

Sexual Discrimination Policy

Includes Sexual Misconduct and Sexual Harassment

Sexual Misconduct

Sexual Contact Defined

• Sexual contact includes: Intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch your 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.

Intercourse Defined

Non-consensual Sexual Intercourse includes

• Vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Non-Consensual Sexual Contact is

- Any intentional sexual touching
- However slight
- With any object
- By any person(s) upon any other person(s)
- That is without consent and/or by force

Non-Consensual Sexual Intercourse is

- Any sexual intercourse
- However slight
- With any object
- By any person(s) upon any other person(s)
- That is without consent and/or by force

Sexual Exploitation

o Occurs when a person takes non-consensual or abusive sexual advantage of another for his/her benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to

- Invasion of sexual privacy
- Prostituting another person
- Non-consensual video or audio taping of sexual activity
 - Going beyond the boundaries of consent (e.g. letting someone hide in the closet to watch consensual sex)
- Voyeurism
- Knowingly transmitting and STI or HIV to another person
 - Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals
 - Sexually-based stalking and/or bullying may also be a form of sexual exploitation

Incapacity

- o **Was the alleged victim incapacitated at the time of sex?**
 - **Could s/he make rational, reasonable decisions?**
 - **Could s/he appreciate the situation and address it consciously such that any consent was informed**

- **Knowing who, what, where, when, why and how?**
- o **Second, did the accused individual know of the incapacity (fact)?**
- o **Or, should the accused individual have known from all of the circumstances (reasonable person)?**

Sexual Harassment

Sexual Harassment is

- Unwelcome, gender-based verbal or physical conduct that is:
 - o Sufficiently severe, persistent or pervasive that it
 - Has the effect of unreasonably interfering with, limiting or depriving someone of the ability to participate or benefit from the College's educational program and/or activities, and is
 - o Based on power differentials, the creation of a hostile environment, or retaliation

There are three types of Sexual Harassment

1.) Hostile Environment

- The determination of whether an environment is hostile will be based on all of the circumstances which could include
 - Whether the conduct arose in the context of other discriminatory conduct
 - Whether the conduct unreasonably interfered with the alleged victim's educational or work performance
 - Whether the statement is a mere utterance of an epithet which engenders offense in an employee or student, or offends by a mere discourtesy or rudeness
 - Whether the speech or conduct deserves the protection of academic freedom or the 1st amendment.
- Hostile environment Includes
 - any situation in which there is harassing conduct that is sufficiently severe, pervasive/persistent and patently/objectively offensive that it alters the conditions of education or employment, from both a subjective (the alleged victim's) and objective (reasonable person's) viewpoint
 - The frequency of the conduct
 - The nature and severity of the conduct
 - Whether the conduct was physically threatening
 - Whether the conduct was humiliating
 - The effect of the conduct on the alleged victim's mental or emotional state
 - Whether the conduct was directed at more than one person

2.) Sexual Harassment

- Quid pro quo sexual harassment exists when there are:
 - o Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, and
 - o Submission to or rejection of such conduct results in adverse educational or employment action
- Examples include an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual-based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

3.) Retaliatory Harassment

- Retaliatory Harassment is any adverse employment or educational action taken against a person because of the person's participation in a complaint or investigation

of discrimination or sexual misconduct.

Definition: Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment or academic standing; or
- b. Submission to or rejection of such conduct by an individual is used as a basis for employment or academic decisions affecting another individual; or
- c. Such conduct interferes with an individual's work or academic performance or creates an intimidating, hostile or offensive working or academic environment.

Legally, sexual harassment is treated as a sex discrimination problem subject to Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964; this policy is subject to these federal regulations and all pertinent laws and regulation of the State of Michigan.

Confidential Reporting Locations

There are two departments on campus that students may utilize for confidential support and reporting of any sexual misconduct or sexual harassment complaint. These locations are: The Counseling and Wellness Center located in the Wilcox Building and the Chaplain located in the basement of the Chapel. Any other employee of the college (including student employees) must report any information of alleged sexual misconduct to the Title IX Coordinator. The Title IX Coordinator is the Vice President for Student Life and is located in the Student Life Office.

Procedures for Sexual Misconduct Complaints

Sexual Misconduct is a violation of the Code of Campus Conduct. Alma College provides on-campus counseling and health services and referrals to off-campus services for victims of sexual offenses. Further, the College will change a victim's academic and living situations after an alleged sex offense, including, but not limited to room or class changes, providing the options are reasonably available and requested by the victim. Please see Section 3: Student Conduct and Appeal Process for the procedures, sanctions, and appeals process related to sexual misconduct on campus.

Allegations of sexual harassment, assault and misconduct will be handled administratively by the Title IX Coordinator housed in the Vice President for Student Life's Office. Complaints will be investigated by administrators of the College who have received investigator training. The investigators will then present the findings and recommendations at the hearing. Alleged violator will have the ability to choose between a hearing agent appointed by the Vice President for Student Life or the Sexual Misconduct Committee. The Sexual Misconduct Committee will consist of a faculty/staff member of the Campus Conduct Committee, the Director of Campus Life, and a faculty/staff member appointed by the Title IX Coordinator. The hearing will be conducted in accordance with procedures outlined in the Campus Conduct Committee process outlined in Section 3 of the Student Life Handbook. Appeals to the decisions of the panel or hearing agent will be heard by the provost.

Conduct decisions by the above will be based on the "preponderance of evidence." A preponderance of evidence is defined as: a decision in which a reasonable person would find that College policy was more likely violated than not.

Retaliation and False Accusation of Sexual Misconduct

The College considers both retaliation and the malicious filing of false allegations to be serious ethical violations. A person bringing a complaint founded in good faith will suffer no recrimination. It is a violation of the College's sexual misconduct policy to retaliate against a person for complaining of or

reporting alleged misconduct and for assisting, participating or cooperating in an investigation of sexual misconduct. Retaliation is a very serious violation which can subject the offender to sanctions independent of the merits of the sexual misconduct allegation. False and malicious accusations, however, are harmful to the personal and professional reputations of the accused person. The College regards sexual misconduct complaints made falsely and maliciously to be a very serious matter and subject to appropriate sanctions if found to be false and malicious in a hearing separate from the original sexual misconduct hearing.

Right to Seek Legal Counsel/ Advocates

Action taken by the institution shall neither replace nor preclude the rights of any party to seek legal counsel at their own expense, or to pursue the matter through state or federal legal systems. Either party may be accompanied by an advocate faculty/staff person when responding to questions during a sexual misconduct investigation. Students' right to be accompanied by an advocate during student disciplinary hearings is stated under Rights and Responsibilities of Students Subject to Disciplinary Hearings in the Student Life Handbook. The Title IX Coordinator will arrange annually for the dissemination of information and for such training of supervisors as may be necessary to understand federal and institutional policies and procedures regarding misconduct violations and related complaints.

For more information regarding the conduct and appeal process please see Section Three of the Student Life Handbook.