1.01 Notice of Nondiscrimination

Mayland Community College ("MCC"), in compliance with and as required by Title IX of the Education Amendments Act of 1972 and its implementing regulations ("Title IX") and other civil rights laws, as well as in furtherance of its own values as a higher education institution, does not discriminate on the basis of race, color, national origin, sex, sexual orientation, gender, gender identity, gender expression, pregnancy, disability, age, religion, veteran status, or any other characteristic or status protected by applicable local, state, or federal law in admission, treatment, or access to, or employment in, its programs and activities. Please see www.mayland.edu/titleix for more information.

Discrimination and harassment are antithetical to the values and standards of the MCC community; are incompatible with the safe, healthy environment that the MCC community expects and deserves and will not be tolerated. MCC is committed to providing programs, activities, and an education and work environment free from discrimination and harassment. MCC is also committed fostering a community that promotes prompt reporting and fair and timely resolution of those behaviors.

Inquiries concerning discrimination or harassment on the basis of sex may be referred to MCC's Title IX Coordinator:

Michelle Musich, Dean of Students
Gwaltney Hall, 828-766-1262, mmusich@mayland.edu.

Inquiries concerning discrimination or harassment based on a protected characteristic or status other than sex may be referred to:

Michelle Musich, Dean of Students (for students)
Gwaltney Hall, 828-766-1262, mmusich@mayland.edu.

Judy McClure, Director of Human Resources (for employees)
Gwaltney Hall, 828-766-1272, jmcclure@mayland.edu.

Individuals may also make inquiries regarding discrimination or harassment to the U.S. Department of Education's Office for Civil Rights by contacting the District of Columbia Office, 400 Maryland Avenue, SW, Washington, D.C. 20202-1475; Phone 800-421-3481; email: OCR@ed.gov.

1.02 Prohibition on Sex Discrimination and Harassment, Retaliation, and Providing False Information or Interfering with a Grievance Process

This Policy prohibits discrimination and harassment on the basis of sex. MCC strongly encourages the prompt reporting of, and is committed to timely and fair resolution of, complaints of sex discrimination and harassment.

Sexual Harassment, as defined by Title IX and herein, is a specific type of sex discrimination/harassment that includes Sexual Assault, Dating Violence, Domestic Violence, and Stalking and that MCC addresses using its Title IX Sexual Harassment Grievance Procedures, as required by Title IX.

This Policy also prohibits Retaliation, as defined by Title IX and herein. Complaints alleging Retaliation may be filed with the Title IX Coordinator and, at the discretion of the Title IX Coordinator, may be addressed under MCC's Title IX Sexual Harassment Grievance Procedures or other grievance procedures adopted by MCC.

Additionally, any individual who knowingly files a false Formal Complaint or who interferes with a MCC grievance process may be subject to disciplinary action. Interference with a grievance process may include, but is not limited to, attempting to coerce, compel, or prevent an individual from providing testimony or relevant information; removing, destroying, or altering documentation relevant to an investigation; or providing false or misleading information to MCC officials who are involved in the investigation and/or resolution of a Formal Complaint, or encouraging others to do so.

1.03 Reporting and Period of Limitations

Any person (whether or not alleged to be the victim) may report sex discrimination or harassment, including Sexual Harassment, in person, by mail, by telephone, or by electronic mail, using the contact information for the Title IX Coordinator listed in Exhibit A, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours).

MCC strongly encourages all employees and other members of the MCC community to promptly report concerns regarding suspected or known discrimination/harassment on the basis of sex to the Title IX Coordinator.

In addition to the Title IX Coordinator, MCC has designated the following employees as individuals with the authority to institute corrective measures on behalf of MCC: Director of Human Resources, Deans, Associate Vice President, and Vice President of Instruction. Accordingly, these employees are required to report discrimination and harassment on the basis of sex to the Title IX Coordinator.

Additionally, MCC has designated the following employees as confidential resources for students.

- Doug Dewar, Director or Counseling & Disability Services
  Gwaltney Hall, 828-766-1256, ddewar@mayland.edu

- Maria Braswell, SOAR Personal Counselor
  Gwaltney Hall, 828-766-1261, mbraswell@mayland.edu

Information about sex discrimination or harassment shared with these confidential resources typically will not be reported to other MCC personnel (including the Title IX Coordinator), to the Respondent, or to others, unless the disclosing individual gives their consent to the disclosure or the law requires it (as may be the case with abuse involving a minor or under conditions involving imminent physical harm, for example). (Confidential resources may report non-identifying statistical information to the Title IX Coordinator for recordkeeping and compliance purposes.)

MCC will address allegations of sex discrimination and harassment appropriately no matter the length of time that has passed since the alleged conduct. However, MCC strongly encourages prompt reporting to preserve evidence for a potential legal or disciplinary proceeding. Delay may compromise the ability to investigate, particularly if the individuals involved in the alleged conduct are no longer MCC students or employees.

1.04 Applicability of Policy and Grievance Procedures

This Policy applies to any allegation of sex discrimination or harassment made by or against a student or an employee of MCC or a third party, regardless of sex, sexual orientation, sexual identity, gender expression, or gender identity.

The Title IX Sexual Harassment Grievance Procedures apply only to allegations of Sexual Harassment in MCC's Education Program or Activity (as defined herein).

MCC will address allegations of other types of sexual harassment (i.e., that do not meet the definition of Title IX Sexual Harassment) by: (1) using other student and employee conduct disciplinary procedures deemed appropriate by the Title IX Coordinator in consultation with other MCC administrators; and/or (2) with Supportive Measures, which are defined and discussed in more detail herein.

1.05 Rights of Parents

When a student Complainant or Respondent is a minor or has a guardian appointed and their parent or guardian has the legal right to act on the student's behalf, then the parent or guardian may file a Formal Complaint on behalf of the student, although the student would be the "Complainant." In such a situation, the parent or guardian may exercise the rights granted to the student under this Policy, including requesting Supportive Measures and participating in a grievance process. Similarly, the parent or guardian may accompany the student to meetings, interviews, and hearings during a grievance process to exercise rights on behalf of the student, while the student's Advisor of choice may be a different person from the parent or guardian. Whether or not a parent or guardian has the legal right to act on behalf of an individual would be determined by state law, court orders, child custody arrangements, or other sources granting legal rights to parents or guardians.

Additionally, FERPA and its implementing regulations address the circumstances under which a parent or guardian is permitted to inspect and review a student's education records. However, in circumstances in which FERPA would not grant a party the opportunity to inspect and review evidence in connection with a grievance process, pursuant to Title IX and its implementing regulations, the student has an opportunity to do so, and a parent or guardian who has a legal right to act on behalf of the student has the same opportunity.

1.06 Definitions Applicable to Policy and Grievance Procedures

Capitalized terms used herein are defined as follows.

"Actual Knowledge" means notice of Sexual Harassment or allegations of Sexual Harassment to MCC's Title IX Coordinator, Director of Human Services, Deans, Associate Vice President or Vice President of Instruction. "Notice" as used in this paragraph includes, but is not limited to, a report of Sexual Harassment to the Title IX Coordinator.

"Clery Act" refers to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, which is a federal statute codified at 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R. § 668.46. The Clery Act requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses.

"Complainant" means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment, irrespective of whether a Formal Complaint has been filed.

"Consent" is informed, freely and actively given, mutually understandable words or actions that indicate a willingness and readiness to participate in mutually agreed upon sexual activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a clear and unambiguous agreement between them to engage in certain conduct with each other. Consent cannot be gained by ignoring or acting in spite of the objections of another.

Consent cannot be inferred from: silence, passivity, or lack of resistance alone; a current or previous dating or sexual relationship alone (or the existence of such a relationship with anyone else); attire; the buying of dinner or the spending of money on a date; or Consent previously given (i.e., Consenting to one sexual act does not imply Consent to another sexual act).

Consent is not effective if it is obtained through the use of physical force, violence, duress, deception, intimidation, coercion, or the threat, expressed or implied, of bodily injury. Whether a party used any of these means to obtain Consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.

Consent may never be given by the following individuals: minors, even if the other participant did not know the minor's age; mentally disabled persons, if their disability was reasonably knowable to a person who is not mentally disabled; or persons who are incapacitated. The use of alcohol or drugs does not diminish one's responsibility to obtain Consent and does not excuse conduct that constitutes Sexual Harassment.

If at any time during a sexual act any confusion or ambiguity is or should reasonably be apparent on the issue of Consent, it is incumbent upon each individual involved in the activity to stop and clarify the other's willingness and readiness to continue and capacity to Consent. Neither party should make assumptions about the other's willingness and readiness to continue.

"Day" means a business day, unless otherwise specified.

"Education Program or Activity" means all of MCC's operations and includes (1) locations, events, or circumstances over which MCC exercised substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred; and (2) any building owned or controlled by a student organization that is officially recognized by MCC.

"Education Record" has the meaning assigned to it under FERPA.

"FERPA" is the Family Educational Rights and Privacy Act, a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 C.F.R. § 99. FERPA protects the privacy of student Education Records. FERPA grants to eligible students the right to access, inspect, and review Education Records, the right to challenge the content of Education Records, and the right to consent to the disclosure of Education Records.

"Formal Complaint" means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that MCC investigate the allegation of Sexual Harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in MCC's Education Program or Activity. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail by using the contact information listed for the Title IX Coordinator in Exhibit A. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

"Incapacitated" means lacking the physical and/or mental ability to make informed, rational judgments. A person may be incapacitated for a variety of reasons, including but not limited to being asleep or unconscious, having consumed alcohol or taken drugs, or experiencing blackouts or flashbacks.

"Respondent" means an individual who has been reported to be the perpetrator of conduct alleged to constitute Sexual Harassment.

"Retaliation" means (1) any adverse action (including direct and indirect intimidation, threats, coercion, discrimination, or harassment (including charges for conduct violations that do not involve sex discrimination or harassment or Sexual Harassment but that arise out of the same facts or circumstances as a report or complaint of sex discrimination or harassment or a report or Formal Complaint of Sexual Harassment) that is (2) threatened or taken against a person (a) for the purpose of interfering with any right or privilege secured by Title IX; or (b) because the person has made a report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing related to Title IX.

"Sexual Harassment" means conduct on the basis of sex that satisfies one or more of the following:

(1) an employee of the MCC conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct. (commonly referred to quid pro quo harassment);

(2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to MCC's Education Program or Activity; or

(3) **Sexual Assault** is any sexual act directed against another person, without the consent of the person, including instances where the person is incapable of giving consent. Sexual Assault can occur between individuals of the same or different sexes and/or genders. Sexual Assault includes the following:

- **Rape:** The carnal knowledge of a person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity;
- **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity;
- **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of a person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity;
- **Fondling:** The touching of the private body parts of a person for the purpose of sexual gratification, without the consent of the person, including instances where the person is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity;
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

"Dating Violence," as defined in 34 U.S.C. § 12291(a)(10): violence committed by a person—(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship;

"Domestic Violence," as defined in 34 U.S.C. § 12291(a)(8): felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction; or

"Stalking," as defined in 34 U.S.C. § 12291(a) (30): engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

"Supportive Measures" are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to a Complainant and/or a Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to MCC's Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or MCC's educational environment or deter Sexual Harassment.

Supportive Measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security, and monitoring of certain areas of the campus. MCC will maintain as confidential any Supportive Measures provided to a Complainant or a Respondent, to the extent that maintaining such confidentiality would not impair MCC's ability to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

[1] Capitalized terms used herein are defined in Section 1.0.
[2] And, at the discretion of the Title Coordinator, to related allegations of Retaliation.
[3] This standard is not met through imputation of knowledge based solely on vicarious liability or constructive notice. This standard also is not met when the only individual with Actual Knowledge is the Respondent. The mere ability or obligation to report Sexual Harassment or to inform a student about how to report Sexual Harassment, or having been trained to do so, does not qualify an individual as one to whom notice of Sexual Harassment or allegations of Sexual Harassment constitutes Actual Knowledge.
[4] Retaliation does not include (1) the exercise of rights protected under the First Amendment; (2) charging an individual with making a materially false statement in bad faith in the course of a grievance proceeding (provided, however, that a determination regarding responsibility alone is not sufficient to conclude that an individual made a materially false statement in bad faith); or (3) good faith actions lawfully pursued in response to a report of prohibited conduct.

For issues related to sexual harassment, see Procedures 5.3.4.1/3.3.7.1 - Title IX Sexual Harassment Grievance Procedures.

For issues related to all other types of unlawful discrimination and harassment, see Procedures 5.3.4.2/3.3.7.2 – Unlawful Discrimination and Harassment.

Adopted: 7/01/2018
Legal Reference: Title VII of the Civil Rights Act of 1964; The Americans with Disabilities Act of 1990; Section 504 of the Rehabilitations Act of 1973; The Age Discrimination in Employment Act of 1967; Equal Pay Act of 1963; Title II of the Genetic Information Nondiscrimination Act of 2008; Title IX of the Higher Education Amendments of 1972; Lily Ledbetter Act; NC Equal Employment Practices Act; NC Retaliatory Employment Discrimination Act; Jeanne Clery Disclosure Act of Campus Security Policy and Campus Statistic Act of 1990; Campus Sexual Assault Victim's Bill of Rights of 1992; Violence Against Women Act of 1994; Campus Sexual Violence Elimination Act of 2013.
Updated: 9/28/2020
Reviewed: 6/26/2023