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SB89-21/22-Resolution Calling for the Immediate Resignation of Clayton Looney

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1 **The Associated Students of the University of Montana**
2 **Resolution Calling for the Immediate Resignation of Clayton Looney**
3 **February 17, 2022**
4 **SB89-21/22**

5 **Authored by: Lauren O’Neill, ASUM Senator; Jorgia Hawthorne, ASUM Senator;**
6 **Margaret Bell, ASUM Senator; Emma Kiefer, ASUM Senator; Ajaysia Hill, Former UM**
7 **Student;**

8 **Sponsored by: Emma Wickum, ASUM Senator; Amelia Hawes, ASUM Senator; Mary**
9 **Madison McKenzie, ASUM Senator;**

10
11 Whereas, The primary purpose of the Associated Students of the University of Montana
12 (“ASUM”) is to advocate for the general welfare of the students;

13
14 Whereas, Advocacy and Inclusivity are some of ASUM’s core values¹;

15
16 Whereas, ASUM’s mission statement includes:

17
18 *The Associated Students of the University of Montana enhances the student*
19 *experience through:*

- 20 • *Providing services such as...advocacy, and more;*
21 • *Advocating for the rights of all University of Montana students as a*
22 *diverse, unified body;*
23 • *Modeling trust and transparency among students, faculty, and staff.*²;

24
25 Whereas, ASUM has set precedent by condemning blatantly racist and generally abhorrent
26 faculty statements³;

27
28 Whereas, The University of Montana (“UM”) values diversity⁴;

29
30 Whereas, UM has promoted inclusive excellence, stating:

31
32 *At the University of Montana, inclusive excellence is not just a strategic goal we*
33 *choose to continually pursue but also an ongoing moral imperative, an ethical*
34 *obligation, and a matter of institutional survival. As a public-serving institution*
35 *committed to access and equal opportunity, UM must continually design itself to*
36 *foster inclusive prosperity for all, a goal that is inextricably linked to our*
37 *aspiration to be a flagship for the for the future.*⁵;

¹ Associated Students of the University of Montana. *About ASUM*. University of Montana. Retrieved February 17, 2022, from <https://www.umt.edu/asum/student-government/about.php>.

² Id.

³ Lock, Canyon S; Ververis, Nicholas.; Kiefer, Emma.; Glueckert, Mary Melissa. “SB28-21/22: Resolution Demanding the Resignation or Termination of Rob Smith, University of Montana Computer Science Professor” (2021). *Senate Resolutions, 2007-Present*.

⁴ Office of the President. *Mission Statement*. University of Montana. Retrieved February 17, 2022, from <http://www.umt.edu/president/mission.php>.

⁵ University of Montana, Diversity, Equity and Inclusion Plan, <https://www.umt.edu/diversity-equity-inclusion-plan/>.

112 Whereas, Discriminatory biases carried into educational settings through employees directly and
113 negatively impacts equitable access to education for all;

114
115 Whereas, Intangible factors can deprive students of equal educational opportunities, including
116 the ability to study, engage in discussion, exchange views with others, and learn their
117 profession¹⁸;

118
119 Whereas, Whereas, Discriminatory biases endorse harmful and destructive beliefs toward the
120 protected class and contribute to generating feelings of inferiority as to status in our campus
121 community and affects students' motivations to learn¹⁹;

122
123 Whereas, The University's Discrimination, Harassment, and Retaliation Interim Policy ("Interim
124 Policy") is intended to enable equitable access to education for members of protected classes and
125 is not intended to protect faculty under the guise of "academic freedom" or personal
126 convictions²⁰;

127
128 Whereas, Regulation of off-duty conduct generally focuses on the effect that the off-duty
129 conduct has on the employee's job performance and contradicts Montana's constitutional
130 guarantees to an equitable education;

131
132 Whereas, A professor should not be protected simply because the Chair of their department–
133 who is not a member of the discriminated protected class– reports thinking highly of that faculty
134 member or is impressed by their work²¹;

135
136 Whereas, Individuals can produce good work, yet be morally repugnant, create a hostile
137 environment, stifle access to education, or lack self-awareness and respect for human dignity;

138
139 Whereas, Coupling discriminatory biases with failures to address them creates harm to protected
140 class members that cannot be undone;

141
142 Whereas, The failure to respond to conduct of employees that perpetuates discrimination against
143 protected classes deteriorates the constitutional guarantees of education and contradicts the
144 purpose of the Interim Policy;

145
146 Therefore, Let It Be Further Resolved, That the Office of Equal Opportunity ("EO") University
147 Legal Counsel, and Office For Commissioner of Higher Education ("OCHE"), examine the
148 Collective Bargaining Agreement to align with the purpose of this University, goals of Montana,
149 and constitutional protections to access to education;

150

¹⁸ See generally *Brown v. Board of Education*, 347 U.S. 483 (1954).

¹⁹ *Id.*

²⁰ See Appendix 1.

²¹ Szpaller, K. (2021, February, 29). *Discrimination allegation deemed 'non-workplace issue'*. The Daily Montanan. Retrieved February 17, 2022 from <https://dailymontanan.com/2021/10/29/um-professor-discrimination-allegation-deemed-non-workplace-issue/>.

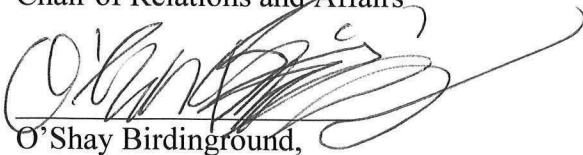
151 Therefore, Let It Be Further Resolved, That the EO, University Legal Counsel, and OCHE
152 consider revising Title IX policy relating to employment and discrimination;
153
154 Therefore, Let It Be Further Resolved, That the EO, University Legal Counsel, and OCHE cease
155 weaponizing University policies aimed at protecting students by doing the bare federal
156 minimum;
157
158 Therefore, Let It Be Further Resolved, That ASUM encourages students to consult with the
159 Office of Equal Oppurtunity and Title IX regarding their experiences with Clayton Looney;
160
161 Therefore, Let It Be Further Resolved, That ASUM demands Clayton Looney’s immediate
162 resignation;
163
164 Therefore, Let It Be Further Resolved, That ASUM discourages students from enrolling in
165 elective courses taught by Clayton Looney;
166
167 Therefore, Let It Be Further Resolved, That this Resolution be sent to Clayton Looney, The Poe
168 Family Distinguished Faculty Fellow and Professor of Management Information Systems; Reed
169 Humphrey, Interim UM Provost; Seth Bodnar, UM President; Terri Phillips, Associate Vice
170 President of Human Resources; Kelly Webster, UM Chief of Staff; Nathan Lindsay, UM Vice
171 Provost for Academic Affairs; Isho Tama-Sweet, Interim Chair of the Department of
172 Management Information Systems; Klaus Uhlenbruck, Associate Dean of the College of
173 Business; Suzanne Tillman, Dean of the College of Business; Amanda Dawsey, UFA President;
174 Kimber McKay, Chair of the Faculty Senate; Brady Schwertfeger, Staff Senate President; Alicia
175 Arant, UM Title IX Coordinator; Clayton Christian, Montana Commissioner of Higher
176 Education; Helen Thigpen, Executive Director of Government Relations and Public Affairs;
177 Lucy France, UM General Counsel; Murray Pierce, Director of Multicultural Affairs; Sarah
178 Swager, Vice Provost for Student Success; Brian Reed, Associate Vice Provost for Student
179 Success; Salena Beaumont Hill, Director of Inclusive Excellence.
180
181
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183 Passed by Committee: February 25, 2022

184
185 Passed by ASUM Senate: February 27, 2022

186 

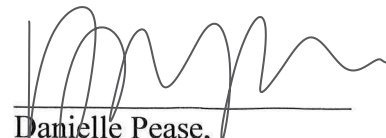
187
188
189 Elizabeth Bowles,
190 Chair of Relations and Affairs

191 

192
193
194 O'Shay Birdinground,
195 Chair of Diversity, Equity, and Inclusion



196
197
198 Noah Durnell,
199 Interim Chair of the Senate

200 

201
202
203 Danielle Pease,
204 Chair of Equitable Education

205
206
207 Passed 19Y-1N-0A.

II. Reporting to the Office of Equal Opportunity & Title IX

The University encourages prompt reporting of conduct that may violate this Policy. Reports of Prohibited Conduct should be made directly to the University's Office of Equal Opportunity and Title IX (EO/Title IX)¹. All Reports of Prohibited Conduct, as described below, or informational requests and inquiries about this Policy or the Procedures, should be filed with the EO/Title IX Office:

Office of Equal Opportunity & Title IX, Director and Coordinator

University Hall 006
University of Montana, Missoula, MT 59812
(406) 243-5710 | eoaa@umontana.edu | www.umt.edu/eo

Some forms of conduct contemplated by this Policy may also constitute crimes and the University strongly encourages individuals to make reports to law enforcement including the University of Montana Police Department (UMPD) or other appropriate law enforcement agency². The EO/Title IX Office can aid in reporting to law enforcement.

Particular conduct reported under this Policy may trigger a timely warning notification in accordance with the Clery Act. Specifically, the University must issue timely warnings for incidents reported that pose a serious or continuing threat of bodily harm or danger to members of the campus community. The University will undertake efforts to ensure that names and other personally identifiable information is not released, while providing sufficient information to members of the campus community to make informed decisions consistent with the circumstances.

A. Report of Prohibited Conduct

A Report of Prohibited Conduct may be filed with the EO/Title IX Office by any individual, including a third party, and is intended to alert the University of a potential violation of this Policy. Except for reports submitted within a University employee's Mandatory Reporter obligation, described below, a Report of Prohibited Conduct may include any information deemed relevant by the reporting person, including: names and contact information for all individuals involved; date(s); location(s); and a description of the protected-class harm.

Upon receipt of a Report of Prohibited Conduct, EO/TIX will promptly reach out to the identified Complainant to offer Supportive and Protective Measures, as described below at Section VI, consider the Complainant's wishes with respect to Supportive and Protective Measures, inform the Complainant of the availability of Supportive and Protective Measures with or without the filing of a Formal Complaint, and invite the Complainant to meet with EO/TIX staff to assess jurisdiction and discuss potential resolution options, including the process for filing a Formal Complaint. A Report of Prohibited Conduct does not trigger a Grievance Proceeding or Informal Resolution Process.

¹ A report of Prohibited Conduct by or against the EO/Title IX Coordinator or any member of the EO/TIX Office should be filed with the President of the University.

² Information about on-campus and off-campus resources, including contact information for relevant law enforcement agencies, is attached to this policy as Appendix A, and appears on EO/Title IX Website: www.umt.edu/eo.

Federal regulations limit the University's jurisdiction to resolve a Formal Complaint alleging Sexual Harassment to conduct occurring against a person in the United States.

B. Supportive and Protective Measures Jurisdiction

Individuals should not avoid reporting Prohibited Conduct to the University on jurisdictional grounds. While the University may not have jurisdiction to investigate or adjudicate a report of Discrimination, Harassment, or Retaliation that occurred separate from a University Program or Activity, EO/TIX has broad jurisdiction to coordinate and implement Supportive and Protective Measures, as described below at Section VI, to members of the University community adversely affected by protected-class harm.

Similarly, individuals should not wait to report ongoing conduct until it becomes sufficiently serious to constitute a Policy violation. The EO/TIX Coordinator can provide advice and, in some cases, may take non-punitive preventive measures, to address conflict in the interest of a maintaining a safe and equitable campus environment.

IV. Confidential and Non-Confidential Resources

There is a distinction between making a report to the University or law enforcement and seeking confidential assistance through Confidential Resources described below. Not every campus or community resource is confidential and this section explains to whom individuals who have experienced Prohibited Conduct can talk without their disclosure being revealed to any other person without their express permission or as required by law.

A. Confidential Resources

Confidential Resources are those campus and community professionals who can maintain legally-protected confidentiality within the University for the individual who shared the information. Confidentiality means that information shared by an individual with a Confidential Resource cannot be revealed to any other person without express permission of the individual, or as otherwise permitted or required by law. Confidential Resources are prohibited from disclosing confidential information unless (1) given permission by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order.

Confidential Resources available to individuals include the Student Advocacy Resource Center (SARC), Counseling Center, Curry Health Center Employees, other licensed medical health-care professionals acting in their health care capacity. Information about on-campus and off-campus resources is attached to this Policy as Appendix A, and appears on EO/Title IX Website: www.umt.edu/eo.

B. Non-Confidential Resources

The Office of Equal Opportunity & Title IX is not a Confidential Resource. Nevertheless, the EO/Title IX Coordinator will make every effort to respect and safeguard the privacy of the individuals involved in reporting or otherwise participating in any process described by this Policy or the accompanying Procedures. Privacy means that reports of Prohibited Conduct will only be shared with limited individuals who need to know for the purpose of assessment, implementation of Supportive and Protective measures, and resolution of a Formal Complaint, and to the extent required by law or court order.

invite, rather than inhibit, discourse on ideas. In addressing all reports under this Policy, the University will take all permissible actions to ensure the safety of students and employees while complying with free speech requirements for students and employees. While the University will vigilantly protect students' and employees' rights against Prohibited Conduct, this Policy does not apply to curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials.

IX. Prohibited Conduct

The following conduct is prohibited.

A. Discrimination

Discrimination is conduct based upon an individual's race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, gender, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation ("protected classes") that:

1. Adversely affects a term or condition of an individual's employment, education, living environment or participation in a University Program or Activity; or
2. Is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment or participation in a University Program or Activity; or
3. Constitutes Harassment, as defined below, by unreasonably interfering with an individual's employment, educational performance, on-campus living environment, or participation in a University Program or Activity.

Discrimination includes failing to provide reasonable accommodation to persons with disabilities. Under the Policy, a person with a disability means a person with a physical or mental impairment that substantially limits a major life activity; has a record of such impairment; or is regarded as having such an impairment. Determinations of whether individuals have a physical or mental impairment that substantially limits a major life activity (and therefore has a disability) are made on a case by case basis. In accordance with the Americans with Disabilities Act (ADA), as amended, Section 504 of the Rehabilitation Act of 1973, and applicable federal and state laws, the University is committed to providing access and reasonable accommodation in its services, programs, activities, education, and employment for individuals with disabilities.

An exception to the definition of Discrimination is a bona fide occupational qualification.

B. Harassment

The University prohibits two forms of Harassment as described below: (1) Discriminatory Harassment; and (2) Sexual Harassment.

1. Discriminatory Harassment

Discriminatory Harassment is unwanted conduct that is: (a) based upon an individual's race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, gender, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation; and (b) that has the purpose or effect of unreasonably interfering with a reasonable person's participation in a University Program or Activity.

Discriminatory Harassment emphasizes the consequence of conduct on an individual's participation in a University Program or Activity.³ The following factors will be considered in assessing whether conduct objectively constitutes an unreasonable interference in a University Program or Activity:

- a. The identity of the parties, the nature of the parties' relationship, and the influence of that relationship on the complainant(s)' employment or education;
- b. The nature, scope, frequency, and duration of the protected class conduct;
- c. The degree to which the protected class conduct affected one or more students' education or individual's employment; and
- d. The nature of higher education.

2. Sexual Harassment

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

Sexual Harassment is unwanted conduct that: (1) occurs within a University Program or Activity located in the United States; (2) affects an individual participating or attempting to participate in a University Program or Activity at the time the Formal Complaint is filed; (3) is based on sex, gender identity, gender expression, or sexual orientation; and (4) satisfies the elements of Quid Pro Quo Conduct, Hostile Environment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, or Sexual Exploitation, as defined below.

- a. Quid Pro Quo Conduct occurs when:
 - i. an employee of the University,
 - ii. conditions the provision of an aid, benefit, or service of the University,
 - iii. on an individual's participation in unwelcome sexual conduct.
- b. A Hostile Environment is created by:
 - i. unwelcome⁴ conduct,
 - ii. determined by a reasonable person,
 - iii. to be so severe, and
 - iv. pervasive, and,
 - v. objectively offensive,
 - vi. that it effectively denies a person equal access to a University Program or Activity.
- c. Sexual Assault is:

³ Although some protected class conduct may be egregious in nature, the lack of proximity of the conduct to the University may limit its effect on an individual's education or employment. Other conduct may be relatively less severe but, for example, occur between colleagues of the same office or students in a shared seminar and therefore result in a greater impact on an individual's education or employment.

⁴ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- i. Non-consensual touching, or coercing or forcing another to touch a person's intimate body parts (defined as genital area, groin, inner thigh, or breast);
- ii. Penetration, no matter how slight, of a person's vagina or anus, by any body part or object, or oral penetration by a sex organ of another person without consent; or
- iii. Sexual intercourse between persons who are related to each other to the degree they cannot marry under state law.

Consent is informed, freely given, and mutual. If coercion, intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated, under the statutory age of consent, or impaired so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing future consent. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University 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.

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, but non-consensual sexual activity is not necessarily forced. The absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

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.

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 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. 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.

d. Dating Violence is:

- i. violence,
- ii. committed by a person,
- iii. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - 1) The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - 2) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - 3) Dating violence does not include acts covered under the definition of domestic violence.

e. Domestic Violence is:

- i. violence,
- ii. committed by a current or former spouse or intimate partner of the Complainant,
- iii. by a person with whom the Complainant shares a child in common, or
- iv. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- v. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Montana, or
- vi. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Montana.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

f. Stalking is:

- i. engaging in a course of conduct,
- ii. directed at a specific person, that
 - 1) would cause a reasonable person to fear for the person's safety, or
 - 2) the safety of others; or
 - 3) Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to,
- (ii) 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.
- (iii) Reasonable person means a reasonable person under similar circumstances

(iv) and with similar identities to the Complainant.

(v) Substantial emotional distress means significant mental suffering or

(vi) anguish that may but does not necessarily require medical or other professional treatment or counseling.

g. 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:

- i. Prostituting another person;
- ii. Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
- iii. 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;
- iv. Going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- v. Inducing incapacitation for sexual purposes;
- vi. Engaging in non-consensual voyeurism;
- vii. Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;
- viii. Exposing one's genitals in non-consensual circumstances, or inducing another to expose their genitals; or
- ix. Possessing, distributing, viewing or forcing others to view illegal pornography.

C. Retaliation

Retaliation means any adverse action, including efforts to intimidate, threaten, coerce or discriminate, and any adverse employment or educational actions, that would discourage a reasonable person from engaging in activity protected under this policy, against any individual for the purpose of interfering with any right or privilege secured by this Policy, or because the individual has made a report or complaint, responded to 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 accompanying Discrimination Grievance Procedures.

X. Resolution, Sanctions, Appeal

The University's resolution processes are described in the accompanying Discrimination Grievance Procedures.

The possible sanctions and corrective actions that can occur as a result of violating this Policy are described in the accompanying Discrimination Grievance Procedures.

The University's procedure to appeal a finding of responsibility for violating this Policy is described in the accompanying Discrimination Grievance Procedures.

Appendices:

A: University Resource Guide; B: Mutual Restriction on Contact Guidelines