



## **Summary of Title IX Sexual Harassment Guidelines & Grievance Process: Definitions**

All Hagerstown Community College employees (faculty, staff, administrators) are required to report actual or suspected sexual misconduct that occurs in coordination with a HCC activity or event or on a HCC campus to the designated HCC's Title IX Coordinator immediately. Reporting is not optional.

### **Sexual Harassment/Misconduct**

Sexual Harassment has the meaning set forth below and may be committed by any person upon any other person, regardless of the sex, sexual orientation, gender and/or gender identity of those involved. Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo:
  - a. a College employee, agents, or other persons authorized by the College to provide aid, benefit, or service in its program,
  - b. conditions the provision of aid, benefit, or service of the College,
  - c. on an individual's participation in unwelcome sexual conduct; and/or

-or-

2. Sexual Harassment:
  - a. Unwelcomed conduct,
  - b. determined by a reasonable person
  - c. to be so severe, and
  - d. pervasive, and,
  - e. objectively offensive,
  - f. that it effectively denies a person equal access to the College's education program or activity

-or-

3. Sexual Assault, defined as:
  - a. Sex Offenses, Forcible or Non-forcible:
    - i. Any sexual act directed against another person,
    - ii. without the consent of the Complainant,
    - iii. including instances in which the Complainant is incapable of giving consent.

-or-

- b. Forcible Rape:

- i. Penetration,
- ii. no matter how slight,
- iii. of the vagina or anus with any body part or object, or
- iv. oral penetration by a sex organ of another person,
- v. without the consent of the Complainant.

-or-

c. Forcible Sodomy:

- i. Oral or anal sexual intercourse with another person,
- ii. forcibly,
- iii. and/or against that person's will (non-consensually), or
- iv. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

-or-

d. Sexual Assault with an Object:

- i. The use of an object or instrument to penetrate,
- ii. however slightly,
- iii. the genital or anal opening of the body of another person,
- iv. forcibly,
- v. and/or against that person's will (non-consensually),
- vi. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

-or-

e. Forcible Fondling:

- i. The touching of the private body parts of another person (buttocks, groin, breasts),
- ii. for the purpose of sexual gratification,
- iii. forcibly,
- iv. and/or against that person's will (non-consensually),
- v. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

-or-

f. Sex Offenses, Non-forcible:

i. Incest:

- i. Non-forcible sexual intercourse,
- ii. between persons who are related to each other,
- iii. within the degrees wherein marriage is prohibited by Maryland state law.

-or-

ii. Statutory Rape:

- i. Non-forcible sexual intercourse,
- ii. with a person who is under the statutory age of consent of Maryland state law.

-or-

4. Dating Violence, defined as:
  - a. violence,
  - b. on the basis of sex,
  - c. committed by a person,
  - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant,
    - i. 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—
    - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - iii. Dating violence does not include acts covered under the definition of domestic violence

-or-

5. Domestic Violence, defined as:
  - a. violence,
  - b. on the basis of sex,
  - c. committed by a current or former spouse or intimate partner of the Complainant,
  - d. by a person with whom the Complainant shares a child in common, or
  - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
  - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state of Maryland.
  - g. 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 the state of Maryland.

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

-or-

6. Stalking, defined as:
  - a. engaging in a course of conduct,
  - b. on the basis of sex,
  - c. directed at a specific person, that
    - i. would cause a reasonable person to fear for the person's safety, or
    - ii. the safety of others; or
    - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- i. Course of conduct means 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.
- ii. A reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- iii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

### **Force, Coercion, Consent, and Incapacitation**

As used in the offenses above, the following definitions and meanings apply:

**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.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or 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.

**Consent:** Refers to a knowing, voluntary, and affirmatively communicated willingness to participate in a particular sexual activity or behavior. Only a person who has the ability and capacity to exercise free will and make a rational, reasonable judgment can give consent. Consent may be expressed either by words and/or actions, as long as those words and/or actions create a mutually understandable agreement to engage in specific sexual activity. It is the responsibility of each party to ensure that they have consent from the other party and that the other party is capable of providing consent.

- Lack of protest or resistance is not consent. Silence, in and of itself, cannot be interpreted as consent. For that reason, relying solely on non-verbal communication can lead to misunderstanding.
- Previous relationships, including past sexual relationships, do not imply consent to future sexual acts.
- Consent to one form of sexual activity does not automatically imply consent to other forms of sexual activity.
- Consent must be present throughout sexual activity and may be withdrawn at any time. If there is confusion as to whether there is consent or whether prior consent has been withdrawn, it is essential that the participants stop the activity until the confusion is resolved.
- Consent cannot be obtained by use of physical force, threats, intimidating behavior, or coercion.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are

disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. A Respondent violates these guidelines if they engage in sexual activity with someone incapable of giving consent.

It is a defense to an alleged sexual assault violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they cannot give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). 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. This process 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 drugs.

**Hagerstown Community College’s Title IX Sexual Harassment Guidelines & Grievance Process is available online <https://www.hagerstowncc.edu/student-affairs/sexual-misconduct-procedures>**

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