



POLICY PROHIBITING UNLAWFUL HARASSMENT, DISCRIMINATION AND RETALIATION

(This policy replaces the *Policy of Zero Tolerance for Unlawful Harassment, Discrimination and/or Retaliation / Compliance with Title IX*)

- *Statement of Policy*

The University is committed to providing an environment that is free of unlawful harassment, discrimination and retaliation as defined by federal, state and local law, as well as under this policy. The University recognizes the important contribution a diverse community of students, faculty and staff makes towards the advancement of its goals and ideals. To this end, the University strictly prohibits all forms of unlawful harassment (including sexual harassment), unlawful discrimination and/or retaliation in any form. Any violations of this policy will be treated as serious misconduct and result in appropriate disciplinary action up to and including termination or dismissal from the University.

This policy applies to all students, faculty, and staff including, but not limited to applicants, interns, volunteers, non-supervisory staff, supervisors, managers, directors and leadership. It is also the policy of the University to protect its students, faculty and staff from unlawful harassment by vendors, guests and other visitors to the University. It is the responsibility of every student, faculty and staff member to follow this policy conscientiously.

Nothing in this policy should be construed to infringe on the academic freedom of members of the University community and their right to use the academic forum provided by the University either to discuss controversial subjects or to express ideas with which some or most members of the University community strongly disagree.

Federal and state law, and this University Policy, prohibit unlawful harassment and discrimination against students, applicants, interns, employees and/or any person providing services to the University, on the basis of protected characteristics, including but not limited to: race, religious creed (including religious dress and grooming practices), color, national origin (including possession of a driver's license granted under Section 12801.9 of the CA Vehicle Code; and including language and language use restrictions), citizenship status, ancestry, marital status, registered domestic partner status, genetic information, sex, (including pregnancy, childbirth, and/or related medical conditions and/or breastfeeding), sexual orientation or preference, gender, gender identity, gender expression, transgender (including whether or not the individual has transitioned or is transitioning), genetic information, age 40 or over, military or veteran status, mental disability, physical disability (including HIV and AIDS), legally protected medical conditions (cancer-related or genetic characteristics), denial of protected leave under federal or state law, certain medical conditions (including, but not limited to cancer and genetic characteristics), military and/or veteran status, domestic violence

victim status, political affiliation, or any other bases protected by federal, state law, or local law, ordinance or regulation.

Unlawful harassment and discrimination are also prohibited based on the perception that a student, applicants, intern, employee, and/or any person providing services to the University, has any of the above-mentioned protected characteristics, or is associated with a person who has or is perceived as having any of those characteristics.

The University strictly prohibits all forms of unlawful harassment, discrimination and/or retaliation in any form. Conduct in violation of this Unlawful Harassment, Discrimination and Retaliation Policy is prohibited in all places and at all times, including, but not limited to, during any school program(s) and/or activit(ies) and in classrooms, school facilities, dorms and/or off-campus locations.

Anyone who violates this Policy Prohibiting Unlawful Harassment, Discrimination and Retaliation is subject to appropriate disciplinary action, up to and including immediate termination or dismissal.

The University will respond to sexual harassment, including off campus incidents if there is any reason to believe the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education. The University will respond to incidents, or that reasonably should be, known to the University.

- *Unlawful Discrimination Defined*

Unlawful discrimination occurs when an individual's protected characteristic is used as a basis for material adverse actions affecting that individual. A materially adverse action is a substantial and detrimental change in the terms and conditions of employment, or a substantial and detrimental change in the terms and conditions of an educational program or activity or which limits a student's ability to participate in or benefit from an educational program or activity. Petty slights, minor annoyances, and lack of good manners do not constitute materially adverse actions. Whether an action is materially adverse is judged from the perspective of a reasonable person in the individual's position. Discrimination encompasses a wide range of conduct. Examples of specifically prohibited conduct include, but are not limited to:

- ◆ Terminating an individual's employment based on a protected characteristic;
- ◆ Refusing a request for time off based on a protected characteristic;
- ◆ Denying housing or other benefits based on a protected characteristic; and
- ◆ Assigning an undeserved low grade based on a protected characteristic.

Pay discrimination between employees of the opposite sex or between employees of another race or ethnicity performing substantially similar work, as defined by the California Fair Pay Act and federal law, is prohibited, although pay differentials may be valid in certain situations defined by law. Employees will not be retaliated against for inquiring about or discussing wages. However, the University is not obligated to disclose the wages of other employees.

- Unlawful Harassment Defined

Unlawful harassment includes all forms of unwelcome verbal, physical and visual conduct and displays that are based on any of the above-mentioned protected characteristics and which are sufficiently severe or pervasive from the objective standpoint of a reasonable person to interfere with performance or create an intimidating, hostile, or offensive environment. Harassment can take many forms. Following are some examples that may constitute harassment if sufficiently severe or pervasive:

- ◆ Verbal harassment such as jokes, epithets, slurs, negative stereotyping, unwelcome remarks about an individual's body, dress, clothing, race, physical appearance or abilities, pitch of voice, derogatory comments, discussions of a sexual nature and/or harassing remarks.
- ◆ Physical harassment such as physical interference with normal activity, impeding or blocking movement, assault, unwelcome physical contact or touching, staring at a person's body, and/or threatening, intimidating or hostile acts that relate to a protected characteristic; and
- ◆ Visual harassment such as offensive or obscene e-mails, instant messaging, web blogs, photographs, calendars, posters, cards, cartoons, drawings and gestures, displays with sexually suggestive or lewd objects, unwelcome letters or notes or any other graphic material that denigrates or shows hostility or aversion toward an individual because of the individual's protected characteristics.

Unlawful harassment may occur in employment with the University or in any of the programs or activities the University provides to students, and it can take place in offices, classrooms, University facilities, dorms, or off-campus locations.

- Unlawful Sexual Harassment Defined

Hostile environment sexual harassment occurs when unwelcome sexual advances, or visual, verbal or physical conduct of a sexual nature, is sufficiently severe or pervasive from the objective standpoint of a reasonable person to interfere with performance or create an intimidating, hostile, or offensive environment. Sexual harassment is harassment based on sex or conduct of a sexual nature, and includes harassment based on sex (including pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity, gender expression and/or transgender. Sexual harassment and discrimination may involve harassment of women by men, men by women and gender-based harassment of individuals of the same gender as the harasser. Sexual harassment also includes sexual violence, sexual battery, and sexual exploitation.

Quid pro quo sexual harassment occurs when submission to or rejection of unwelcome sexual conduct by an individual is used as a basis for any employment or educational decisions affecting that individual. It may involve offers of benefits in return for sexual favors, or threats of adverse action for refusing, and demands to submit to sexual requests. Sexual harassment encompasses a wide range of conduct. Examples of specifically prohibited conduct include, but are not limited to:

- ◆ Promising, directly or indirectly, a reward to an employee who complies with a sexually oriented request;
- ◆ Threatening, directly or indirectly, retaliation against an employee who refuses to comply with a sexually oriented request;
- ◆ Engaging in sexually suggestive conversation, or physical conduct;
- ◆ Displaying pornographic or sexually oriented materials;
- ◆ Telling sexual or “dirty” jokes;
- ◆ Engaging in indecent exposure;
- ◆ Making unwanted sexual or romantic advances;
- ◆ Spreading sexual rumors; or
- ◆ Physical conduct such as sexual assault, touching, or blocking normal movement.

Sexual harassment and sexual discrimination are also prohibited under the University’s Faculty and Staff Title IX Sexual Harassment Policy. As set forth below, if the University determines that a complaint falls under the University’s Faculty and Staff Title IX Sexual Harassment Policy, the complaint will be referred to the University’s Title IX Coordinator and must proceed under that policy and its procedures.

- *Complaint Procedure*

It is the responsibility of each individual to assure that prohibited harassment, discrimination or retaliation does not occur within the University. *Anyone who believes they are being harassed, discriminated or retaliated against is encouraged to immediately make a complaint. Complaints can be initiated by submitting a Report Form at*

https://cm.maxient.com/reportingform.php?MountStMarysCollege&layout_id=40.

Individuals who submit complaints via this Reporting Form will be contacted by an Intake Officer or their designee. Complaints can also be initiated by contacting one of the following Intake Officers:

- ◆ Director for Human Resources;
- ◆ Assistant Director for Human Resources;
- ◆ Associate Provost;
- ◆ Assistant Vice President of Student Affairs;
- ◆ Dean of Student Life (Chalon & Doheny);
- ◆ Dean of the Baccalaureate Program;
- ◆ Dean of the Associate in Arts Program;
- ◆ Dean of the Graduate Division;

- ◆ Dean of the Weekend/Evening College;
- ◆ Director of Campus Security;
- ◆ or the University's Title IX Coordinator

The complaining individual will be asked to identify the facts of the incident(s), the name(s) of the party(s) involved, and all relevant dates, witnesses, and documents. The complaining individual will also be encouraged to put the complaint in writing.

It is also the responsibility of all supervisory employees to immediately report allegations, observations and/or knowledge of any circumstances which could constitute unlawful harassment, discrimination and/or retaliation to an Intake Officer.

The complaining individual may be asked whether they want the University to attempt to facilitate an informal resolution, either directly or through a facilitator, or whether they want to initiate a formal complaint and investigation under this Policy. The University will assess the severity of the alleged harassment, discrimination or retaliation, and the potential risk of a hostile environment for others in the community to determine whether informal resolution may be appropriate.

When the University receives a complaint of sexual harassment or discrimination under this Policy Prohibiting Unlawful Harassment, Discrimination and Retaliation, it will determine whether the complaint also falls within the scope of the University's Title IX – Sexual Harassment Policy. Such determinations will be made on a case-by-case basis and will take into account various factors, including, but not limited to, the nature of the report and the location of the alleged incident(s). If it is determined that a complaint falls under the University's Title IX - Sexual Harassment Policy, the complaint will be referred to the University's Title IX Coordinator and must proceed under that policy and its procedures. A complaint about the same alleged incidents of sexual harassment may not be pursued under both policies.

Affected employees and/or students may also direct complaints to the U.S. Department of Education Office for Civil Rights (1-415-486-5555). Affected employees also may direct complaints to the federal Equal Employment Opportunity Commission ("EEOC") (1-800-669-4000) and/or the California Department of Fair Employment and Housing ("DFEH") (1-800-884-1684).

- Investigations

All complaints of harassment, discrimination or retaliation made to the University against any student, employee, or third party affiliated with the University will be promptly, thoroughly and objectively investigated. Investigations will be conducted in as discreet manner as possible. Investigations will include interviews of the complaining individual, the accused party, and others, as appropriate. Such interviews will be aimed at providing both parties an opportunity to present evidence and explain their version of the events. Information obtained from the investigation will be disclosed only on a need-to-know basis. At the conclusion of the investigation, the University will determine whether, based upon a preponderance of the evidence, prohibited harassment, discrimination and/or retaliation has occurred in violation of University policy and will communicate a summary of its findings in writing to the accused and

the complainant. When appropriate and lawful, the University will communicate its findings to other persons who are directly concerned.

Any member of the University community who is found to have violated this Policy Prohibiting Unlawful Harassment, Discrimination and Retaliation will be subject to appropriate discipline, up to and including immediate termination or dismissal. Steps will be taken as necessary to prevent any further harassment, discrimination or retaliation.

- *No Retaliation*

The University takes all complaints of harassment, discrimination and retaliation seriously and wants the opportunity to internally resolve any problems that may arise. No individual will be retaliated against or otherwise disciplined for reporting in good faith an incident of harassment, discrimination or retaliation, or for participating in good faith in an investigation. The reporting individual and all parties participating in an investigation have the assurance of the University that no reprisals will be taken as a result of the complaint, unless the complaint was filed in bad faith or for an improper purpose. If any individual feels they have been retaliated against, they should immediately report the retaliatory conduct.