



**Responsible Office:** Office of Equity & Compliance  
**Version:**

**Responsible Officer:** Associate Vice President, Global Diversity & Inclusion

## **PROHIBITED DISCRIMINATION & HARASSMENT POLICY**

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### **I. Policy Statement**

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Portland State University (PSU) is committed to providing all students and employees with equal opportunity in education and employment and to providing PSU students, employees and members of the public who access the University an environment free from discrimination, discriminatory harassment, and retaliation.

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### **II. Reason for Policy/Purpose**

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Students, employees and members of the public, who learn, work, and engaged with an environment free from discrimination, discriminatory harassment, and retaliation are better able to recognize their full potential individually and to provide positive contributions to the PSU community. Further, PSU supports students, employees, and members of the public of all backgrounds and is committed to complying with all applicable laws and regulations concerning the prohibition of unlawful discrimination, harassment, and retaliation.

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### **III. Applicability**

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This policy applies to all students, employees, applicants for employment or admission, volunteers and members of the PSU community, including but not limited to contractors and vendors, and applies to discriminatory conduct occurring in any PSU service, activity, or program, including employment,

academic programs, and other PSU services and activities (e.g., student housing, athletics, etc.).

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## **IV. Definitions**

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**Discrimination:** Discrimination means excluding from participation, denying the benefits of, or otherwise subjecting an individual or group of individuals to different treatment based on Protected Class(es).

**Discriminatory Harassment:** Discriminatory Harassment means verbal comments, graphic or written statements, or physical conduct by a student, faculty, staff, or other PSU community member based on Protected Class(es) that is so severe, persistent or pervasive that it interferes with or limits a student, employee, volunteer or PSU community member's ability to participate in or benefit from the university's educational and/or employment opportunities, programs or activities. Discriminatory Harassment includes Sexual Harassment.

**Effective Consent:** Effective Consent is voluntary, non-coerced and mutually understandable communication between adults, meeting the age requirements of the State of Oregon, indicating a willingness to participate in a particular act. Consent must be freely and actively given. Silence, stillness, or the absence of "no" in and of itself is not an indication of consent. Consent can be withdrawn at any time. Past consent does not imply future consent. Effective consent cannot be gained by actual or the threat of force, intimidation, or by taking advantage of incapacitation of another, where a person knows or reasonably should have known of such incapacitation.

**Incapacitation:** Incapacitation means a person is in a state that renders the person incapable of determining their own conduct and/or lacks an understanding of who they are interacting with or where, why, or how their interactions or conduct occurred at the time of the incident.

The causes of incapacitation may include but are not limited to a medical diagnosis, a temporary or permanent disability, lack of sleep, blackouts, or influence of a controlled or other intoxicating substance that has rendered the individual physically or substantially incapable of making decisions or communicating unwillingness to engage in sexual activity. Respondents are not in violation of this policy if they neither knew nor should have known the Complainant to be physically or mentally incapacitated.

## **Non-disparagement or Non-disclosure Agreement:**

**Protected Class:** Protected Class means a group of people who qualified for protection under this policy based on particular identities. The protected classes covered by this policy include age, color, disability, gender, gender identity and expression, genetic information, marital status, national origin, pregnancy, race, religion, sex, sexual orientation, veteran status, or in the use of Workers' Compensation, the federal Family and Medical Leave Act ("FMLA") or the Oregon Family Leave Act ("OFLA") and or any other basis protected by federal, state, or local law.

**Sexual Harassment:** Sexual Harassment refers to unwelcome conduct of a sexual nature. Sexual harassment includes sexual advances, requests for sexual favors, and other verbal comments, non-verbal, or physical conduct of a sexual nature, where such conduct is sufficiently severe or pervasive that it has the effect, intended or unintended, of:

- unreasonably interfering with an individual's work or academic performance or
- it creating an intimidating, hostile environment

Examples of inappropriate behavior include: sexual or derogatory comments; grabbing or touching parts of the body; and sending letters, notes, cartoons, emails, text or audio messages of a sexually suggestive nature. Sexual harassment does not refer to occasional compliments of a socially acceptable nature. Sexual Harassment includes, but is broader than, Title IX Sexual Harassment. Sexual harassment includes a host of behaviors, only a few of which are defined here. Many of these behaviors involve the absence of Effective Consent, including instances in which a person is incapacitated. Some additional behaviors that constitute Sexual Harassment include the following:

- **Dating Violence:** Sexual violence or physical abuse or the threat of such abuse, 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. PSU determines whether such a relationship exists by considering the Complainant's statement and the length of the relationship, the type of relationship, and the frequency of interaction between the people involved.
- **Domestic Violence:** Sexual violence or physical abuse or the threat of such abuse, on the basis of sex, committed by a Respondent who is

a current or former spouse or intimate partner of the Complainant; or shares a child in common, with the Complainant; or is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or is similarly situated to a spouse of the Complainant under the domestic or family violence laws of Oregon. The relationship between the Respondent and the Complainant is more than just two people living together as roommates.

- **Fondling:** The touching of the private parts of another person, without the consent of the other person, including instances where the other person is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- **Incest:** Sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law.
- **Quid Pro Quo Sexual Harassment (“This for That”):** Making submission to unwelcome conduct of a sexual nature explicitly or implicitly a term or condition of an individual’s employment or educational experience. This may include employment, salary, or other benefit changes affecting an employee, or as a basis for educational decisions or benefits affecting a student.
- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Sexual Assault:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving effective consent.
- **Sexual Exploitation:** This means that a Respondent takes non-consensual or abusive sexual advantage of another for their own advantage or benefit or to benefit another person. Examples of Sexual Exploitation include, but are not limited to: invasion of sexual privacy, taking or transmitting photographs of a sexual nature without consent, engaging in voyeurism, exposing one’s genitals in non-consensual circumstances, prostituting another person, or inducing incapacitation with the intent to commit other acts of sexual misconduct.
- **Stalking:** Engaging in a “course of conduct” (two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or

means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property); 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, which includes anguish that may but does not necessarily require medical or other professional treatment or counseling.

- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent as defined by the laws of the State of Oregon.

**Retaliation:** Retaliation means any adverse treatment that is taken because a person has opposed an act or practice, made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing concerning their protected rights and that would discourage a reasonable person from engaging in those protected activities. Retaliation also means coercing, intimidating, threatening, interfering or discriminating against any person for the purpose of interfering with any protected right or because they have exercised any protected right or aided or encouraged another person to exercise any protected right.

**Title IX of the Amended Education Act of 1972:** This is the federal law that prohibits discrimination on the basis of sex in PSU's education programs or activities.

**Title IX Sexual Harassment:** Title IX Sexual Harassment is the specific form of Sexual Harassment that is regulated under Title IX of the Amended education Act of 1972, which prohibits discrimination on the basis of sex in PSU's education programs or activities. The procedures that apply to this form of Sexual Harassment are found in PSU's Title IX Policy at [link](#). Title IX Sexual Harassment procedures apply to:

- Quid Pro Quo Sexual Harassment by an employee;
- Sexual Assault, Domestic Violence, Dating Violence, and Stalking, and
- unwelcome sexual conduct that is so severe, persistent, and objectively offensive that it effectively denies a person equal access to recipient's educational program or employment.

Title IX does not cover all cases of this Sexual Harassment or other sexual misconduct. Whether Title IX Sexual Harassment processes apply may depend on when and where the behavior occurred and the connection of the Complainant and Respondent to PSU.

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## V. Policy

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Discrimination or Discriminatory Harassment based on a Protected Class(es) is strictly prohibited by PSU. Retaliation is also prohibited by PSU.

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## VI. Procedure

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1. **Reporting Prohibited Discrimination or Harassment.** PSU encourages anyone who believes that he or she has experienced or witnessed conduct prohibited under this policy to promptly report it to any of the PSU employees below, whose contact information is provided in Section VIII:
  - A supervisor or department head most directly concerned, excluding the person accused of the conduct prohibited under this policy;
  - Any academic or administrative official of PSU including but not limited to, the President, Vice President, University Counsel, the Provost, Vice Provost, Dean, Chair or a Director;
  - The Office of Equity & Compliance;
  - The Office of the Dean of Student Life;
  - PSU's Title IX Coordinator(s); or
  - Campus Public Safety.

Individuals are encouraged to report Prohibited Discrimination or Harassment as soon as possible in order to maximize PSU's ability to respond promptly and effectively. Although PSU does not limit the timeframe for reporting, the passage of time may impact or limit PSU's jurisdiction, and/or ability to gather relevant evidence that may be lost due to the passage of time, and/or the ability to impose discipline. Anyone who believes that they are experiencing prohibited discrimination, discriminatory harassment or retaliation is encouraged to document any incident(s).

2. **Required Reporting to the Office of Equity & Compliance or the Office of the Dean of Student Life.** Any Dean, Chair or Chair Equivalent or Director of an academic department, supervisor, manager, faculty member, instructor, academic advisor, Graduate Teaching Assistant, University Studies mentor, any employee in the

athletics department, including Athletics Director, Assistant Athletics Director, coach, assistant coach, and trainer, employee in University Housing and Residence Life (UHRL), Resident Assistant, Learning Community Assistant, or Residential Academic Mentor in UHRL, or other University Official with the title of Director or higher who becomes aware of an incident that may constitute conduct prohibited under this policy is required to promptly notify the Office of Equity & Compliance or the Office of the Dean of Student Life and provide any related documentation. Any person unsure whether they are required to report an incident is encouraged to contact Portland State University's Title IX Coordinator, Dean of Students, or the Office of General Counsel.

3. **Initiating a Complaint.** PSU provides several options for responding to complaints:
  - 3.1. Informal: This process may involve OEC gathering information either to help establish whether there is sufficient evidence of discrimination or retaliation occurred to support an investigation or to attempt to resolve a disagreement without following a formal complaint process. This informal process may include conflict resolution or coaching.
  - 3.2. Formal: The process of investigating a case of alleged discrimination or retaliation and making a determination as to whether or not there was a violation of a PSU policy.
  - 3.3. **Complaints Against Students.** The Office of the Dean of Student Life administers the University's Student Code of Conduct, which describes and provides a process for addressing inappropriate student behavior, including conduct prohibited under this policy. Title IX Sexual Harassment is addressed pursuant to the Title IX Policy. Complaints regarding a student's conduct may be reported to the Office of the Dean of Student Life by completing and submitting a Student Conduct Complaint Form.
  - 3.4. **Complaints Against Faculty/Staff and Others.** The Office of Equity & Compliance conducts prompt and thorough investigations involving allegations of conduct prohibited under this policy. Complaints against faculty, staff, a volunteer, or a PSU community member may be reported to the Office of Equity & Compliance by completing and submitting an online complaint form.

- 3.5. **Title IX Sexual Harassment Complaints:** The Title IX Coordinator will evaluate complaints to determine whether the matter must be addressed under PSU's Title IX Policy or under this policy. If the complaint alleges Title IX Sexual Harassment the matter will proceed through PSU's Title IX Policy. If the complaint does not allege Title IX Sexual Harassment, the matter may proceed under this policy and it will be processed either through the Office of Equity and Compliance or through the Office of the Dean of Student Life.
4. **Privacy and Confidentiality.** To the extent possible, PSU will protect the privacy and confidentiality of all parties in connection with reports of conduct prohibited under this policy. It may become necessary, however, to disclose information during the course of an investigation or attempt at resolution on a need- or right-to-know basis.
5. **Investigation of the Complaint.** Investigations under this policy proceed as follows: The Office of Dean of Student Life and the Office of Equity & Compliance conduct prompt, thorough and neutral investigations of any complaint or report of conduct prohibited under this policy. The extent and nature of the investigation will take into account any request for confidentiality by the individual bringing forward the complaint. The individual who files the complaint is known as the Complainant. The investigation may involve meeting with the parties and other appropriate university officials; allowing the person whose actions are the subject of the complaint, known as the Respondent, an opportunity to respond to the allegations; allowing the Complainant and Respondent to present witnesses and other evidence, interviewing relevant witnesses, and reviewing relevant documentation. A determination will then be made if a violation of this policy has occurred based on a preponderance of the evidence standard. Both the Complainant and the Respondent will be notified of the results of the investigation in writing. The investigation and notification of the outcome will be completed within 120 days from the receipt of the complaint, absent extenuating circumstances.
6. **Corrective Action.** Where conduct prohibited under this policy is found, timely and effective steps will be taken to ensure that the conduct stops and to prevent its recurrence. PSU will also take steps to remedy the effects of the prohibited conduct on any of the victims of that conduct. Corrective actions may be determined for students by



the Student Code of Conduct and for employees by their respective supervisor. Appropriate corrective measures may range from training, counseling, verbal or written reprimands, suspensions, or other action, up to and including dismissal/termination of the relationship with PSU, in accordance with established PSU policies and procedures, collective bargaining agreements, and the Student Code of Conduct. PSU will provide the Complainant with notice of corrective action taken as permitted by law.

7. **Non-Retaliation.** No person shall retaliate against an individual for reporting conduct prohibited under this policy; filing a complaint; participating in an investigation; participating in resolution of a complaint; or engaging in any other activity protected under this policy, regardless of the outcome of the concern or complaint. Any act of Retaliation or reprisal violates this policy and will be treated as a separate matter. Anyone found to have retaliated against someone making use of this policy will be subject to corrective action, up to and including discharge (for employees) or expulsion (for students).

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## **VII. External Complaints**

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In compliance with the Oregon Workplace Fairness Act (ORS 659A.375, PSU is required to notify employees of the following:

1. Anyone who pursues legal action against PSU based on alleged unlawful employment practice prohibited by ORS 659A.030, 659A.082 or 659A.112 (unlawful discrimination or sexual assault) must do so no later than five (5) years after the occurrence of the alleged unlawful employment practice;
2. PSU may not require or coerce an employee or prospective employee to enter into a nondisclosure or nondisparagement agreement that has the purpose or effect of preventing the individual from disclosing or discussing conduct prohibited by ORS 659A.030, 659A.082 or 659A.112 (unlawful discrimination or sexual assault) when that conduct occurred between employees or between an employer and an employee in the workplace or at certain work-related events; or that occurred between an employer and an employee off the employment premises, **except;**

2.1. when an employee claiming to be aggrieved by unlawful requests to enter into a settlement, separation, or severance agreement which contains a nondisclosure, nondisparagement, or “no-rehire” provision and will have seven (7) calendar days to revoke the agreement; or

2.2. if an employer makes a good faith determination that an employee has engaged in conduct prohibited by ORS 659A.030, ORS 659A.082 or 659A.112.

3. As defined by the Oregon Bureau of Labor and Industries:

3.1. A nondisclosure agreement is any agreement by which one or more parties agree not to discuss or disclose information regarding any complaint of work-related harassment, discrimination, or sexual assault.

3.2. A nondisparagement agreement is any agreement by which one or more parties agree not to discredit or make negative or disparaging written or oral statements about any other party or the company.

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## **VIII. Links To Related Forms**

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[Student Conduct Complaint Form](#)

[Complaint of Prohibited Discrimination Online Intake Form](#)

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## **IX. Links To Related Policies, Procedures or Information**

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PSU Policies, Procedures, and Collective Bargaining Agreements may be found on the [Human Resources](#) website;

The [Title IX Sexual Harassment Policy](#)

The [Student Code of Conduct](#) Procedure may be found on the Dean of Student Life website;

The [Office of Equity of Compliance](#) procedures may be found on the Global Office of Diversity & Inclusion website.

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## **X. Contacts**

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### **For students and prospective students:**

Office of the Dean of Student Life, 433 Smith Memorial Student Union, 1825 SW Broadway Telephone: (503) 725-4422; E-mail: [askdoslife@pdx.edu](mailto:askdoslife@pdx.edu)

### **For employees (faculty & staff), applicants, and members of the public:**

Office of Equity & Compliance, Suite 830, Richard & Maurine Neuberger Center, 1600 SW 4th Avenue  
Telephone: (503) 725-5919; E-mail: [diversity@pdx.edu](mailto:diversity@pdx.edu)

Office of Human Resources, Suite 518, Richard & Maurine Neuberger Center, 1600 SW 4th Avenue  
Telephone: (503) 725-4926; E-mail: [askhrc@pdx.edu](mailto:askhrc@pdx.edu)

### **For anyone with a safety emergency or campus safety-related concern:**

Campus Public Safety Office, Suite 149, Shattuck Hall, 1914 SW Park  
Telephone: (503) 725-4407; Emergency Telephone: (503) 725-4404; Email: [cps@pdx.edu](mailto:cps@pdx.edu)

### **Questions regarding this Policy can be directed to either of the following:**

PSU's Title IX Coordinator, Julie Caron, J.D. Associate Vice President, Global Diversity & Inclusion Title IX & ADA/504 Coordinator Portland State University - Telephone: (503) 725-4410; Email: [jucaron@pdx.edu](mailto:jucaron@pdx.edu)

For external complaints, contact:

[Oregon Bureau of Labor and Industries](#)

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## **XI. History/Revision Dates**

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**Adoption Date:** April 4, 2012

**Revision Date:** March 15, 2013

**Interim Policy Date:** September 11, 2020

Revised Interim Policy Date: September 24, 2020

Revisions made to 'Required Reporting to the Office of Equity & Compliance or the Office of the Dean of Student Life' in Section VI(2).

**Interim Review Date:** March 11, 2021