Title IX: Sexual Harassment including Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation

Rationale for Policy
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. Carroll College also prohibits retaliation against any person opposing discrimination on the basis of sex/gender or participating in any discrimination investigation or complaint process internal or external to the institution. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and by this Carroll College policy. Any member of the campus community, guest, or visitor who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the Carroll College community on the basis of sex/gender is in violation of the Title IX Policy.

Definition of Sexual Harassment
The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Montana regard Sexual Harassment as an unlawful discriminatory practice.

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.

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Any of the following conduct on the basis of sex constitutes sexual harassment under this policy:

1) Quid Pro Quo Harassment: A Carroll College employee conditioning an educational benefit or service of Carroll College upon a person’s participation in unwelcome sexual conduct.

Or

2) Sexual Harassment: 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.

OR

3) Sexual assault, dating violence, domestic violence or stalking as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f), and the Violence Against Women Act, 34 U.S.C. § 12291(a).
   1) Sexual assault: Sexual acts directed against another person (Complainant) without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent; incest; and sexual intercourse with a person who is under the statutory age of consent of 16 years old.
a. Dating Violence: Violence, on the basis of sex, committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

b. Domestic Violence: Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, or by a person with whom the Complainant shares a child in common.

c. Stalking: engaging in a course of conduct, on the basis of sex, 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.

c. Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

**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.”).

**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.

**Consent**: Knowingly and voluntarily, by giving clear permission by word or action, to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, 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, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.
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 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 Carroll College 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 kink, 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 Carroll College’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.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or is 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.

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

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).

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.

**Scope**
The core purpose of this policy is the prohibition of sexual harassment and retaliation as described above. When an alleged violation of this policy is reported, the allegations are subject to resolution using Carroll College’s “Title IX Grievance Procedure.”

When the Respondent is a member of Carroll College community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of Carroll College 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.

Preliminary Interim Policy
Approved by the Executive Committee of the Board of Trustees - 08/13/2020
The procedures below 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.

**Title IX Coordinator**
The Dean of Students and Retention serves as the Title IX Co-Coordinator who oversees implementation of this policy for Respondents who are attending Carroll College in the context of their student status. The Director of Human Resources oversees implementation of this policy for Respondents in an employment-related context or third parties such as guests, visitors, volunteers, invitees, and campers.

The Title IX Co-Coordinator has 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.

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

The members of the Title IX Team are vetted and trained to ensure they are not biased 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 Co-Coordinator, contact Carroll College President, 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 Co-Coordinator.

Reports of misconduct committed by a Title IX Co-Coordinator should be reported to Carroll College President, president@carroll.edu or designee. Reports of misconduct committed by any other Title IX Team member should be reported to a Title IX Co-Coordinator.

**Title IX Co-Coordinator Contact Information**
Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

**Student Responding Parties**
Judy Hay, Interim Dean of Students
Co-Title IX Co-Coordinator
Office of Student Life
Borromeo Hall, Room 130
(406)447-4530 (office)
(406)447-461-8130 (cell)
Email: jhay@carroll.edu
Web: http://carroll.edu
Employee and 3rd Parties Responding Parties
Renee McMahon, Director of Human Resources
Co-Title IX Co-Coordinator
Office of Human Resources
O’Connell Hall, Room 214
(406)447-5501 (office)
(406)465-9022 (cell)
Email: rmcmahon@carroll.edu
Web: http://carroll.edu

Inquiries may be made externally to:
Office for Civil Rights, Seattle Office
U.S. Department of Education
915 Second Ave., Room 3310
Seattle, WA 98174-1099
Telephone: (206)607-1600
Fax: (206)607-1601
TDD: (206)607-1647
Email: OCR@ed.gov
Web: http://www.ed.gov/ocr

This Policy supersedes any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by a Title IX Co-Coordinator.

If government 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 August 14, 2020.