 0160 Campus Delivery Fort Collins, CO 80523-0160

By email: oeo@colostate.edu

University Confidential Support for Faculty and Staff

Office of the Ombuds 316 General Service Building Fort Collins, CO 80523
Phone: (970) 491-1527

SECTION 7. PROCEDURES

CSU has procedures addressing complaints of discrimination and harassment (“Procedures”) to implement this policy and to provide for prompt and equitable informal resolutions, investigations, hearings and appeals for complaints of discrimination, harassment and sexual harassment. An individual may file a complaint addressing an instance or a pattern of instances if the last instance took place within the last 120 calendar days.

Colorado State University will employ the preponderance of the evidence standard.

SECTION 9. AFFIRMATIVE ACTION

The University, as a federal contractor, takes affirmative action to employ qualified women, racialized minorities, veterans, and individuals with disabilities. For information on this Affirmative Action commitment and program, contact the Office of Equal Opportunity at oeo@colostate.edu or (970) 491-5836.

SECTION 10. FILING WITH EXTERNAL AGENCIES

Persons who believe that they have been subjected to discrimination, harassment, sexual harassment, retaliation may be able to file a complaint with the Colorado Civil

Rights Division, the U.S. Equal Employment Opportunity Commission, the U.S. Department of Education's Office for Civil Rights or the Office of Federal Contract Compliance Programs. Information regarding filing charges with any of these agencies may be obtained from the Office of Equal Opportunity.

SECTION 11. REFERENCES AND LEGAL AUTHORITY

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- Title VI of the Civil Rights Act of 1964
- Title VII of the Civil Rights Act of 1964, amended in 1991
- Executive Order 11246, as amended
- Pregnancy Discrimination Act of 1978
- Equal Pay Act of 1963
- Age Discrimination in Employment Act of 1967
- Vietnam Era Veterans' Readjustment Assistance Act, as amended
- Uniformed Services Employment and Reemployment Rights Act of 1994
- Genetic Information Nondiscrimination Act of 2008
- Americans with Disabilities Act of 1990, amended by the ADA Amendment Act of 2008
- Sections 503 and 504 of the Rehabilitation Act of 1973
- Title IX of the 1972 Education Amendments to the Higher Education Opportunity Act, 20 U.S.C. § 1681, et seq., and 20 U.S.C. §§ 1681-1688; 34 C.F.R. § 106.1 et seq.
- Violence Against Women Act, 34 U.S.C. § 12291, et seq., 34 C.F.R. § 668.46 Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C.A. §1092(f) and implementing regulations, 34 C.F.R. §668.41 and 668.46) ("Clery Act")

APPROVALS

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