

PROPOSED CHANGES TO MSU AT BOZEMAN STUDENT CONDUCT CODE TO CONFORM TO NEW DISCRIMINATION POLICY AND GRIEVANCE PROCEDURE

The proposed changes are shown in tracked changes:

633.00 ~~STALKING,~~ HARASSMENT AND HAZING

~~A. Stalking includes, but is not limited to, purposely or knowingly causing another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly following the stalked person or harassing, threatening, or intimidating the stalked person, in person or by mail, by electronic communication or any other action, device, or method.~~

~~B.A.~~ Harassment includes but is not limited to verbal, psychological, graphic and/or written abuse directed at another, beyond a reasonable expression of opinion, which:

1. is threatening or carries with it the intention to do bodily harm; or
- ~~2. is unwelcome and unwanted behavior of a sexual nature that is severe, persistent or pervasive; or~~
- ~~3. is harassment of a person on the basis of race, ethnicity, color, religion, sex/gender, sexual orientation or preference, age, national origin, disability, political beliefs that is severe, persistent or pervasive; and~~
2. disrupts or undermines a person's exercise of his/her responsibilities as a student, faculty or staff member including unreasonably interfering with a person's educational or work performance.

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Harassment which is based upon discrimination as defined in MSU's Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking Policy [link] is also proscribed conduct, but that type of harassment is covered in Section 635.00 below; it is a separate offence from Harassment under this section and such conduct is addressed as provided in Sections 635.00 and 650.00 below.

~~B.~~ Hazing includes, but is not limited to, any conduct or method of initiation, admission or condition of continued membership in any student organization which:

1. endangers the physical or mental health or safety of any student or other person, including extended deprivation of sleep or rest; forced consumption of food, liquor, beverage, or drugs; beating or branding; involuntary confinement or imprisonment; or
2. destroys, vandalizes or removes public or private property

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635.00 VIOLATION OF MSU'S DISCRIMINATION, HARASSMENT, SEXUAL MISCONDUCT, DATING VIOLENCE, DOMESTIC VIOLENCE, AND STALKING POLICY OFFENSES

A. Violation of Montana State University's Policy on Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking Policy (Discrimination Policy) is proscribed conduct under this Student Conduct Code. [LINK to Policy]. The definitions of discrimination, harassment, sexual misconduct, domestic violence, and stalking are contained in the Discrimination Policy. Policy Violations of the Discrimination Policy include retaliation against an individual for taking any of the actions in support of this policy as defined in Section 128.00 of the Discrimination Policy.

A. Sexual misconduct is any non-consensual physical contact of a sexual nature, including sexual intercourse without consent (rape); sexual assault, sexual exploitation/coercion and any other forms of sexual violence. Sexual misconduct may vary in its severity and consists of a range of behavior(s) or attempted behaviors that may be grounds for action under University policy.

B. Prohibited Sexual Misconduct includes:

1. Sexual Intercourse without Consent: Unwilling or nonconsensual sexual penetration (anal, oral or vagina), however slight, with any object or body part that is committed either by force, threat, intimidation or through exploitation of another's mental or physical condition of which the perpetrator was aware or should have been aware.
2. Sexual Assault: Unwilling or nonconsensual sexual contact.
3. Sexual contact includes: 1) intentional contact with the breasts, buttock, groin or genitals or touching another with any of these body parts; 2) making another touch the perpetrator or themselves with or on any of these body parts; 3) any other intentional bodily contact in a sexual manner, including contact by a penis, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact).

C. Sexual Exploitation/Coercion: Taking nonconsensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited or coerced. Examples of sexual exploitation/coercion include, but are not limited to:

1. Relationship violence (intimate relationship violence or domestic abuse)
2. Prostituting another person
3. Nonconsensual video or audiotaping of sexual activity
4. Going beyond the boundaries of consent (such as letting friends hid in the closet to watch sexual intercourse)

~~5. Engaging in voyeurism~~

~~6. Unwilling or nonconsensual sexual activity that arises from the use of verbal pressure or misuse of authority.~~

~~7. Knowingly transmitting an STD or HIV to another person.~~

~~Consent: Consent is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. The lack of a negative response is not consent. An individual incapacitated by alcohol and/or drugs whether voluntarily or involuntarily consumed may not give consent. Effective consent also cannot be given by minors or mentally disabled.~~

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643.00 UNIVERSITY STUDENT CONDUCT BOARD/HEARING OFFICER

The University Student Conduct Board is responsible for the adjudication of cases involving alleged violations of the Student Conduct Code unless:

a) the alleged offense is violation of MSU's Policy on Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking Policy in which case Section 650.00 below will apply; or

(b) if the university cannot adjudicate the matter under the administrative adjudication procedures set forth in Section 662.00.

At its discretion, the University may appoint a Hearing Officer to assist the Board or to conduct the hearing instead of the Board. The Hearing Officer will conduct the hearing using the same procedures outlined in Sections 663.00 through 665.00.

650.00 ADJUDICATION OF ALLEGATIONS OF DISCRIMINATION, HARASSMENT, SEXUAL MISCONDUCT, DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING POLICY VIOLATION OFFENSES

A. ~~Students at Montana State University have the right to live and learn in an academic environment that is free from all forms of sexual misconduct, sexual violence and sexual harassment. Complaints against student(s) accused of committing violations of MSU's Discrimination, Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking Policy (Policy Violations) sexual misconduct, sexual violence, or sexual harassment will be referred to the Title IX Coordinator for investigation who will follow the procedures for reports and complaints of Policy Violation in accordance with MSU's Discrimination Grievance Procedures [put in link to new Procedures].~~ under the Non-Discrimination Policies and Discrimination Grievance Procedures. The Student Conduct Adjudication Procedures in Section 660.00 "STUDENT CONDUCT ADJUDICATION PROCEDURES" shall not apply in allegations of such Policy Violations and shall be replaced by MSU's Discrimination Grievance Procedures.

B. When a student is found to have engaged ~~in sexual misconduct, sexual violence or sexual harassment, the Dean of Student will impose, in -Policy Violations, the Dean of Students will impose~~ sanctions allowed by the Student Conduct Code, ~~in Section 670,~~ including suspension or expulsion from the university. The Dean of Student's sanction decision is the final University decision and shall not be subject to the appeal right and procedures found in Section 665.00 (P) and Section 680.00 of the Student Conduct Code.

C. ~~The Director of the Office of Institutional Equity is the Title IX Coordinator for MSU. The Title IX Coordinator or a person appointed by the Title IX Coordinator will conduct investigations of allegations of student code of conduct violations that involve sexual misconduct, sexual violence and sexual harassment.~~

D.C. ~~Montana State University prohibits retaliation against any person for reporting concerns, or filing, testifying, assisting or participating in any manner in investigations or proceedings involving allegations of discrimination, sexual harassment, sexual violence or sexual misconduct. Any person who engages in retaliation will be subject to discipline. Policy Violations include retaliation against an individual for taking any of the actions in support of this policy as defined in Section 128.00 of the Policy.~~