

Allegany College of Maryland
STUDENT & LEGAL AFFAIRS – Title IX

DEFINITIONS

SEXUAL HARASSMENT & SEX DISCRIMINATION POLICY

Definitions below are derived from appropriate sources: the United States Department of Education (Title IX Offenses*), the Clery Act, or the Maryland Attorney General’s Office Report which included the University System of Maryland’s definitions as determined by the Maryland Attorney General’s Offices’ definitions. Terms defined by other sources are noted.

*For these definitions to apply, the circumstances must qualify as a Title IX matter including jurisdiction and must be processed in accordance with Title IX rules. Similar definitions can be found in the Code of Student Conduct for similar acts of misconduct which do not qualify as Title IX matters; they are processed pursuant to the Code of Student Conduct.

TITLE IX OFFENSES

SEXUAL ASSAULT: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI (Clery Act definition of sexual assault). The following crimes are forms of sexual assault and are prohibited by the College:

- **Rape—(Except Statutory Rape)** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Per Uniform Crime Report by Federal Bureau of Investigation as required for the annual Clery Crime Report:** “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.”
- **Sodomy—**Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Sexual Assault With An Object—**To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Fondling (aka Groping)—**The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- **Incest—**Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape—**Nonforcible sexual intercourse with a person who is under the statutory age of consent.

STALKING [FEDERAL DEFINITION FOR TITLE IX PURPOSES]: engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

STALKING (MARYLAND DEFINITION EFFECTIVE 10/1/22 PER HB148): A malicious course of conduct that includes approaching or pursuing another where (1) the person intends to place or knows or reasonably should have known the conduct would place another in reasonable fear of serious bodily injury of any assault (any degree), or rape/sexual offense, false imprisonment, or death or that a third person will likely suffer any of the listed acts; (2). the person intends to place or knows or reasonably should have known the conduct would cause serious emotion distress to another. Stalking includes conduct that occurs in person, by electronic communication, or through the use of a device that can pinpoint or track the location of another without the person’s knowledge or consent.

RELATIONSHIP VIOLENCE: dating violence and domestic violence

- **DATING VIOLENCE:** violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based upon a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- **DOMESTIC VIOLENCE** (EFFECTIVE 10/1/22 PER VIOLENCE AGAINST WOMEN ACT UPDATE): “A felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction... [remaining definition in the law that covers many more actions applies only to *victim services* such as programs attached to law enforcement, prosecutor’s offices, etc.. and not to colleges/universities under Title IX or Clery.]”

SEXUAL HARASSMENT

- **HOSTILE ENVIRONMENT SEXUAL HARASSMENT:** any unwelcome advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance (ie., it is sufficiently severe and pervasive and objectively offensive to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment).
- **QUID QUO PRO:** any unwelcome advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when (1) submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment, evaluation of academic work, or participation in any aspect of an ACM program or activity; (2) submission to or rejection of such conduct by an individual is used as the basis for academic, employment, or activity or program participation related decisions affecting an individual

GENDER DISCRIMINATION : [Source: US Department of Education 2020 regulations] “... No person shall, on the basis of sex, be excluded from participation in, be denied the benefits

of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity” The prohibition against treating students and employees differently on the basis of sex applies to all college operations including but not limited to recruitment, admission, education programs/activities, classes, textbooks, financial assistance, facilities, athletics/sports, housing, extra-curricular activities, employment, compensation, eligibility for any college aid/benefit/service, treatment in any college aid/benefit/service, different rules of behavior/sanctions/other treatment, residency determinations, and/or otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity based on sex. *Summary, no college official may treat any person differently based upon sex.*

OTHER TERMS

AMNESTY: Complainants and witnesses shall not be subject to disciplinary action for drug/alcohol violations IF (a) violation occurred during/near time of assault, (b) assault report/participation is in good faith, and (c) violation was “not an act that was reasonably likely to place the health or safety of another individual at risk.”

From Maryland General Assembly HB571 / passed House and Senate, approved by Governor Hogan on May 12, 2015

CONFIDENTIALITY: All complainant requests for confidentiality or requests not to initiate College action shall be considered; whether the complainant’s request can be honored shall be based upon the following factors: immediate safety and well-being of the complainant; immediate safety and well-being of the campus or local community (eg., prior history of accused, potential for repeated behavior, predatory behavior, weapon, ongoing threat, multiple accused persons,); whether the misconduct or discrimination can be eliminated and remedied via other means; whether other evidence is available that permits action without the complainant’s participation; and whether the complainant’s concerns can be addressed (identify and resolve barriers). The process is confidential up to the point any allegations are contested.

BYSTANDER INTERVENTION: “Everyone can play an active role in stopping domestic violence and sexual assault before it occurs by becoming an engaged bystander and helping to establish an environment where healthy and positive relationships are based on respect, safety, and equality. Moreover, taking steps to stop harassment or violence can make a significant difference in someone’s life, and send a powerful message to the perpetrator and society as a whole about which social norms are acceptable and which are unacceptable.” - <http://nomore.org/take-action/preventviolence/>

CLERY OFFENSES: The U.S. Department of Education requires all colleges receiving federal education funding to annually report the incidence and location of specific crimes, hate crimes, arrests, and disciplinary action. Statistics must be submitted to the federal database, and a written report must be published. See the detailed list of crimes on this document: Clery/HEA: Reporting Offenses (Annual Crime & Fire Safety Report).

CONSENT: a knowing, voluntary, and affirmatively communicated willingness to mutually participate in a particular sexual activity or behavior. It must be given by a person with the

ability and capacity to exercise free will and to make a rational and reasonable judgment. Consent may be expressed either by affirmative words or actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity. Consent may be withdrawn at any time. Consent cannot be obtained by force, threat, coercion, fraud, manipulation, reasonable fear of injury, intimidation, or through the use of one's mental or physical helplessness or incapacity. Consent cannot be implied based upon the mere fact of a previous consensual dating or sexual relationship. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

CONTACT (for purposes of No Contact /No Negative Contact Orders): includes all forms of verbal, written, electronic, and non-verbal communications. Examples include (but are not limited to) face-to-face conversations, telephone conversations, texts, posts on social media (to or about the other person or the situation), notes, letters, conversations with other students to or about the other person or the situation), attempts to contact each other through any medium, hand gestures, loitering where the other person is or expected to be, and any or attempted contact with the other person's family/household members. Such contact is negative if it is hostile, aggressive, insulting, embarrassing, or has the intent or effect of making the other person uncomfortable, embarrassed, or afraid. In short, you are each required to interact with each other courteously. If you cannot do so, then you must have no contact of any kind.

FERPA: FAMILY EDUCATIONAL RIGHTS PRIVACY ACT (20 U.S.C.1232G): This federal law outlines the rights of students regarding their educational record(s). Generally, FERPA does not allow a college or its employees to release certain information to third parties without *either* written permission from the student or a recognized exception to the law such as an emergency. Compliance with Title IX and the provisions of the College's Sexual Misconduct and Sex Discrimination Policy as well as accompanying procedures do not constitute a violation of FERPA.

RESPONSIBLE EMPLOYEE: any employee who has the authority to take corrective action regarding sexual harassment or sex discrimination. Responsible employees are required to report sexual harassment or sex discrimination to the Title IX Coordinator. Reporting must be prompt. The following Allegany College of Maryland responsible employees include the Title IX Coordinator, Campus Safety/Special Police, all senior administrators (President and Vice Presidents), Human Resources Director, athletic coaches, and professional Residence Life staff members.

RETALIATION: vengeful, negative, harassing, or discriminatory acts against any individual for the purpose of interfering with any right or privilege secured by law or ACM policy or *because an individual has made a report, assisted, provided information, or participated in any manner with any proceeding related to this policy.* Examples of retaliation include (but are not limited to) acts of violence, threats of any kind, intimidation, coercion to change/conceal testimony or evidence, spreading rumors/false information, interfering with work or education, interfering with personal or professional relationships, damaging personal or professional reputation, attempts to commit such acts, and directing such acts

toward family members or associates of an individual who participated in a proceeding related to this policy.

Title IX: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

VIOLENCE: unjust or unwarranted exercise of physical force, usually accompanied by anger or heightened passions.