

600.14 Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking

State and federal laws and regulations prohibit certain kinds of discrimination in employment and in educational services. This policy is intended to comply with the following laws and regulations: Titles IV, VI, and VII of the Civil Rights Act of 1964; 34 C.F.R. pt. 100; Title IX; 28 C.F.R. pt. 54 and 34 C.F.R. pt. 106; Section 504 of the Rehabilitation Act; 34 C.F.R. pt. 104; Age Discrimination Act of 1975; 34 C.F.R. pt. 110; and Titles I and II of the Americans with Disabilities Act; 28 C.F.R. pt. 35; Montana Human Rights Act and Governmental Code of Fair Practices, Title 49, Montana Code Annotated.

In addition, Title IX of the Education Amendments of 1972 and its implementing regulation, at 34 C.F.R. § 106.31 (a), provide that no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by Miles Community College.

Revised on: 1/16/1989, 4/27/2009, 9/26/2011, 3/24/14, 7/27/2020
Reviewed 1/2013

600.14.1 Policy Statement

The college is committed to providing an environment that emphasizes the dignity and worth of every member of its community and that is free from harassment and discrimination based upon race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Such an environment is necessary to a healthy learning, working, and living atmosphere because discrimination and harassment undermine human dignity and the positive

connection among all people at the college. Acts of discrimination, harassment, sexual misconduct, dating violence, domestic violence, stalking, and retaliation shall be addressed consistent with this policy.

Adopted on 3/24/14
Revised on 7/27/2020

600.14.2 Definitions of Discriminatory Conduct

The following are common definitions of terms used throughout this policy:

- A. **Discrimination** is conduct that is based upon an individual's race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation that excludes an individual from participation, denies the individual the benefits of, treats the individual differently or otherwise adversely affects a term or condition of an individual's employment, education, living environment or participation in a college program. This includes failing to provide reasonable accommodation, consistent with state and federal law, to persons with disabilities.
- B. **Harassment** is covered under this policy if it is based upon an individual's race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Harassing conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones, social media, or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine v. male/masculine or a failure to conform to those gender stereotypes.
- C. **Sexual Harassment** can include unwelcome: sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual misconduct. Sexual harassment, including sexual misconduct, can involve persons of the same or opposite sex.

Consistent with the law, this policy prohibits two types of sexual harassment:

1. **Tangible Employment or Educational Action**

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This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a college program is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a college program. Generally, this type of sexual harassment will involve agents or employees with some authority from the college.

2. Hostile Environment

A *Hostile Environment* based on race, color, religion, national origin, creed, service in the uniformed services, veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation exists when harassment:

- is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the college's programs, services, opportunities, or activities; or
- when such conduct has the purpose or effect of unreasonably interfering with an individual's employment or academic performance.

A hostile environment can be created by anyone involved in a college program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident, such as a sexual assault, even if isolated, can be sufficient.

In determining whether harassment creates a hostile environment, the harassment shall be considered not only from the perspective of the individual who feels harassed, but also from the perspective of a reasonable person in a similar situation. Also, the following factors shall be considered:

- The degree to which the conduct affected one or more students' education or individual's employment;
- The nature, scope, frequency, and duration;
- The location, event, or circumstances, whether or not these items are on a school's campus, includes where the school has substantial control over the context of the alleged harassment and the person accused of committing sexual harassment;

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- The identity, number, and relationships of persons involved;
- The perspective of a “reasonable person” in the same situation as the person harassed; and
- The nature of higher education.

D. **Sexual Misconduct** includes sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, and dating violence.

Sexual Assault means an actual or attempted sexual contact with another person without that person’s consent. Sexual assault includes, but is not limited to:

- Involvement in any sexual contact when the victim is unable to consent.
- Intentional and unwelcome contact with the breasts, buttock, groin or genitals or touching another with any of these body parts or coercing or forcing or attempting to coerce or force another to touch the perpetrator or themselves with or on any of these body parts.
- Any other intentional bodily contact in a sexual manner, including contact by a penis, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact).
- Sexual intercourse without consent, including acts commonly referred to as “rape.”

E. **Consent** is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. If coercion, intimidation, threats, or physical force are used there is no consent.

There is no consent if a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact of, or make a reasonable judgment as to the nature or harmfulness of the conduct, or extent of the sexual situation. This includes impairment or incapacitation due to mental disability, alcohol or drug consumption, or being asleep or unconscious. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing future consent. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent. Effective consent may not be given by minors less than 16 years old.

F. **Inducing incapacitation for sexual purposes** includes using drugs, alcohol, or other means with the intent to affect or having an actual effect on the ability of an individual to consent or refuse to consent (as “consent” is defined in this policy) to sexual contact.

G. **Sexual Exploitation/Coercion** occurs when a person takes non-consensual or abusive sexual advantage of another for anyone's advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of sexual exploitation include:

- Prostituting another person;
- Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- Non-consensual distribution of photos, other images, or information of an individual's sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
- Going beyond the bounds of consent (such as letting others hide in the closet to watch you having consensual sex);
- Engaging in non-consensual voyeurism;
- Knowingly transmitting a sexually transmitted disease, such as HIV to another;
- Exposing one's genitals in non-consensual circumstances, or inducing another to expose his or her genitals; and
- Possessing, distributing, viewing or forcing others to view illegal pornography.

H. **Dating Violence** is abuse or violence between, partners or persons in a social relationship of an intimate or romantic nature involving one or more of the following elements:

- Battering that causes bodily injury;
- Emotional abuse creating apprehension of bodily injury or property damage;
- Repeated telephonic, electronic, or other forms of communication -- anonymously or directly -- made with the intent to intimidate, terrify, harass, or threaten.

The existence of such a relationship shall be determined based on consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction.

I. **Stalking** includes repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other

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action, device or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death. To the extent applicable as provided in 600.13.4 Off Campus Conduct, allegations of stalking, regardless of whether they are based on discrimination, shall be addressed and considered in accordance with this Policy and the Discrimination Grievance Procedure.

- J. **Domestic Violence** is an act of partner or family member assault (as defined in Section 45-2-206 Montana Code Annotated) A person “commits . . . partner or family member assault if the person:
- a. purposely or knowingly causes bodily injury to a partner or family member;
 - b. negligently causes bodily injury to a partner or family member with a weapon;
or
 - c. purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.”

“Partners” are spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship. “Family member” means mothers, fathers, children, brothers, sisters, and other past or present family members of a household.

To the extent applicable as provided in 600.13.4 Off Campus Conduct, allegations of domestic violence, regardless of whether they are based on discrimination, shall be addressed and considered in accordance with this Policy and the Discrimination Grievance Procedure.

¹ While sexual assault and other sexual misconduct is often considered a subset of “sexual harassment,” for purposes of this policy and the consequences that may result from violating this policy, the terms are distinct.

Adopted on 3/24/14
Revised on 7/27/2020

600.14.3 Disability Discrimination

The College is committed to eliminating disability-based discrimination against persons with disabilities and making reasonable accommodation for any known disability that interferes with an applicant's ability to compete in a selection process, an employee's ability to perform the essential functions of a job, a student's ability to meet the essential requirements of an academic program, or a person's ability to benefit from a college service or participate in a college sponsored or hosted event. Applicants, employees, students or participants with a disability seeking an accommodation should contact the appropriate person identified below:

Students or student applicants:

Coordinator of College Success and Disabilities Support Services,

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Center for Academic Success,
Room 208
Phone (406) 874-6100 or (800) 541-9281
DSS@milesc.edu

Employees, employment applicants or participants:
Dean of Administrative Services and HR,
Office 218
Phone (406) 874-6292
HumanResources@milesc.edu

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Revised on 7/27/2020

600.14.4. Off Campus Conduct

Conduct that occurs off campus can be the subject of a complaint or report and shall be evaluated to determine whether it violates this policy or student code of conduct, e.g., if off-campus harassment has continuing effects that create a hostile environment on campus. Allegations of off-campus sexual misconduct, where the school has substantial control over the context of the alleged harassment and the person accused of committing sexual harassment should be brought to the attention of the Responsible Official (RO).

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Revised on 7/27/2020

600.14.5 Applicability

This policy prohibits discrimination and harassment of employees by the employer and between members of the Miles Community College community more generally: for example, between an employee and another employee, instructor and a student, between two students, or between a student and an applicant or campus guest. The policy applies in all college programs and activities, including, but not limited to, discrimination in athletics, instruction, campus sponsored travel, grading, housing, clubs, organizations, and employment.

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600.14.6 Reporting Violations of This Policy

All reports or any concerns about conduct pertaining to sexual harassment or discrimination that may violate Policy 600.13 and retaliation should be reported to official responsible for receiving reports of discrimination referred to throughout this Policy as the Responsible Official (“RO”).

The MCC Responsible Official (ROs) is:

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Kylene Phipps
Title IX Coordinator
Office 218
2715 Dickinson
Miles City, MT 59301
Phone: (406) 874-6292
TitleIX@milescc.edu

Richard DeShields
Deputy Title IX Coordinator
Student Services Office
2715 Dickinson
Miles City, MT 59301
Phone: (406)874-6226
deshieldsr@milescc.edu

Erin Niedege
Deputy Title IX Coordinator
Student Services Office
2715 Dickinson
Miles City, MT 59301
Phone: (406) 874-6211
niedgee@milescc.edu

Jessica Lofland
Deputy Title IX Coordinator
Student Services Office
2715 Dickinson
Miles City, MT 5930
Phone: (406)874-6480
Loflandj@milescc.edu

Guidance concerning means and methods of reporting, criminal reporting, confidentiality and anonymous reporting are found in the Discrimination Grievance Procedure.

Upon receiving a report, the RO shall follow the procedures described in the Discrimination Grievance Procedure.

Please do not wait to report conduct of concern until harassment becomes sufficiently serious (i.e., severe, pervasive, or persistent) to create a hostile environment. The RO can take proactive steps to prevent harassment from continuing and perhaps escalating and to protect or otherwise assist the person harassed. For example, in the case of a student experiencing harassment, the Dean of Student Engagement and Auxiliary Services, or designee, can arrange for no-contact orders, counseling and changes in class schedules, living arrangements, class requirements, testing schedules as needed, and other supportive measures. The RO can also provide expertise and advice to help identify conduct that might be a warning sign of or constitute sexual harassment or hostile environment harassment prohibited by this policy and address concerns appropriately.

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Revised on 7/27/2020

600.14.7. Mandatory Employee Reporting of Sexual Harassment and Sexual Misconduct Involving Students

To enable the college to respond effectively and to stop instances of sexual harassment and sexual misconduct involving students proactively, all employees are identified as Mandatory Reporters and must promptly (normally within 24 hours) report information they have about alleged or possible sexual harassment and sexual misconduct involving students to the RO.

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Employees, such as licensed health-care professionals and victim advocates who have a statutory privilege under Montana law, are exempt from these reporting requirements.

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600.14.8 Sanctions and Corrective Action

Violations of this policy shall be addressed through the Discrimination Grievance Procedures. The college utilizes a preponderance of evidence standard in all cases pertaining to Policy 600.13. Consequences for violating this policy shall depend upon the facts and circumstances of each particular situation.

The respondent is presumed not responsible at the onset of the process and can only be found responsible after the grievance process concludes.

In determining the severity of sanctions or corrective actions, factors such as the frequency and severity of the offense and any history of past discriminatory, harassing or retaliatory conduct are relevant. A finding of discrimination, harassment that creates a hostile environment or results in a tangible employment or educational action, or sexual misconduct may be cause for disciplinary action up to and including the discharge of employees and the expulsion of students, in accordance with applicable college policies and procedures and collective bargaining agreements. Other possible terms of disciplinary action are identified in the Discrimination Grievance Procedures.

Adopted on 3/24/14
Revised on 7/27/2020

600.14.9 Amnesty for Drug or Alcohol Possession and Consumption Violations

The college strongly encourages students to report instances of sex-based discrimination, sexual harassment, and sexual misconduct involving students. Therefore, students who provide information about sex-based discrimination, sexual harassment, sexual misconduct, domestic violence, or stalking involving students shall not be disciplined by the college for any violation of the college's drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident.

Adopted on 3/24/14
Reviewed on 5/20/2020

600.14.10 Free Speech and Academic Freedom

This policy shall not be construed or applied to restrict academic freedom at the college, nor shall it be construed to restrict constitutionally protected expression, even though such expression may be offensive, unpleasant, or even hateful.

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In addressing all complaints and reports under this policy, the college shall take all permissible actions to ensure the safety of students and employees while complying with free speech requirements for students and employees.

Adopted on 3/24/14
Reviewed on 5/20/2020

600.14.11 External Complaints

As an employee or student, if you filed a complaint with the RO and believe the college's response was inadequate, or otherwise believe you have been discriminated against by the college on the basis of race, color, national origin, sex, including sexual harassment, disability, age, or retaliation, you may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education based in Seattle or the Educational Opportunities Section (EOS) of the Civil Rights Division of the U.S. Justice Department of Justice, and a complaint based on religion with EOS of the U.S. Justice Department. Contact information for the Office for Civil Rights is as follows:

U.S. Department of Education Office for Civil Rights

Seattle Office

915 Second Avenue, Room 3310

Seattle, WA 98174-1099

OCR.Seattle@ed.gov

Voice: 206-607-1600

Fax: 206-607-1601

TDD: 206-607-1647

As an employee or student, if you filed a complaint with the RO and believe the college's response was inadequate, or you otherwise believe you have been discriminated against by the college on the basis of race, color, national origin, sex, including sexual harassment, disability, age, religion, creed, pregnancy, marital status, familial status (housing only), or political beliefs, or retaliation, you may file a complaint with the Montana Human Rights Bureau. Contact Information is as follows:

Montana Human Rights Commission

1625 11th Ave.

PO Box 1728

Helena, MT 59624-1728

Voice: 406-444-2884

Toll free: 800-542-0807

<http://erd.dli.mt.gov/human-rights-bureau.html>

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Reviewed on 5/20/2020

600.14.12 Discrimination, Harassment, and Title IX Training

To educate staff and faculty on the importance of non-discrimination and the prevention of sexual harassment in the work environment and classroom, the college requires all employees (faculty, administrators, and staff members) to:

- complete discrimination and harassment prevention training on a biennial basis; and
- complete Title IX on-line training.

New employees must complete the training within 45 days of employment. Temporary employees and student employees are required to complete the training program only at the discretion of the RO or Human Resources and/or in conjunction with the department of hire.

Supervisors shall support the employee in providing a reasonable amount of work time for the employee to complete the training program. Training programs can be selected from resources such as online programs, presentations or self-study options as determined and pre-approved by the responsible college officials.

The college requires primary prevention, risk reduction and awareness training programs for all incoming students and new employees concerning sexual misconduct, domestic violence and stalking. The college shall maintain ongoing primary prevention, risk reduction, and awareness campaigns concerning sexual misconduct, domestic violence, and stalking for students and employees.

The RO will send an annual notice regarding policies, reporting mechanisms, and grievance procedures to every student, applicant for admission or employment, employees and faculty association representative.

Adopted on 3/24/14
Revised on 7/27/2020

600.14.13 Confidentiality of Reporting Parties and Other Necessary Parties

Except where specifically identified in written policies and/or procedures, such as the Grievance Process, the College has the responsibility to protect the confidentiality of victims/complainants and other necessary parties in the following ways:

- 1) Complete publicly available recordkeeping, including Clery Act reporting and disclosures, without the inclusion of personally identifying information about the victim/complainant, as defined in section 40002(a)(2) of the Violence Against Women Act of 1994 (42 U.S.C. 13925(a)(20).
- 2) Maintain as confidential any accommodations or protective measures provided to the victim/complainant, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.

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- 3) Whenever possible, the College shall inform victims/complainants before sharing personally identifiable information about the victim/complainant that the institution believes is necessary to provide an accommodation or protective measure.

The institution will, upon written request, disclose to the alleged victim of a crime of violence, the report on the results of any disciplinary proceeding conducted by the institution against a student who is the alleged perpetrator or such crime or offense. If the alleged victim is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim for purposes of this paragraph. Additional information regarding the release of information pertaining to reports of discrimination, harassment, sexual misconduct, domestic violence, and stalking are located in 600.16 Grievance Procedures. In those cases where a formal complaint is made involving Discrimination, Harassment, Sexual Misconduct, Domestic Violence, Dating Violence and/or stalking, as defined in the final Title IX Rules of the Education Amendments of 1972, the College will share information with any respondent and advisor of choice.

Adopted on 11/23/2020

600.14.14 Retaliation

Retaliation against an individual for taking any of the actions in support of this policy is prohibited. It is central to the values of the college that any individual who believes they may have been the target of unlawful discrimination or harassment feel free to report their concerns for appropriate investigation and response, without fear of retaliation or retribution.

Retaliation is action taken by an accused individual or an action taken by a third party against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

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