

## **Discrimination, Harassment, Sexual Misconduct, Stalking and Retaliation**

### **I. Policy Statement:**

Carroll College is an equal opportunity employer, committed to compliance with state and federal anti-discrimination laws, including Title IX of the Education Amendments of 1972. Acts of discrimination, harassment, sexual misconduct, and retaliation are prohibited and will be addressed consistent with this policy.

It is important that members of the Carroll community understand that the law does not just prohibit discrimination and harassment of employees by employers. The law also prohibits discrimination and harassment between members of the Carroll community more generally, such as between an instructor and a student, between two students, or between a campus guest or vendor and an employee. In addition, the law prohibits retaliation against an individual for opposing any practices forbidden under this policy, for bringing a complaint of discrimination or harassment, for assisting someone with such a complaint, for attempting to stop such discrimination or harassment, or for participating in any manner in an investigation or resolution of a complaint of discrimination or harassment. Any individual who believes he or she may have been subject to unlawful discrimination or harassment should feel free to report their concerns for appropriate investigation and response, without fear of retaliation.

Information regarding how to report unlawful discrimination or harassment can be found in the Equal Opportunity Grievance Policy. Questions regarding this policy should be directed to Carroll's Title IX Coordinator/Equal Opportunity Officer, Renee McMahon, Director of Human Resources, 1601 N. Benton Avenue, O'Connell Hall, Room 214, Helena, MT 59624; [rmcmahon@carroll.edu](mailto:rmcmahon@carroll.edu); (406) 447-5501.

### **II. Discrimination**

Carroll College prohibits unlawful discrimination in employment on the basis of race, color, national origin, age, physical or mental disability, marital status, gender identity, sexual orientation, creed, religion, or sex, except when the reasonable demands of the position require an age, physical or mental disability, marital status, gender identity, sexual orientation, creed, religion, or sex distinction. In the case of religion and creed, such distinctions may be appropriate under state and federal constitutional provisions due to the religious character and Catholic identity of Carroll College and the nature of the particular employment position at issue.

### **III. Retaliation**

Carroll College prohibits retaliation against an individual for opposing any practices forbidden under this policy, for bringing a complaint of discrimination or harassment, for assisting someone with such a complaint, for attempting to stop such discrimination or harassment, or for participating in any manner in an investigation or resolution of a complaint of discrimination or harassment. It is central to the values of Carroll 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.

### **IV. Harassment**

Harassment is a form of misconduct that can be demeaning to another person, and is strictly prohibited. It is the policy of the college to prohibit harassment of its employees by anyone, including faculty, staff, students, and vendors or other non-employees, on the basis of sex, race, creed, color, national origin, religion, age, marital status, gender identity, sexual orientation, or physical or mental disability. Harassing behavior may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful or humiliating.

#### **A. Sexual Harassment**

Sexual harassment means any unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual assault. Sexual harassment, including sexual assault, can involve persons of the same or opposite sex.

The following are examples of conduct that may constitute sexual harassment:

1. Sexual advances which are unwelcome (this may include situations which began as a reciprocal attraction but later ceased to be reciprocal);
2. Sexual gestures;
3. Graphic verbal comments of a sexual nature, including such comments about a person's body, or sexually degrading words used to describe an individual;
4. Displaying sexually suggestive objects, pictures, cartoons, or posters;
5. Verbal abuse of a sexual nature, sexually oriented jokes, innuendoes, obscenities, or sexually suggestive letters, notes or invitations;
6. Reprisals or threats after a negative response to sexual advances;

7. Employment benefits affected in exchange for sexual favors;
8. Physical conduct such as assault, rape, impeding or blocking movements, or unwelcome touching.

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

1. Tangible Employment or Educational Action

This type of sexual harassment occurs when the terms and conditions of employment are 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 favor in decisions affecting that individual's employment. Generally, perpetrators will be agents or employees with some authority from the College.

2. Hostile Environment Harassment

A hostile environment exists when harassment based on sex, race, creed, color, national origin, religion, age, marital status, gender identity, sexual orientation, or physical or mental disability:

- Is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to alter the terms and conditions of employment; or
- When such conduct has the purpose or effect of unreasonably interfering with an individual's employment.

Harassment that creates a hostile environment violates this policy.

A hostile environment can be created by anyone involved in a college program or activity (e.g., administrators, faculty members, students, staff members, and campus visitors). 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 sexual assault, even if isolated, can be sufficient.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive.

Also, the following factors will be considered:

- a. The degree to which the conduct affected the individual;
- b. The nature, scope, frequency, and duration of incident or incidents;

- c. The number of persons involved; and
- d. The nature of academic freedom.

## V. **Sexual Misconduct**

**Sexual misconduct** includes sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, relationship violence, and stalking.

**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:

1. Involvement in any sexual contact when the victim is unable to consent.
2. Intentional and unwelcome touching of, or coercing, forcing, or attempting to coerce or force another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks or breast).
3. Sexual intercourse without consent, including acts commonly referred to as "rape."

**Consent** must be informed, freely given and mutually understood. If coercion, intimidation, threats or physical force are used, there is no consent. If the victim is mentally or physically incapacitated or impaired so the victim cannot understand the fact, nature, or extent of the sexual situation, and the condition was known or would be known to a reasonable person, there is no consent. This includes conditions due to alcohol or drug consumption, or being asleep or unconscious. Whether an accused individual has taken advantage of a position of influence over the victim may also be a factor in determining consent. Past consent to sexual activities does not imply future or ongoing consent. Silence does not necessarily constitute consent.

**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 to sexual contact.

**Sexual Exploitation** 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 behavior that could rise to the level 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 friends hide in a closet to watch consensual sex);
  - Engaging in non-consensual voyeurism;
  - Knowingly transmitting an sexually transmitted infection (STI), such as HIV, to another without disclosing STI status;
  - Exposing genitals in non-consensual circumstances, or inducing another to expose his or her genitals;
  - Possessing, distributing, viewing or forcing others to view illegal pornography.

**Relationship Violence** is abuse or violence between partners or former partners involving one or more of the following elements:

- Battering that causes bodily injury;
- Purposely or knowingly causing reasonable apprehension of bodily injury;
- Repeated telephonic, electronic, or other forms of communication – anonymously or directly – made with the intent to intimidate, terrify, harass, or threaten.

Relationship violence includes dating violence, which is abuse or violence between individuals who have been or currently are in a dating or ongoing romantic or intimate relationship; and domestic violence, which is abuse or violence between individuals who are spouses or former spouses, who are or were living together as spouses or intimate partners, or who have a child in common. Domestic violence also includes abuse or violence that constitutes partner or family member assault under Montana law.

**Stalking** includes repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or any other action, device, or method that purposely or knowingly causes substantial emotional distress or reasonable fear of bodily injury or death to the individual or others.

## **VI. Employee Reporting**

In order to enable Carroll College to respond effectively, proactively, and to stop instances of discrimination, harassment, and sexual misconduct at the College, all College employees must report as soon as feasibly possible information they have about alleged or possible discrimination, harassment, and sexual misconduct to the Equal Opportunity Officer/Title IX Coordinator. Employees who are statutorily prohibited from reporting such information are exempt from these reporting requirements, including licensed healthcare professionals, priests who receive information under the seal of confession, and victim advocates.

Any supervisor who becomes aware of possible harassment or discrimination must promptly advise the Equal Opportunity Officer/Title IX Coordinator. Failure to provide this notification may result in disciplinary action, up to and including termination.

Upon receiving a report of alleged or possible discrimination, harassment, or sexual misconduct, the Equal Opportunity Officer/Title IX Coordinator will follow the procedures described in the Equal Opportunity Grievance Procedures.

## **VII. Assistance and Support**

Carroll College's Sexual Safety and Wellness Educator and the Equal Opportunity Officer/Title IX Coordinator are available to help staff who are victims of sexual misconduct identify appropriate resources for counseling, mental health services, and medical services. The Equal Opportunity Officer/Title IX Coordinator is also available to discuss and coordinate possible interim measures to address harassment or discrimination, such as changes in work situations, reporting relationships, or work location.

## **VIII. Sanctions and Corrective Action**

Violations of this policy will be addressed through the Equal Opportunity Grievance Procedure. Consequences for violating this policy will depend on the facts and circumstances of each particular situation, including the frequency and severity of the offense and any history of past discriminatory, harassing, or retaliatory conduct. A finding that this policy was violated may be cause for disciplinary action as further described in the Staff and Faculty Handbooks, such as corrective counseling, verbal warning, written reprimand, loss of privileges, discretionary sanctions, suspension, disciplinary demotion, or termination, as set forth in the Staff and Faculty Handbook. In addition, Carroll College may take other action, such as reassignment; a no-contact order; or relocation of office or parking space. Carroll College may also take appropriate action if it does not find discrimination or harassment that creates a hostile work environment or results in a tangible employment action, but (a) the College found that the individual engaged in disruptive behavior; or (b) action is necessary to prevent the creation of a hostile environment.