

Allegany College of Maryland
STUDENT & LEGAL AFFAIRS – Title IX

**INFORMATION: OFFICE OF CIVIL RIGHTS
SEXUAL MISCONDUCT & SEX DISCRIMINATION POLICY**

A complaint of discrimination can be filed by anyone who believes that a school that receives federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability or age. The person or organization filing the complaint need not be the victim of the alleged discrimination, but may complain on behalf of another person or group.

For information on how to file a complaint with the United States Department of Education's Office of Civil Rights, visit <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or contact OCR's Customer Service Team at 1-800-421-3481.

FROM THE OFFICE OF CIVIL RIGHTS WEBSITE:

The Title IX implementing regulation, at 34 C.F.R. § 106.31(a), provides that 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 operated by a recipient of Federal financial assistance. Specific obligations are set forth at 34 C.F.R. § 106.31(b), including a recipient's obligation to ensure that its students are not denied or limited in their ability to participate in or benefit from the recipient's programs or activities on the basis of sex.

Sexual harassment and gender-based harassment that create a hostile environment are forms of sex discrimination prohibited by Title IX.² Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence. Gender-based harassment may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. Sexual harassment and gender-based harassment of a student create a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the recipient's program

In determining whether this denial or limitation has occurred, OCR examines all the relevant circumstances from an objective and subjective perspective, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved (e.g., professor-student or student-student); the setting and context in which the harassment occurred; whether other incidents have occurred at the college or university; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. For example, a single instance of rape is sufficiently severe to create a hostile environment. Title IX protects all students at recipient institutions from sex harassment, including male and female students.

If a recipient knows or reasonably should have known about sexual or gender-based harassment that creates a hostile environment, Title IX requires the recipient to take immediate and appropriate action to investigate or otherwise determine what occurred. If a recipient delays responding to allegations of sexual harassment or responds inappropriately, the recipient's own action may subject the student to a hostile environment. If it does, the recipient will be required to remedy the effects of both the initial

sexual harassment and the effects of the recipient's failure to respond promptly and appropriately. If an investigation reveals that discriminatory harassment has occurred, a recipient must take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. These duties are a recipient's responsibility regardless of whether a student has complained, asked the recipient to take action, or identified the harassment as a form of discrimination. If needed, the recipient must take immediate steps to protect the complainant from further harassment prior to the completion of the Title IX investigation/resolution.

Additionally, the Title IX regulation, at 34 C.F.R. Section 106.8(b), requires recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints alleging any action that would be prohibited by Title IX. Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and gender harassment complaints. A recipient may use student disciplinary or other separate procedures for these complaints. However, any procedures used to adjudicate complaints of sexual harassment or gender harassment, including disciplinary proceedings, must afford the complainant a prompt and equitable resolution.

In evaluating whether a recipient's grievance procedures are prompt and equitable, OCR considers whether the procedures provide for:

1. notice to students and employees of the procedures, including where complaints may be filed;
2. application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
3. adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
4. designated and reasonably prompt timeframes for the major stages of the complaint process;
5. written notice to the parties of the outcome of the complaint and any appeal; and
6. an assurance that the recipient will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

To ensure that students and employees have a clear understanding of what constitutes sexual violence, the potential consequences for such conduct, and how the recipient processes complaints, the recipient's Title IX grievance procedures should also include the following in writing:

1. a statement of the recipient's jurisdiction over Title IX complaints;
2. adequate definitions of sexual harassment (which includes sexual assault) and an explanation as to when such conduct creates a hostile environment;
3. reporting policies and protocols, including provisions for confidential reporting;
4. identification of the employee or employees responsible for evaluating requests for confidentiality;
5. notice that Title IX prohibits retaliation;
6. notice of a student's right to file a criminal complaint and a Title IX complaint simultaneously;
7. notice of available interim measures that may be taken to protect the student in the educational setting;
8. the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint;
9. notice of potential remedies for students;
10. notice of potential sanctions against perpetrators; and
11. sources of counseling, advocacy and support

Pending the outcome of an investigation, Title IX requires a recipient to take steps to ensure equal access to its education programs and activities and to protect the complainant from further harassment as necessary, including taking interim steps before the final outcome of the investigation. The recipient should undertake these steps promptly once it has notice of a harassment allegation and should provide the complainant with periodic updates on the status of the investigation. It should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the recipient may prohibit the alleged perpetrator from having contact with the complainant pending the results of the investigation. The specific interim measures implemented and the process for implementing those measures will vary depending on the facts of each case. When taking steps to separate the complainant and the alleged perpetrator, a recipient should minimize the burden on the complainant. Recipients should also check with complainants to ensure that the interim measures are effective and, if ineffective, identify alternatives.

In addition, recipients should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling services, and their right to file with local law enforcement.

To ensure individuals can invoke these grievance procedures without fear of reprisal, Title IX also prohibits the university and others, including students, from retaliating against any individual “for the purpose of interfering with any right or privilege secured by [Title IX],” or because that individual “has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing” under Title IX. Prohibited retaliatory acts include intimidation, threats, coercion, or discrimination against any such individual. Universities therefore should take steps to prevent any retaliation against a student who makes a complaint or any student who provides information regarding the complaint. At a minimum, under Title IX, the university must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems; and should follow up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

In addition, if there is an incident involving potential criminal conduct, the university must determine, consistent with state and local law, whether appropriate law enforcement or other authorities should be notified. But a university’s Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve a university of its independent Title IX obligation to investigate the conduct. A university therefore should not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own Title IX investigation, and if needed, must take immediate steps to protect the complainant in the educational setting. These duties are a university’s responsibility, regardless of whether a student has complained, asked the university to take action, or identified the harassment as a form of discrimination.

If the complainant requests confidentiality or asks that the complaint not be pursued, a university should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If the complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, a university should inform the complainant that its ability to respond may be limited. A university also should tell the complainant that Title IX prohibits retaliation, and that university officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs. If the student still requests that his or her name not be disclosed to the accused or that the recipient not investigate or seek action against the accused, the recipient will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, including the student who reported the harassment. A recipient should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation.

Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of gender-based harassment complaints. However, it is improper for a complainant

to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the recipient (e.g., participation by a trained counselor, a trained mediator, or, if appropriate, a faculty member or administrator). The complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault/violence, mediation is not appropriate even on a voluntary basis.

Throughout the recipient's investigation and in any hearing, both parties must have equal opportunity to present relevant witnesses and other evidence. Also, in order for a recipient's grievance procedures to be consistent with the Title IX evidentiary standard, the recipient must use a preponderance of the evidence standard for investigating allegations of gender-based harassment. If a recipient provides for appeal of the findings or remedy, it must do so for both parties. The recipient must maintain documentation of all proceedings.

In addition, recipients should provide training to employees about their grievance procedures and their implementation. Recipients should provide such training to any employees likely to witness or receive reports of sexual harassment and violence, including professors, university law enforcement unit employees, university administrators, university counselors, general counsel, health personnel, and resident advisors. Recipients need to ensure that their employees are trained so that they know to report harassment to appropriate officials, and so that employees with the authority to address harassment know how to respond properly. All persons involved in implementing a recipient's grievance procedures (e.g., Title IX coordinators, investigators and adjudicators) must have training or experience in handling complaints of sexual harassment, and in the recipient's grievance procedures as well as applicable confidentiality requirements. In sexual assault cases in particular, the fact-finder and the decision-maker also should have adequate training or knowledge regarding sexual assault.

The Title IX regulation, at 34 C.F.R. § 106.8(a), specifically requires that each recipient designate at least one employee to coordinate its responsibilities to comply with and carry out its responsibilities under Title IX, including any investigation of any complaint communicated to such recipient alleging its noncompliance with Title IX. This provision further requires that the recipient notify all of its students and employees of the name (or title), and office address and telephone number of the employee(s) so designated. In addition, OCR's 2011 *Dear Colleague* Letter on Sexual Violence states that recipients should notify all students and employees of the electronic mail (email) address of the Title IX Coordinator. The recipient must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sex discrimination (including gender-based harassment) and that they understand how the recipient's grievance procedures operate.

The regulation implementing Title IX, at 34 C.F.R. § 106.9(a), requires that a recipient implement specific and continuing steps to notify applicants for employment, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of sex in the education programs or activities it operates; that the prohibition against discrimination extends to employment; and that inquiries to recipients concerning the application of Title IX and its implementing regulation may be referred to the Title IX coordinator or to OCR. The regulation implementing Title IX, at 34 C.F.R. § 106.9(b), requires recipients to include the notice of nondiscrimination in each announcement, bulletin, catalog, or application form that it makes available to the persons described above, or which is otherwise used in the recruitment of students or employees. OCR policy provides that pursuant to the Title IX regulation, the notification must include the contact information for the Title IX coordinator.