Allegany College of Maryland

STUDENT & LEGAL AFFAIRS

TITLE IX PROCEDURE: DEFINITIONS

SEXUAL HARASSMENT & SEX DISCRIMINATION POLICY

Definitions below are derived from appropriate sources: the United States Department of Education, the Clery Act, ATIXA's model policy/procedures, caselaw/court cases, 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. May be updated as needed.

*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 HARASSMENT

Sexual Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

1) **Quid pro quo harassment:**
   - an employee agent, or other person authorized by the College,
   - to provide an aid, benefit, or service under the College 's education program or activity,
   - explicitly or impliedly conditioning the provision of such aid, benefit, or service,
   - on a person's participation in unwelcome sexual conduct.

2) **Hostile Environment Harassment:**
   - unwelcome sex-based conduct that
   - based on the totality of the circumstances,
   - is so severe, pervasive, and objectively offensive,
   - that it effectively denies a person equal access to the College's education program or activity.

3) **Sexual Assault:** Any sexual act, including Rape, Sodomy, Sexual Assault with an Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse.
   a. **Rape:**
      - Penetration,
      - without the consent of the Complainant,
      - including instances where the Complainant is incapable of giving consent
        - because of their age or because of their temporary or permanent mental or physical incapacity

   b. **Statutory Rape:**
      - Nonforcible sexual intercourse with a person
      - who is under the statutory age of consent of the state law.

c. Sodomy

- Oral or anal penetration
- Of the Complainant by the Respondent
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
  - because of their age or
  - because of their temporary or permanent mental or physical incapacity

d. Sexual Assault with an Object

- Respondent's use of an object or instrument
- to unlawfully penetrate, however slightly, the genital or anal opening
- of the body of the Complainant,
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent
  - because of their age or
  - because of their temporary or permanent mental or physical incapacity

e. **Criminal Sexual Conduct** (replaces fondling (stricken below) per the FBI effective Summer 2025):

- The intentional touching by the Respondent of the Complainant's clothed or unclothed body parts
- Without the consent of the Complainant
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation

OR

- The forced touching by the Complainant of the Respondent's clothed or unclothed body parts
- Without the consent of the Complainant
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation

Exceptions:

- Contact is inadvertent
- Contact is for legitimate medical or other protected purpose
- Contact involves a Respondent who is pre-sexual, based on maturity/age (thus no sexual intent)
- Contact involves a Respondent who cannot developmentally understand sexual contact or that their contact is sexual
- Contact otherwise has no sexual motivation or purpose (determined by context)

~~**Fondling**~~

- ~~The touching of the private body parts (breasts, buttocks, groin) of the Complainant by the Respondent~~
- ~~or causing the Complainant to touch the Respondent's private body parts~~
- ~~intentionally for a sexual purpose~~
- ~~without the consent of the Complainant, including instances where the Complainant is incapable of giving consent~~
  - ~~because of their age or~~
  - ~~because of their temporary or permanent mental incapacity or physical incapacity.~~

4) **Dating Violence:**
   - Violence committed by a Respondent,
   - who is in or has been in a social relationship of a romantic or intimate nature with the Complainant; **and**
   - where the existence of such a relationship shall be determined based on a consideration of the following factors:
     - length of the relationship
     - type of relationship
     - frequency of the interaction between the Parties involved in the relationship.

5) **Domestic Violence:**
   - Felony or misdemeanor crimes under the domestic violence laws of the jurisdiction [where federal funding is received]
   - And the violence is committed by a person who:
     - is a current or former spouse or intimate partner of the Complainant under state family or domestic violence laws or a person similarly situated to a spouse of the Complainant;
     - is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
     - shares a child in common with the Complainant; **or**
     - commits acts against a youth or adult Complainant who is protected from those acts under the state family or domestic violence laws

6) **Stalking:**
   - engaging in a course of conduct on the basis of sex, that is,
   - 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.

SEX DISCRIMINATION:

A. **DISCRIMINATION** is different treatment with respect to an individual's employment or participation in an education program or activity based, in whole or in part, upon the individual's actual or perceived federally protected characteristic including sex, sex stereotypes, sex characteristics, pregnancy or related conditions.
(Maryland also protects these characteristics: sexual orientation and gender identity.)

Discrimination can take two primary forms:

1) Disparate **Treatment** Discrimination:
   - Any unwelcome conduct of a person or persons
   - On the basis of an individual's actual or perceived protected characteristic
   - Which is severe, pervasive, and objectively offensive based on the totality of the circumstances, and
   - Limits or denies the person's ability to participate in or benefit from the program or activity.

2) Disparate **Impact** Discrimination:
   - Policy or practice that appears to be neutral but which unintentionally results in
   - a disproportionate impact on person(s) with a protected characteristic
   - Which is severe, pervasive, and objectively offensive based on the totality of the circumstances, and
   - Limits or denies the person's ability to participate in or benefit from the program or activity.

OTHER TERMS

AMNESTY: Parties 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

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).

COERCION: unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective because it is not voluntary. When someone makes clear that they do not want to engage in 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. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

CONFIDENTIAL EMPLOYEE: College faculty/staff or contracted service providers who have been specifically designated as having confidential status and are exempt from the requirement to report information of misconduct to the Title IX Coordinator. These persons are limited to professional mental health providers whose communications are deemed privileged by law and professional medical or health care providers whose communications with patients are deemed privileged by law and the provider is *acting in that capacity at the time of the disclosure*. These persons are required to identify their role as confidential and to provide contact information for the Title IX Coordinator.

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.

>> Additionally, College Officials, Parties and their Advisors may not:

- Distribute or otherwise publicize materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the College; or
- publicly disclose a party's personally identifiable information without authorization or consent.

CONSENT: a knowing and voluntary 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 words or actions which should create a mutually understandable permission regarding the conditions of sexual activity. (Maryland is not an affirmative consent state, so a verbal yes to each sexual act is not required but is nonetheless recommended. Clear communication about sexual activity is important. Never assume your wishes are understood if you do not verbalize them.) 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 one sexual act does not automatically create consent for a different sexual act. 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 thru 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.

COURSE OF CONDUCT: For purposes of this definition, a course of conduct requires that there be more than one incident, and the conduct must be directed at a specific person. Stalking can occur in person or using technology, and the duration, frequency, and intensity of the conduct should be considered. Stalking tactics can include, but are not limited to watching, following, using tracking devices, monitoring online activity, unwanted contact, property invasion or damage, hacking accounts, threats, violence, sabotage, and attacks. Merely annoying conduct, even if repeated, is a nuisance, but is not typically chargeable as stalking.

DISMISSAL: A formal complaint is closed without any findings. Can occur at different stages of the process for various reasons. Dismissal is a final resolution to the matter unless it is successfully appealed. See the dedicated Dismissal information sheet.

EVIDENCE: Information submitted or collected during a formal investigation. Evidence must be relevant to the allegation(s) and cannot have been obtained illegally by any person. Types of evidence include written statements, verbal statements, text messages, social media posts, videos, photographs, audio recordings, and documents/records. Evidence should be preserved and secured.

FALSE ALLEGATION: A deliberately false/fabricated and/ or malicious accusation that is not intended to preserve a person's access to programs/services but is, instead, intended to harm another person or to retaliate. Allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination that policy was violated are not deemed false allegations.

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.

FORCE: the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

INCAPACITATION: a state where a person is incapable of giving consent.

- An incapacitated person 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, and how" of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, physically helpless, or unconscious for any reason, including because of alcohol or other drug consumption.
- This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.
- Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
- If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

INFORMAL RESOLUTION: an option available after a formal complaint of alleged sexual harassment or sex discrimination but before a formal decision (outcome) is issued. (Remember that under these regulations, if there is no formal, written complaint, the Title IX formal grievance procedures do not apply but other institutional policy/procedure may apply.) The Informal Resolution is implemented instead of a formal investigation. The Parties must both be students or both be employees. The Parties must agree in writing. The College offers four types:

1) **ALTERNATIVE RESOLUTION**. Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, restorative practices, facilitated dialogue, etc.) which is performed by another College Official or outside entity. The formal grievance process may be closed with or without a finding.
2) **SUPPORTIVE RESOLUTION**. At the request of the Complainant Title IX Coordinator can resolve the matter informally by providing only supportive measures to the Complainant. The formal grievance process is closed without a finding.
3) **ACCEPTED RESPONSIBILITY**. Respondent is willing to accept responsibility for violating Policy and is willing to agree to certain actions that will be enforced including possible sanctions. The formal grievance process is closed with a finding of Responsibility.
4) **WITHDRAW/RESIGNATION.** Respondent voluntarily chooses to separate from the institution, and the formal grievance process is closed without a finding.

PREGNANCY AND PREGNANCY/PARENTING – RELATED CONDITIONS

1. Pregnancy, childbirth, termination of pregnancy, or lactation;
2. Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; OR
3. Recovery from childbirth, termination of pregnancy, lactation, or related medical conditions.

NOTE: This policy does not apply to or provide for maternity leave, paternity leave, or child care.

REASONABLE PERSON: an objective standard meaning a person in the Complainant's shoes (having similar characteristics/demographics to the Complainant).

RELEVANT EVIDENCE: Evidence that tends to prove or disprove any element of an offense or any issue materials to resolving a complaint.

RESPONSIBLE EMPLOYEE: an official with authority who is required to report/disclose information

1. Any College employee with actual knowledge of alleged sexual harassment or sex discrimination is required to report it promptly to Title IX Coordinator or Campus Safety/Special Police, and/or the Office of Student & Legal Affairs.
2. Any College employee with information about a student who is pregnant or who has experienced any of the specific conditions related to pregnancy/parenting should
   (a) inform the student that College will not discriminate and will provide access and
   (b) provide the Title IX Coordinator's contact information.

RETALIATION:

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by the College, a student, employee, or a person authorized by the College to provide aid, benefit, or service under the education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or resolution process

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 or an individual who participated in a proceeding related to this policy.

NOTE: The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the College to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under this Policy. However, a determination that the Respondent violated this Policy, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

SEXUAL EXPLOITATION (a form of misconduct under this policy if it meets one of the definitions of sexual harassment)

- an individual taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above
- for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection

- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)
- Creating or disseminating images or videos of child sexual abuse material

****** ON 5/19/25, the federal "**Take It Down Act**" was signed into law. Formally entitled "Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks Act", this law prohibits online publication of intimate visual depictions of adults without their consent and of minors. Both authentic and computer generated ("fake") intimate images are prohibited. Posting or threatening to post such images is a federal crime with penalties including prison and mandatory restitution. Platforms are required to remove such images within 48 hours of being notified.

STANDARD OF PROOF: the "measurement" by which a person is deemed responsible for committing act(s) which violate this Policy. The standard of proof at Allegany College of Maryland is preponderance of the evidence – or it is more likely than not that the act(s) were committed as alleged without an acceptable defense in violation of policy. All evidence is considered collectively in the totality of the circumstances to reach this threshold before a Respondent may be found responsible and sanctioned.

SUBSTANTIAL COLLEGE INTEREST:

1. Any action that constitutes a criminal offense as defined by law including, but not limited to, single or repeat violations of any federal, state, or local law.
2. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
3. Any situation that significantly infringes upon the rights or property of other persons or that significantly breaches the peace of the campus community.
4. Any situation that substantially interferes with the College's educational interests or mission.

Timely Warning: Information is reported regarding certain crimes create a serious and continuous threat of harm or danger to the campus community which requires the College to issue a warning to the campus community (or a particular population/location) so persons may take reasonable steps to protect themselves.

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."

UNAUTHORIZED DISCLOSURE:

1. Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the College; or
2. publicly disclosing a party's personally identifiable information without authorization or consent.

VIOLENCE: For purposes of this Policy and as an ATIXA membership institution, the College adopts the ATIXA definition: Respondent intentionally or recklessly causes the Complainant serious physical, emotional, or psychological harm.

- Intent is evidenced when a reasonable person would be more likely to act with the purpose of causing serious harm rather than for any other reason.
- Recklessness is evidenced by a disregard of obvious risk to the safety of the Complainant.
- Violence in self-defense is not a violation of this policy if the purpose is safety – not harm.
- Threats to seriously harm the Complainant or people they care about may violate this policy if doing so causes serious emotional or psychological harm.
- Threats to harm oneself, even if made to cause emotional or psychological harm, do not violate this policy.
- Consensual use of violence, such as in kink relationships, is not a violation of this policy.