

## Carroll College Title IX Policy

### I. **Purpose**

As a recipient of federal financial assistance for education activities, Carroll College is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, and are prohibited under Title IX and by this Carroll College policy. 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.

### II. **Scope**

Carroll College prohibits sexual harassment and retaliation as described in this policy in all College programs and activities. The policy applies to students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers who are participating or attempting to participate in a Carroll College program or activity.

When an alleged violation of this policy is reported, the allegations are subject to resolution using Carroll College Title IX Grievance Procedure.

### III. **Sexual Harassment Definitions**

Under Title IX and this policy, the definition of Sexual Harassment, as an umbrella category, includes sexual harassment, sexual assault, domestic violence, dating violence, and stalking as described below.

- A. Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
1. A Carroll College employee conditioning the provision of an educational aid, benefit or service of Carroll College upon a person's participation in unwelcome sexual conduct.
  2. Unwelcome conduct determined by a reasonable person to be so severe, and pervasive, and objectively offensive that it effectively denies a person equal access to Carroll College's education program or activity.
  3. Sexual Exploitation is any instance in which a person takes non-consensual or abusive sexual advantage of another for any person's benefit other than the person being exploited. Sexual Exploitation is conduct that falls within other categories of Sexual Harassment but is identified separately for clarity. Examples of behavior that could rise to the level of Sexual Exploitation include:
    - a) Prostituting another person;
    - b) Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;

- c) 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;
- d) Going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- e) Inducing incapacitation for sexual purposes;
- f) Engaging in non-consensual voyeurism;
- g) Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;
- h) Exposing one's genitals in non-consensual circumstances, or inducing another to expose their genitals; or
- i) Possessing, distributing, viewing, or forcing others to view illegal pornography.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

B. Sexual assault, dating violence, domestic violence or stalking as those offenses defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a) and are summarized below.

1. Sexual Assault: Sexual acts, including sexual intercourse, directed against another person without that person's consent, including instances in which a person is incapable of giving consent; incest; and sexual intercourse with a person who is under the statutory age of consent of 16 years old.
2. Dating Violence: Dating means violence committed by a person—
  - a) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - b) where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - (i) The length of the relationship.
    - (ii) The type of relationship.
    - (iii) The frequency of interaction between the persons involved in the relationship.
3. Domestic Violence: Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

4. Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety, or the safety of others, or suffer substantial emotional distress.

#### IV. **Consent Definitions**

A. Consent: For purposes of this policy, consent means a conscious and voluntary agreement to engage in any type of sexual activity. It is an informed decision made freely, actively and voluntarily by all parties.

Limits of Consent: Affirmative consent must be ongoing throughout sexual activity and can be revoked at any time. Lack of protest or resistance does not mean consent, nor does silence mean consent. Consent cannot be obtained by threat, coercion, or force. A current or previous dating or sexual relationship between the persons involved or the manner of dress should never by itself be assumed to be an indicator of consent. Being intoxicated does not diminish one's responsibility to obtain consent.

A person cannot give consent if they

1. is a minor under age 16;
2. has a mental disorder or developmental or physical disability that renders him or her incapable of giving consent, and this is known or reasonably should have been known to the alleged Respondent;
3. is unconscious of the nature of the act, and this is known to the alleged Respondent; or
4. is incapacitated from alcohol or other drugs, or other condition detailed in the Incapacitation Definition, and this condition is known or reasonably should have been known to the alleged Respondent.

Consent withdrawal: Consent can be withdrawn at any time for any reason. This can be in the form of verbal withdrawal, or any expression of an unwillingness to engage in any instance of sexual activity.

B. Incapacitation: 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). A Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent. 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. 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 consumption of incapacitating drugs.

C. **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 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.

D. **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. Sexual activity that is the result of coercion is non-consensual.

**V. Retaliation**

Retaliation means any adverse employment or educational action, including efforts to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and the Title IX Grievance Procedures. Retaliation is prohibited by this policy.

Acts of alleged retaliation should be reported to a Title IX Coordinator. Carroll College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

**VI. Title IX Coordinator**

The Dean of Students serves as the Title IX Coordinator who oversees implementation of this policy for Respondents who are students. The Director of Human Resources oversees implementation of this policy for Respondents who are employees or third parties such as guests, visitors, volunteers, invitees, and campers.

The Title IX Coordinators have the primary responsibility for coordinating Carroll College’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, and retaliation prohibited under this policy.

**VII. Independence and Conflict-of-Interest**

A Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. A Title IX Coordinator oversees all resolutions under this policy and these procedures.

The Title IX Team (Title IX Coordinators, Investigators, Decision makers and any other person participating in the resolution of complaints under this policy) will be trained as outlined in the federal regulations and such training will include training to preclude bias for or against any party in a specific case, or for or against Complainants and/or Respondents.

To raise any concern involving bias or conflict of interest by a Title IX Coordinator, contact Carroll College President, [president@carroll.edu](mailto:president@carroll.edu). Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with a Title IX Coordinator.

Reports of misconduct committed by a Title IX Coordinator should be reported to Carroll College President, [president@carroll.edu](mailto:president@carroll.edu) or designee. Reports of misconduct committed by any other Title IX Team member should be reported to a Title IX Coordinator.

#### VIII. **Title IX Coordinator Contact Information**

Complaints or reports of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

##### **Students**

Annette Walstad  
Dean of Students  
Title IX Coordinator  
Office of Student Engagement  
Borromeo Hall, Rm 110  
(406)447-5434 (office)  
(406)447-461-8130 (cell)  
Email: [awalstad@carroll.edu](mailto:awalstad@carroll.edu)  
Web: <http://carroll.edu>

##### **Employees and 3rd Parties**

Karla Smith  
Director of Human Resources  
Title IX Coordinator  
Office of Human Resources  
O'Connell Hall, Rm 214  
(406)447-5501 (office)  
(406)431-6365 (cell)  
Email: [klsmith@carroll.edu](mailto:klsmith@carroll.edu)  
Web: <http://carroll.edu>

Inquiries may be made externally to:

Office for Civil Rights, Seattle Office  
U.S. Dept of Education  
915 Second Ave., Rm 3310  
Seattle, WA 98174-1099  
(206)607-1600 (Office)  
(206)607-1601 (Fax)  
(206)607-1647 (TDD)  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

This Policy supersedes any policy or handbook provisions previously adopted that relate to the resolution of Sexual Harassment reports or complaints within the jurisdiction of the Title IX Policy.

Carroll College has a separate Equal Opportunity Policy that will be used to resolve complaints alleging discrimination other than Sexual Harassment as defined by the Title IX Policy or complaints that are not within the jurisdiction of the Title IX Policy.

If federal or state laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective upon formal approval and will apply to reports and complaints of Sexual Harassment received after that date.

<b>REQUIRED APPROVALS</b>	<b>NAME</b>	<b>DATE</b>
Originator(s) Name(s)	Annette Walstad, Title IX Coordinator Karla Smith, Title IX Coordinator	May 13, 2021
Approval by Board of Trustees	Board of Trustees	May 13, 2021