

CSU Pueblo Policy Library

CSU PUEBLO POLICY: DISCRIMINATION, PROTECTED CLASS HARASSMENT AND RETALIATION

Policy Title: Discrimination, Protected Class Harassment and Retaliation	Category: Human Resources and Institutional Equity
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POLICY PURPOSE:

CSU Pueblo (“CSU Pueblo” or the “University”) is committed to equal educational and employment opportunities and to the elimination of all forms of Discrimination, Protected Class Harassment, and Retaliation. Furthermore, CSU Pueblo is committed to maintaining respectful, safe, and nonthreatening educational, working, and living environments. This Policy addresses the types of conduct which are prohibited by CSU Pueblo in order to maintain its longstanding commitment to a campus environment free from Discrimination, Protected Class Harassment, and Retaliation, as well as for compliance with applicable legal requirements.

POLICY APPLIES TO (Persons affected by):

This Policy applies to students, faculty, staff, affiliates, guests, and certain third parties (where provided by law or contract) including, but not limited to, agents, contractors, consultants, grantees, subcontractors, and their employees. Furthermore, this Policy applies to any other individual who is

subject to the jurisdiction and authority of the University with respect to matters of Discrimination, Protected Class Harassment, and Retaliation.

DEFINITIONS:

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, pregnancy, or because an individual has inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant 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.

Protected Class 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:

- 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;
- 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
- Such conduct is sufficiently severe or pervasive to unreasonably interfere with an individual's employment or education 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, Sexual Harassment and Gender Discrimination policy. *

*For the definition of sexual harassment pursuant to Title IX of the Education Amendments Act of 1972, see the CSU Pueblo Policy on Title IX, Sexual Harassment and Gender Discrimination. 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 Pueblo Policy on Title IX, Sexual Harassment and Gender Discrimination. The Office of Human Resources and Institutional Equity 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.

POLICY STATEMENT:

CSU Pueblo is an affirmative action/equal opportunity institution. It encourages diversity and provides equal opportunity in education, employment, all of its programs and activities, and the use of its facilities. The University takes affirmative action to employ qualified women, racial/ethnic minorities, protected veterans, and individuals with disabilities.

Furthermore, the University is committed to protecting the constitutional and statutory civil rights of persons connected with the University.

CSU Pueblo does not discriminate on the basis of age, citizenship, creed, color, disability, gender, gender expression, gender identity, genetic information, national origin or ancestry, pregnancy, race, religion, sex, sexual orientation, veteran status, or because an individual has inquired about, discussed, or disclosed their own pay or the pay of another employee or applicant. CSU Pueblo complies with the Equal Pay Act, Titles IV, VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments, the Americans with Disabilities Act, as amended, Section 503/504 of the Rehabilitation Act, the Age Discrimination Act, Age Discrimination in Employment Act, the Vietnam Era Veterans' Readjustment Assistance Act, the Pregnancy Discrimination Act, Executive Order 11246, as amended, Violence Against Women Reauthorization Act of 2013, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act the Genetic Information Nondiscrimination Act of 2008, and all civil rights laws of the State of Colorado.

To comply with federal requirements regarding non-discrimination in admissions and operations, the above non-discrimination statement must appear in major University publications. A brief required non-discrimination statement also must appear in written advertisements and University publications, including those used to inform prospective students of University programs. Human Resources and Institutional Equity (HRIE) will maintain the required non-discrimination statements, and additional information regarding these requirements.

Admission of students, employment, and the availability and access to CSU-Pueblo programs, activities, and facilities are made in accordance with these policies regarding non-discrimination.

As such, the University prohibits any conduct that constitutes Discrimination, Protected Class Harassment, and Retaliation. The University prohibits threats directed towards a Complainant because of that person's actual or perceived protected characteristics. Furthermore, the University prohibits conduct which maliciously and with specific intent to intimidate or harass a Complainant because of that person's protected characteristics and that: makes physical contact with the Complainant; damages or defaces any property of another person; or threatens by word or act to do either of the above if there is a reasonable cause to believe that such an act will occur.

It is incumbent upon all members of the University community to work together to provide an environment that is free of Discrimination, Protected Class Harassment and Retaliation. To that end the University encourages any person, student, faculty or staff, who believes that they have knowledge of a violation of this Policy or have been subjected to conduct that violates this Policy, to report that concern to HRIE.

An individual found to have engaged in conduct prohibited by this Policy may be subject to discipline by the University, up to and including, dismissal or termination of their relationship with the University.

POLICY PROVISIONS:

1. Jurisdictional Scope

This policy applies to alleged discrimination, protected class harassment or retaliation 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 (e.g. video-conferencing, social media).

2. First Amendment

The University affirms its commitment to the principle of free speech and academic freedom. The protections of the First Amendment must be considered if issues of speech or expression are involved. Free speech rights apply in the classroom and in all other education programs and activities of public institutions, and First Amendment rights apply to the speech of students and

academic faculty. Verbal or physical conduct exceeds the protections of academic freedom if it meets the definition of Protected Class Harassment or Sexual Harassment as contained in this policy and a) is reasonably regarded as non-professional speech (i.e., advances a personal interest of the faculty member as opposed to furthering the learning process, legitimate objectives of the course, or scholarly pursuits); or b) lacks accepted pedagogical purpose or is not germane to the academic subject matter.

3. Reporting

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 HRIE.

4. Concurrent Complaints & Filing with External Agencies

A Complainant has the right to pursue charges or file a concurrent complaint with local law enforcement or any other state or federal administrative agencies, independently of any complaints filed with the University pursuant to this Policy.

HRIE has an obligation to investigate alleged violations of this Policy independent of any criminal investigations carried out by law enforcement or any investigations carried out by administrative agencies.

5. Complaint Resolution Procedures

The University provides fair, understandable, and legally sound procedures for handling all concerns, allegations, and complaints of Discrimination, Protected Class Harassment, and Retaliation. These procedures may vary depending on the nature of the concern, allegation, or complaint and the relationships of the involved parties to the University (i.e., student, faculty, employee, or non-employed party). The responsible departments will develop, maintain, publish, and follow appropriate procedures.

6. Training & Educational Programming

Individuals involved in processing alleged or potential violations of this Policy shall undergo annual training on issues related to Discrimination, Protected Class Harassment, and Retaliation and how to conduct investigatory and (when applicable) sanctioning processes that protect the safety of complainants and the campus community, promote accountability, and ensure due process.

The University shall offer primary prevention and awareness programs regarding topics related to Discrimination, Protected Class Harassment and Retaliation to new students, faculty, and staff as appropriate.

7. Withdrawals, Resignations, & Graduations

If a Respondent ceases enrollment or employment with University before final conclusion of all processes under this Policy or its Procedures, the University may continue those processes, to the extent it is able, whether or not the Respondent elects to continue participation. Under certain circumstances, the University may take additional Interim Measures in light of, or in anticipation of, termination of the relationship between the University and the Respondent.

RESPONSIBILITIES:

Office of Human Resources and Institutional Equity

The Office of Human Resources and Institutional Equity is responsible for carrying out the University's commitment to preventing conduct prohibited by this Policy. HRIE provides leadership in supporting and enhancing campus diversity and an inclusive community, as well as developing, implementing, and monitoring the University's equal opportunity and affirmative action (EO/AA) compliance obligations. HRIE is also responsible for the oversight and investigation of alleged violations of this Policy. HRIE also provides resources and training regarding preventing conduct prohibited by this Policy, as well as workplace and education equity.

ADA/504 Coordinator

The University has designated the Compliance and Title IX Coordinator as the of the Office of Human Resources and Institutional Equity as the University's ADA/504 Coordinator, responsible for coordinating the University's compliance with the American's with Disabilities Act, as amended, and Section 504 of the Rehabilitation Act, which prohibit the University from discriminating against individuals with disabilities.

RELATED LAWS, POLICIES & PROCEDURES:

Related Laws

Equal Pay Act

Titles IV, VI and VII of the Civil Rights Act of 1964

Title IX of the Education Amendments

The Americans with Disabilities Act, as amended

Section 503/504 of the Rehabilitation Act

The Age Discrimination Act

Age Discrimination in Employment Act

The Vietnam Era Veterans' Readjustment Assistance Act

The Pregnancy Discrimination Act

Executive Order 11246, as amended

Violence Against Women Reauthorization Act of 2013

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act

The Genetic Information Nondiscrimination Act of 2008

All civil rights laws of the State of Colorado

Related Policies

Title IX, Sexual Harassment and Gender Discrimination

Access to Personnel Files Policy and Procedures

Student Code of Conduct

Familial and Consensual Relationships (Nepotism)

Family Educational Rights and Privacy Act (FERPA)

Service Animals in Classrooms

Related Procedures

CSU-Pueblo Procedures for Discrimination, Protected Class Harassment and Retaliation

APPROVALS

Approved by Dr. Timothy Mottet, President

Date: 9/16/2020

Approved by The Board of Governors

Date 10/9/2020