

SUBTITLE 16

NON-DISCRIMINATION

§3-1601 Discrimination, Sexual Harassment and Sexual Misconduct Policy

A. Policy. It is the policy of the Board that no member of the College Community shall be subject to any form of unlawful discrimination, sexual harassment, or sexual misconduct. Sexual misconduct includes, but is not limited to: sexual harassment, sexual assault, intimate partner violence/abuse, sexual exploitation and sexual intimidation. The College complies with §485(f) of the Higher Education Act of 1965 as amended and Title IX of the Education Amendment of 1972.

The College is an equal opportunity institution with respect to both education and employment. The College is committed to maintaining an environment free from illegal discrimination and sexual misconduct. The College will not tolerate discrimination or harassment whether verbal or physical, flagrant or subtle, related to any individual's race, color, religion, gender, national origin, age, disability, sexual orientation, marital status or genetic information. The College will not tolerate behavior that contributes to creating a hostile work or learning environment.

B. Delegation to the President. The President is authorized to make, promulgate, issue, rescind and amend reasonable rules, regulations and procedures to carry out this policy.

C. Rules.

(1) Purpose: The purpose of this policy is to define a coordinated and consistent process that all members of the College Community, and visitors, must adhere to in regards to discrimination, sexual harassment, and sexual misconduct.

(2) Scope. The policy applies to all College Community members, including: students, faculty, administrators, staff, volunteers, vendors, independent contractors, visitors and any individuals regularly or temporarily employed, studying, visiting, conducting business or having any official capacity with the College or on College property.

(3) Definitions.

(i) "Discrimination" means the unfavorable or unfair treatment of an individual or group on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, gender identity, disability, or genetic information. Employment discrimination is the unfavorable or unfair treatment of an individual or group in hiring, promotion, compensation, discipline, termination, and any other terms and conditions of employment.

(ii) "Employment Practices" means the College is committed to a policy of equal opportunity in employment to the end that this institution will not discriminate against any person on the basis of race, color, national origin, sex, sexual

orientation, political affiliation, marital status, religion, age, genetic information, or status as a qualified disabled person, or as a qualified disabled veteran or Vietnam-era veteran.

(iii) "Hostile Work/Learning Environment" means an environment in which unwelcomed sexual or other harassing conduct unreasonably interferes with an individual's job performance or ability to learn, or creates an intimidating or offensive work or learning environment. This harassment does not necessarily result in tangible or economic job consequences, such as the loss of pay or a promotion, or a lower grade. A hostile environment might include but is not limited to:

- (a) Repeated requests for sexual favors;
- (b) Demeaning sexual inquiries and vulgarities;
- (c) Offensive language;
- (d) Other verbal or physical conduct of a sexual or

degrading nature.

(e) Sexually or otherwise offensive, explicit or sexist signs, cartoons, print materials, clothing, literature or photographs displayed in plain view.

- (f) Offensive or vulgar graffiti

(iv) "Retaliation" means the College will not tolerate retaliation against any person who, in good faith, makes a complaint of harassment or participates in an investigation. Employees and students will be expected to report situations of any form of harassment, whether they are the subject of such behavior or whether they observe or know of a fellow employee or student, or group of employees or students, who are subjected to such behavior.

(v) "Intimidation" means implied threats or acts that cause an unreasonable fear of harm in another person(s).

- (vi) "Sexual Harassment"

(a) Sexual harassment involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when submission of such conduct is made, either explicitly or implicitly, a term or condition of employment; a condition to receive a passing grade; or when submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting an individual; or when submission to or rejection of such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working or learning environment. This conduct is prohibited regardless of whether it involves employees or students of the same or different genders.

- (b) Sexual harassment can include, but is not limited to:

[1] Conversations with unwelcome sexual innuendo such as sexually suggestive comments or jokes, or comments of a sexual nature, or derogatory comments about gender;

[2] Improper questions about an employee's/student's private life; requests for sexual favors; or graphic, degrading or condescending comments about an employee's/student's appearance, dress or anatomy;

[3] Repeated social invitations when the invitee has previously indicated that he or she is not interested in accepting such invitations;

[4] Circulating material (by any method, electronically or otherwise) which ridicules a gender or which is sexually suggestive, or other

forms of discriminatory ridicule or insults, regardless of whether the ridicule is directed at specific individuals;

[5] Undesired, intentional physical contact (e.g., embracing, touching, pinching), or any threats or suggestions of such contact;

[6] Display of sexually suggestive print materials, objects, cartoons, computer applications or similar displays

[7] Abuse of familiarities or inappropriate behavior such as whistling or catcalls, offensive gestures or leering

[8] The awarding of favorable grades, ratings, promotions or salary considerations based on sexual favors or acceptance of social invitations, regardless of whether the employee/student welcomes the invitations.

(vii) "Sexual Misconduct"

(a) Domestic Violence –

[1] The actual or threatened physical, sexual, or psychological harm by a current or former family or household member.

[2] The pattern of assaultive or coercive behaviors is characterized by the control or domination of one person over another.

(b) Assault –

[1] An act that places a person in fear of imminent serious bodily harm;

[2] An act that causes serious bodily harm;

[3] Rape or sexual offense;

[4] Attempted rape or sexual offense; or

Stalking.

(c) False imprisonment –

[1] Interference with freedom;

[2] Physically keeping you from leaving your home, any College facility or kidnapping you.

(viii) "Intimate Partner/Dating Violence"

(a) The actual or threatened physical, sexual, or psychological harm by a current or former partner or spouse. The pattern of assaultive or coercive behaviors is characterized by the control or domination of one person over another.

(b) The existence of such a relationship shall be determined based on a consideration of the following factors:

[1] The length of the relationship;

[2] The type of relationship;

[3] The frequency of interaction to include all electronic forms between the persons involved in the relationship.

(ix) "Harassment" means unwelcome verbal or physical conduct based upon gender, race, color, religion, national origin, age, disability, sexual orientation or marital status that has the purpose or effect of unreasonably interfering with an individual's work performance or learning experience, or creating an intimidating, hostile or offensive working or learning environment. Conduct of this type between employees and/or students, is prohibited regardless of where it occurs. Examples of prohibited racial harassment include derogatory comments, taunting, slurs, jokes, cartoons, or graffiti about or motivated by a person's race. Unprofessional actions and remarks become harassment when they are

unwelcome. Individuals who believe they have been harassed by supervisors, co-workers, peers or students are encouraged to effectively address their concerns or objections regarding the incident directly with the person demonstrating the harassing behavior. In as professional a way as possible, make it clear that such behavior is offensive. If the unwelcome behavior continues, follow the process outlined in section IV under Complaint and Investigation Procedures in this document.

(x) “Stalking” means a course of conduct directed at a specific person because of his or her gender or gender identity/expression that is unwanted and unwelcomed and that would cause a reasonable person to fear for his or her safety, security or well-being. Stalking includes repeated implicit or explicit harassing or threatening behaviors. Examples may include but are not limited to:

- (a) following a person;
- (b) appearing, or leaving messages or objects at a person’s home, place of business, classroom, or other places a person is known to frequent;
- (c) making harassing phone calls;
- (d) sending messages by mail or electronic means, including emails or texts;
- (e) vandalizing personal property

(xi) “Sexual Exploitation” means when an individual takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses.

(xii) “Sexual Assault” means any type of sexual contact or behavior that occurs by force or without consent of the recipient of the unwanted sexual activity. Included in the definition of sexual assault is sexual activity such as forced sexual intercourse, sodomy, child molestation, incest, fondling, and attempted rape. It includes, but is not limited to, sexual acts against people who are unable to consent either due to age or lack of capacity.

(xiii) “Consent” means informed, knowing and voluntary. It is active, not passive. Silence, in and of itself, cannot be interpreted as consent. For that reason, relying solely on non-verbal communication can lead to misunderstanding. Consent can be given by words or actions, as long as those words and actions create mutually understandable permission regarding the conditions of sexual activity. Consent to one form of sexual activity cannot imply consent to other forms of sexual activity and previous relationships or consent cannot imply consent to future sexual acts. 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 given by someone known to be – or should be known to be – mentally or physically incapacitated. In order to give consent, one must be of legal age. Consent is the responsibility of the person who wants to engage in the activity. Consent cannot be obtained by use of physical force, compelling threats, intimidating behavior or coercion.

(xiv) “Coercion” means unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure used. When someone makes clear that he/she does not want sex that he/she wants to stop, that he/she does not want to perform certain acts or that he/she does not want to go beyond a certain point, continued pressure can be coercive.

(xv) “Non-consent: Non-consensual contact - any intentional sexual touching, however slight, with any object, by a person upon a person that is without consent and/or by force. Sexual contact includes, but is not limited to, intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

(xvi) “Non-consensual sexual intercourse” means committed by physical force, coercion, threat, or intimidation, actual or implied, by a person(s) known or unknown to the victim. Sexual intercourse can involve anal, oral, or vaginal penetration, no matter how slight.

(4) Complaint and Investigation Procedures.

(i) Any member of the College Community who believes he or she has been subjected to, or has observed or been informed of, discrimination, sexual harassment, or sexual misconduct prohibited by this policy, should promptly file a written complaint with one of the designated reporting authorities:

- (a) College Police
- (b) Title IX Coordinators
- (c) Affirmative Action Officer
- (d) Dean of Human Resources, or
- (e) Coordinator of Violence Prevention Center

Affected member may also report to employee's supervisor, department chair or department head.

(ii) Any member of the College Community who is advised of discrimination, sexual harassment, or sexual misconduct prohibited by this policy, including any reports made anonymously, or who otherwise has reason to believe that a violation of this policy has occurred, should promptly notify the designated reporting authorities as noted above.

(iii) Human Resources or the Affirmative Action Officer is responsible for promptly investigating and resolving all employee complaints. The vice president for student services, or designee, is responsible for promptly investigating and resolving all student complaints. Ordinarily this should include:

(a) Meeting with the complainant, within ten days of receiving the complaint, documenting the complaint and explaining that the complaint will be investigated as confidentially as possible. Employees or students involved in the complaint may be asked to document their version of the incident.

(b) Within ten days of meeting with the employee or student, notifying the accused employee or student of the allegations and giving him or her an opportunity to respond.

(c) Advising both parties that each will be given the opportunity to identify witnesses who will be interviewed and each party will be permitted to provide any additional evidence he or she deems relevant.

(d) Advising all employees or students involved in the investigation, including the complainant, that the complaint and investigation should be treated as confidential.

(e) Within 60 days of receiving the complaint,

informing both the complainant and the accused of the results of the investigation as well as the basis for the decision and ensuring that appropriate corrective action is taken if warranted which would prevent the recurrence of any discrimination and correct any discriminatory effects on the complainant; and

(f) Maintaining a confidential record of the complaint, including a summary of the allegations and the accused's response, and the manner in which the complaint was resolved.

(g) Although anonymous complaints may be difficult to investigate, Human Resources, the affirmative action officer, or the vice president for Student Services, nevertheless, should investigate such complaints, to the best of their ability, and take appropriate corrective action if it is determined that a violation of this policy has occurred.

(h) All investigations shall be adequate, reliable and impartial.

(iv) These procedures are intended to supersede the grievance procedures set forth in Section 3-501 of the College CODE.

(5) Investigative Procedures, Protocol and Reporting.

(i) Any person who believes that he/she has been the subject of sexual harassment, discrimination or assault, in any form, should immediately report the incident to the Title IX Officer and/or the College Police. Persons who would like assistance in contacting local authorities may request such help from campus authorities. At the request of the victim, campus authorities will provide prompt assistance in notifying the appropriate law enforcement officials and disciplinary authorities of an incident of sexual assault.

(ii) College personnel will provide full and prompt cooperation in obtaining appropriate medical attention, including transportation to Prince George's Hospital Center, 3001 Hospital Drive, Cheverly, Maryland and by providing the hospital's phone number - 301-618-3154. Persons who experience sexual assault can access a Sexual Assault Forensic Exam (SAFE) within 72 hours of an assault from the Domestic Violence and Sexual Assault Center at Prince George's Hospital Center.

(iii) The College recognizes that a student who is under the influence of alcohol and/or drugs at the time of an incident may be hesitant to report sexual assault because of the threat of disciplinary sanctions for his/her own violation of the Student Code of Conduct. In this context, a student who reports sexual assault to the College or a law enforcement officer or who participates in an investigation of sexual assault as a witness is not under disciplinary sanctions if:

(1) The College determines the violation occurred during or near the time of the alleged sexual assault,

(2) The student is determined to have made the report of sexual assault or is participating in an investigation as a witness in good faith, and

(3) The College determines that the violation was not an act that was reasonably likely to place the health or safety of another individual at risk.

Definitions.

(iv) “Privacy” generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those College employees who “need to know” in order to assist in the active review, investigation or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process.

(v) “Confidentiality” means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus and community professionals include mental health providers, ordained clergy, rape crisis counselors and attorneys, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others or a suspicion of child abuse.

(vi) “Reporting” –

(a) “Voluntary Confidential Reporting” means if victims of a crime do not want to pursue action within the College or the criminal justice system, they may still want to consider making a confidential report. With victims’ permission, a designated reporting authority, such as, College Police, Title IX Coordinators, dean of Human Resources, or other College administrators, can file a report on the details of the incident without revealing their identity. The purpose of a confidential report is to comply with their wish to keep the matter confidential, while taking steps to ensure the future safety of themselves and others. With such information, the College can keep an accurate record of the number of incidents involving students, determine where there is a pattern of crime with regard to a particular location, method, or assailant, and alert the College Community to potential danger. Reports filed in this manner are counted and disclosed in the annual crimes statistics for the institution.

(b) “Limited Voluntary Confidential Reporting” means the College encourages anyone who is the victim or witness to any crime to promptly report the incident to the police. Confidential reports for purposes of inclusion in the annual disclosure of crime statistics can generally be made to other PGCC **Campus Security Authorities** as identified below.

(c) “Campus Security Authorities” means any official of an institution who has significant responsibility for student and campus activities, or who manages or otherwise oversees student and campus activities. For example, staff responsible for College Life Services, the Largo Student Center, or student extra-curricular activities; program directors and other designated reporting authority at all College Extension Centers; a director of athletics or a team coach; faculty advisors to student groups; staff responsible for student conduct. Check the following link for the Campus Security Authority Memorandum: http://www.pgcc.edu/Campus_Info/campus_police/Campus_Police.aspx.

(d) Counselors and Confidential Crime Reporting – College “Professional Counselors” and the Coordinator of the Violence Prevention Center, when acting as such, are not considered to be a campus security authority and are not required to report crimes for inclusion into the annual disclosure of crime statistics. As a matter of policy, they are encouraged, if and when they deem it appropriate, to inform persons being counseled of the procedures to report crimes on a voluntary basis for inclusion into the annual crime statistics.

[1] Reporting on Campus – Who to Contact?
Designated Reporting Authorities:

[a] College Police, 301 Largo Road, Facilities Building, Room 102, Largo, MD 20774, (301) 546-0666;

[b] Title IX Coordinator – vice president for Student Services, 301 Largo Road, Kent Hall, Room 119, Largo, MD 20774, 301-546-0412;

[c] Office of Human Resources, 301 Largo Road, Kent Hall, Room 103, Largo, MD 20774, 301-546-0613;

[d] Affirmative Action Officer, 301 Largo Road, Kent Hall, Room 130, Largo, MD 20774, 301-546-0170;

[e] Violence Prevention Center **Coordinator**, 301, Largo Road, Bladen Hall, Room 122-F, Largo, MD 20774, 301-546-5281;

[2] Interim Measures will be implemented at the discretion of the college of the College. Potential remedies, which may be applied to the Complainant and/or the Respondent, include:

[a] Access to counseling services and assistance in setting up initial appointment, both on and off campus

[b] Imposition of campus “Stay-Away Letter”

[c] Rescheduling of exams and assignments (in conjunction with appropriate faculty)

[d] Providing alternative course completion options (with the agreement of the appropriate faculty)

[e] Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections (with the agreement of the appropriate faculty)

[f] Change in work schedule or job assignment

[g] Limit an individual or organization’s access to certain College facilities or activities pending resolution of the matter

[h] Voluntary leave of absence

[i] Providing academic support services, such as tutoring

[j] Interim suspension or College-imposed leave

[k] Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

[3] Respondent Interim Suspension –

[a] Where the report of discrimination, sexual harassment, and sexual misconduct poses a substantial and immediate threat of harm to the safety or well-being of an individual, members of the campus community, or the performance of normal College functions, the College may place a student or student organization on interim suspension or impose leave for an employee. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities and/or all other College activities or privileges for which the student might otherwise be eligible, as the College determines appropriate.

[b] When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

[4] Findings and Resolution –

[a] If, after an investigation, it is determined that this policy has been violated, corrective action designed to eliminate any form of prohibited harassment should be taken. This action may range from educating the employee or student on the inappropriateness of his or her behavior, to termination of employment or expulsion from the College.

[b] If the corrective action to be taken involves a change in an employee's employment status (i.e. transfer, demotion, or termination), the dean of Human Resources must be consulted. If the corrective action to be taken involves a change in a student's status (i.e. suspension or expulsion), the vice president for Student Services must be consulted.

[i] If the action taken is termination of employment, regular employees maintain the right to utilize the General Grievance Procedure.

[ii] If the action taken against a student is expulsion, students may use the Student Grievance Procedure.

(6) Options for Assistance Following an Incident of Sexual Misconduct.

(i) The College utilizes the community partners in effort to combat sexual assault, harassment, and misconduct on the main campus and all extension centers. The campus and community resources available to faculty, staff, and students at the College are outlined below.

(ii) Sexual Assault Response Team is a multidisciplinary interagency team of individuals working collaboratively to provide services for the community by offering specialized sexual assault intervention services.

(iii) Resources (Community Partners) –

(a) Domestic Violence and Sexual Assault Center at Prince George's Hospital Center, 3001 Hospital Drive, Cheverly, MD 20785, 301-618-3154;

(b) National Black Justice Coalition, Post Office Box 71395, Washington, DC 20024, 202-319-1552;

(c) Office of the State's Attorney for Prince George's County, 14735 Main Street, Suite M3403, Upper Marlboro, MD 20772, 301-952-3500;

(d) Prince George's County Domestic Violence Coordinating Council, 14330 Old Marlboro Pike, Upper Marlboro, MD 20772, 301-952-1440;

(e) Prince George's County Office of the Sheriff, 5303 Chrysler Way, Upper Marlboro, MD 20772, 301-780-8600;

(f) House of Ruth, 2201 Argonne Drive, Baltimore, MD 21218, 410-889-7884;

(g) Women's Law Center of Maryland, 305 W. Chesapeake Avenue, Towson, MD 21204, 410-321-8761;

(7) Relation to Other Policies and Rules.

(i) There are some intersections with this policy and the requirements outlined by other laws and regulations.

(a) Clery Act: The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act or Clery Act applies to institutions of higher education and is confined to campus crimes, which occur on campus, adjacent to campus, or off-campus when associated with the institution. Under the Clery Act the College must provide a timely warning of any crime that presents an ongoing threat to the campus community. The Clery Act also requires the College to compile and make available an Annual Security Report of all campus crimes. Reports for Title IX offenses must be included in the Annual Security Report. The report is found online at:

http://www.pgcc.edu/Campus_Info/campus_police/Annual_Security_Report.aspx

(b) Family Educational and Rights and Privacy Act: The Family Educational Rights and Privacy Act of 1974 (FERPA) is a federal mandate designed to protect the privacy of students' records. It includes academic records, financial aid records, attendance records and any other personally identifiable information collected by the College that, if shared, could violate the privacy rights of students and former students.

(c) Sex Offender Registry: The federal Campus Sex Crimes Prevention Act requires institutions of higher education to issue a statement advising the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained. It also requires sex offenders already required to register in a State to provide notice, as required under State law, of each institution of higher education in that State at which the person is employed, carries on a vocation, or is a student. The state of Maryland maintains an Internet registry located at www1.dpscs.state.md.us/sor.

(d) Academic Freedom: Evaluation of perceptions of behavior as sexually harassing assumes special importance in the context of carrying out responsibilities in the classroom, laboratory, studio, library, office, and similar contexts in fulfilling our educational objectives as related to teaching, learning, and scholarship. Speech or expression of a sexual nature, which is professional and appropriate to a lesson or teaching strategy, may be disturbing without also being harassing. Such speech or expression may, however, depart so far from professional or appropriate behavior that it is not protected by academic freedom. The professional teaching of controversial issues shall not be construed as constituting such a departure. However, speech or expression that is determined to be too far from professional, or that is, upon investigation, determined to be inappropriate behavior is unacceptable, and is not protected by academic freedom.

(ii) This policy is not intended to supersede any of the College's responsibilities under state or federal statutes and regulations, or other College policies

and rules, such as Grievance/Review, which addresses Regulations on Nondiscrimination on the basis of handicap, Americans with Disabilities Act, as well as all Affirmative Action complaints pertaining to discrimination in employment on the basis of race, color, religion, sex, national origin, or sexual orientation.

(iii) Nothing in this policy is meant to preempt or foreclose the pursuit of other remedies available to alleged victims of discrimination, sexual harassment, or sexual misconduct under applicable state or federal statutes and regulations.