



Operational Area:	Diversity, Equity and Inclusion
Responsible Executive:	Chief Executive Officer
Responsible Office:	Equal Opportunity Office
Effective:	August 15, 2020

Prohibition of Discrimination, Harassment, Sexual Misconduct, Title IX Violations, and Retaliation

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I. **Introduction**

- A. **Authority:** Colorado Revised Statutes (C.R.S.) § 23-54-102, *et seq.* (2020) authorizes the Trustees of Metropolitan State University of Denver (either “MSU Denver” or “University”) to establish rules and regulations to govern and operate the University and its programs. The MSU Denver Trustees retain authority to approve, interpret, and administer policies pertaining to University governance. The MSU Denver Trustees authorize the MSU Denver President to approve, administer, and interpret policies pertaining to University operations.

- B. **Purpose:** MSU Denver community members should be able to live, study, learn, and work in an environment free from unlawful discrimination and sexual misconduct. This policy is promulgated under:
 - 1. Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681, *et seq.*, and its implementing rules and regulations (“Title IX”);



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2. 34 C.F.R. Part 106; Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c) (“Title IV”);
3. The Violence Against Women Reauthorization Act (“VAWA”);
4. The Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act (“Clery Act”);
5. Title VII of the Civil Rights Act of 1964 (“Title VII”);
6. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d, *et seq.* and its implementing regulations at 34 C.F.R. Part 100 (“Title VI”); and
7. Colo. Rev. Stat. § 24-34-402.

C. Scope and Jurisdiction

1. The core purpose of this Policy is the prohibition of discrimination. Discrimination may involve exclusion from activities, such as admission, athletics, or employment. Additionally, discrimination can take the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, and/or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution through either: 1) Title IX Procedures established by the University’s Office of Equal Opportunity (“OEO”)/Title IX Coordinator (when applicable, as further discussed below); or 2) Antidiscrimination Procedures, established by the University’s OEO/Title IX Coordinator, which will apply and be used for all discriminatory conduct that does not specifically fall under the definition of a Title IX violation. When the Respondent is a member of the University community, a grievance process



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may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. This Policy and the OEO/Title IX implementing procedures may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy.

2. This Policy applies to the education programs and activities of the University, to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by the University's recognized student organizations. The Respondent must be a member of the University community for its policies to apply. This policy also may apply to the effects of off-campus misconduct that effectively deprives someone of access to the University's educational program. The University also may extend jurisdiction to off-campus and/or to online conduct when the OEO/Title IX Coordinator determines that the conduct affects a substantial, University interest. Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational programs or activities and/or has continuing effects on campus or in an off-campus-sponsored program or activity. A substantial University interest includes:
 - a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;



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- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, member, guest, or other individual;
 - c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
 - d. Any situation that is detrimental to the educational interests or mission of the University.
3. If the Respondent is unknown or is not a member of the University community, the OEO/Title IX Coordinator will assist the Complainant in identifying appropriate, campus and local resources and support options, and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.
4. Furthermore, even when the Respondent is not a member of the University community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the OEO/Title IX Coordinator or the Dean of Students Office.
5. In addition, the University may take other actions, as appropriate, to protect the Complainant against third parties, such as barring individuals from University property and/or events.
6. All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers and/or to Policy and the implementing procedures to which their employer has agreed to be bound by contractually.



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7. When the Respondent is enrolled in, or employed by another institution, the OEO/Title IX Coordinator can assist the Complainant to contact the appropriate individual at that institution, because it may be possible to allege violations through that institution’s policies.
8. Similarly, the OEO/Title IX Coordinator may be able to assist a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.
9. All forms of discriminatory behavior listed in this Policy are prohibited and will be responded to in accordance with guidance established in either the OEO/Title IX Anti-Discrimination or Title IX Procedures; however, the OEO/Title IX Coordinator’s Title IX procedures apply only to alleged Title IX violations that occur while the Complainant is in the United States of America and is participating in, or attempting to participate in, an education program or activity of the University, as has been described above. In situations when discriminatory behavior occurs, but is not subject to Title IX, but may still be considered discrimination as described in this Policy, such discrimination will be subject to the OEO/Title IX Coordinator’s Anti-Discrimination Procedures, but are not subject to the Title IX Procedures.



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II. Roles and Responsibilities

- A. **Responsible Executive:** Chief Executive Officer
- B. **Responsible Administrator:** Chief Equal Opportunity Officer
- C. **Responsible Office:** Office of Equal Opportunity
- D. **Policy Contact:** Office of Equal Opportunity, 303-615-0036

Executive Director, Office of Equal Opportunity
Title IX Coordinator
Jordan Student Success Building Suite 306
Phone: 303-615-0036

III. Policy Statement

This policy shall be known as the Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Title IX Violations, and Retaliation (hereinafter, the "Policy").

A. Discrimination is Prohibited

1. MSU Denver is committed to maintaining work, study, learning, and recreational environments for all students, employees, and visitors free from discrimination, sexual misconduct, Title IX violations (described below in section III.B.), and discriminatory harassment. Therefore, in accordance with applicable local, state, and federal laws, MSU Denver shall not discriminate and prohibits discrimination in all of its programs and activities, including but not limited to, academics, in-person and online classroom instruction and discussions, extracurricular activities, athletics, University-sponsored student



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clubs, employment, promotion, admissions, and access to all academic, clinical, career, and technical programs on the basis of any of the following:

- a. Race;
- b. Creed;
- c. Color;
- d. Sex;
- e. Gender;
- f. Gender Identity or Expression;
- g. Affectional or Sexual Orientation;
- h. Pregnancy;
- i. National Origin;
- j. Nationality;
- k. Age;
- l. Ancestry;
- m. Marital, Domestic Partnership, or Civil Union Status;
- n. Religion;
- o. Atypical Hereditary Cellular or Blood Trait;
- p. Genetic Information;
- q. Liability for Military Service;
- r. Protected Veteran Status;
- s. Mental or Physical Disability, including perceived disability, AIDS and HIV-related illnesses;
- t. Harassment (related to any of the forgoing categories);



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- u. Retaliation for filing a complaint of or participating in an investigation of discrimination and harassment; and/or
 - v. Any other category protected by law.
2. In addition to prohibiting discrimination on the basis of any of the categories listed above, this Policy specifically prohibits all forms of sexual misconduct, which includes, but is not limited to, discrimination based on gender or sex, sexual assault, sexual abuse, sexual harassment, other forms of nonconsensual sexual conduct, stalking, interpersonal violence, including domestic and dating violence, and sexual exploitation.
3. This Policy also prohibits discriminatory harassment (as described below in section III.B.), a form of discrimination which is improper conduct toward a particular individual, individuals, or groups on the basis of one or more of the protected classes listed above. Discriminatory harassment occurs when behavior is sufficiently severe, persistent, or pervasive that it has the purpose or effect of:
 - a. Creating an intimidating, hostile, or offensive environment; or
 - b. Unreasonably interfering with work, academic performance, personal security, or participation in any MSU Denver activity.
4. MSU Denver will take immediate and appropriate action to investigate allegations of all Title IX violations, sexual misconduct, discrimination, harassment, and retaliation. Any other alleged violations of the Student Code of Conduct occurring from the same incident(s) will be reviewed as part of the investigation. If, after an adequate, reliable, and impartial investigation of those



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complaints there is a finding that this Policy has been violated, MSU Denver will impose appropriate disciplinary action on the individual found in violation.

5. Comprehensive procedures will be established by the Equal Opportunity Office and Title IX Coordinator to implement this Policy (the “OEO Procedures”). The procedures will be interpreted in conjunction with this Policy and any and all implementing rules and regulations, including the U.S. Department of Education’s Title IX Rules. MSU Denver’s procedures can be found on the Equal Opportunity Office website.

B. Harassment is Prohibited

1. Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom or the First Amendment.
2. The sections below describe the specific forms of legally prohibited harassment that are also prohibited under this Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of this Policy; however, supportive measures will be offered to those affected.

- C. Sexual Harassment is Prohibited.** This Policy prohibits sexual harassment, a form of discrimination based on sex and/or actual or perceived gender. Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex and/or actual or perceived gender that satisfies one or more of the following:



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1. *Quid Pro Quo*:
 - a. an employee or student of the University,
 - b. conditions the provision of an aid, benefit, or service to the individual,
 - c. on an individual's participation in or cooperation with unwelcome sexual conduct; and/or
2. Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person
 - c. to be so severe,
 - d. and pervasive,
 - e. and objectively offensive
 - f. that it effectively denies a person equal access to the University's education program, activity, or employment.
3. Sexual assault, defined as:
 - a. Sex Offenses, Forcible:
 - i. Any sexual act directed against another person,
 - ii. Without the consent of the Complainant,
 - iii. Including instances in which the Complainant is incapable of giving consent due to intoxication, lack of consciousness, disability, presence of coercion, or age.
 - b. Forcible Rape:
 - i. Penetration, no matter how slight, of the vagina or anus with any body part or object,
 - ii. or oral penetration by a sex organ,



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- iii. or any other object or body part, of another person, without the consent of the Complainant.
- c. Forcible Sodomy:
 - i. Oral, digital, or anal sexual intercourse with another person,
 - ii. forcibly,
 - iii. and/or against that person's will (non-consensually), or
 - iv. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age, intoxication, the presence of coercion, lack of consciousness, or because of temporary or permanent mental or physical incapacity.
- d. Sexual Assault with an Object:
 - i. The use of an object or instrument to penetrate,
 - ii. however slightly,
 - iii. the oral, genital or anal opening of the body of another person,
 - iv. forcibly,
 - v. and/or against that person's will (non-consensually),
 - vi. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age, intoxication, the presence of coercion, lack of consciousness, or because of temporary or permanent mental or physical incapacity.
- e. Forcible Fondling:



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- i. The touching of the private body parts of another person (buttocks, groin, breasts),
 - ii. for the purpose of sexual gratification,
 - iii. forcibly,
 - iv. and/or against that person’s will (non-consensually),
 - v. or not forcibly or against the person’s will in instances in which the Complainant is incapable of giving consent because of age, intoxication, the presence of coercion, lack of consciousness, or because of temporary or permanent mental or physical incapacity.
 - f. Sex Offenses, Non-forcible:
 - i. Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by the laws of the State of Colorado.
 - ii. Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent in Colorado.
4. Dating Violence,
 - a. defined as:
 - i. violence,
 - ii. on the basis of sex and/or actual or perceived gender,



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- iii. committed by a person,
 - iv. who is in, or has been in, a social relationship of a romantic or intimate nature with the Complainant.
 - b. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - c. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - d. Dating violence does not include acts covered under the definition of domestic violence.
- 5. Domestic Violence,
 - a. defined as:
 - i. violence,
 - ii. on the basis of sex and/or actual or perceived gender,
 - iii. committed by a current or former spouse or intimate or romantic partner of the Complainant,
 - iv. by a person with whom the Complainant shares a child in common, or
 - v. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate or romantic partner, or
 - vi. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Colorado, or

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- vii. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the State of Colorado.
 - b. To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate or romantic relationship.
- 6. Stalking,
 - a. defined as:
 - i. engaging in a course of conduct,
 - ii. on the basis of sex and/or actual or perceived gender,
 - iii. directed at a specific person, that
 - 1) would cause a reasonable person to fear for the person's safety, or
 - 2) the safety of others; or
 - 3) Suffer substantial emotional distress.
 - b. For the purposes of this definition—
 - i. *Course of conduct* means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

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- ii. *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant.
 - iii. *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
7. The following definitions and understandings apply to the above described forms of sexual harassment:
- a. **Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or to produce consent (*e.g.*, "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want."). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.
 - b. **Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.



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- c. Consent is:
- i. knowing, and
 - ii. voluntary, and
 - iii. clear permission
 - iv. by word or action
 - v. to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back. Consent can also be withdrawn once given through clear verbal or physical communication (e.g. saying "no", using an agreed upon safe word, pushing a sexual partner away, a previously engaged sexual participant becoming disengaged). If consent is withdrawn, that sexual activity should cease immediately. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship



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or experience is not sufficient to constitute consent. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of non-traditional intimacy, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default. Prior experiences with kink situations shall not be construed to be consent for future contact.

- d. Incapacitation: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.
 - i. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should

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have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

- ii. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
- iii. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
- iv. This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the voluntary or forced consumption of incapacitating drugs.

8. Other Civil Rights Offenses

- a. In addition to the forms of sexual harassment described above (which fall within the coverage of Title IX), the University additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class:
 - i. Sexual **Exploitation**, defined as: when an individual takes non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person



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being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:

- b. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed);
- c. Invasion of sexual privacy;
- d. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography.
- e. Prostituting another person;
- f. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection;
- g. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity;



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- h. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections;
- i. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity;
- j. Knowingly soliciting a minor for sexual activity;
- k. Engaging in sex trafficking;
- l. Creation, possession, or dissemination of child pornography.
- m. Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- n. Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- o. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- p. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy).
- 9. Violation of any other University policies may constitute a civil rights offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory



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limitation or denial of employment or educational access, benefits, or opportunities.

D. Retaliation is Prohibited

Retaliation against a person who reports a potential violation under this Policy, assists someone with a report of a violation, or participates in any manner in an investigation or in the resolution of a complaint made under this Policy is strictly prohibited and will not be tolerated. Retaliation includes, but is not limited to, threats, slander, intimidation, reprisals and/or adverse actions related to an individual’s employment or education. MSU Denver will take appropriate steps to ensure that a person who in good faith reports, complains about, or participates in an investigation pursuant to this Policy will not be subjected to prohibited retaliation. Individuals who believe they are experiencing retaliation are strongly encouraged to file a complaint with the Equal Opportunity Office and/or Title IX Coordinator or designee.

The University is obligated to ensure that the reporting, complaint, investigation, and grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described below, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but may, on occasion, also be made by individuals for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the OEO/Title IX Procedures and the procedures described below. Investigation of such



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Prohibition of Discrimination, Harassment, Sexual Misconduct, Title IX Violations, and Retaliation

Diversity, Equity and Inclusion

claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

IV. Related Information

- A. Related Policies and Procedures
- B. Forms
- C. Other references

V. Policy History

- A. **Effective:** TBD
- B. **Revised:** [Date and Notes]
- C. **Review:** This policy will be reviewed every three years or as deemed necessary by University leadership.

VI. Policy Approval

Janine Davidson, Ph.D.
President, Metropolitan State University of Denver



President's

Policy Statement
University Policy Library

Operational Area:	Diversity, Equity and Inclusion
Responsible Executive:	Chief Executive Officer
Responsible Office:	Equal Opportunity Office
Effective:	August 15, 2020

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Sexual Misconduct, Title IX Violations, and Retaliation**
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N/A

Chair, Board of Trustees, Metropolitan State University of Denver