

Definitions

As used in this Policy, the phrases and words listed shall have the meanings set forth below. Unless otherwise stated in the definition, any of the defined terms which include "Section I" or "Section II" shall expressly limit the definition set forth thereafter to the respective Section to which it refers.

Actual Knowledge

Notice of Section I Title IX Sexual Harassment or allegations of Section I Title IX Sexual Harassment to the College's Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the College with actual knowledge is the respondent. The mere ability or obligation to report Section I Title IX Sexual Harassment or to inform a student about how to report Section I Title IX Sexual Harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the College. "Notice" as used in this paragraph includes, but is not limited to, a report of Section I Title IX Sexual Harassment to the Title IX Coordinator as described in this Policy.^[1]

Advisor

An individual who assists a Complainant or Respondent in the Title IX hearing process. An advisor may, but need not be, an attorney.

Campus

Any building or property owned or controlled by the College within the same reasonably contiguous geographic area and used by the College in direct support of, or in a manner related to, the College's educational purposes, including residence halls. Any building or property that is within, or reasonably contiguous to, any building or property owned or controlled by the College within the same reasonably contiguous geographic area and used by the College in direct support of, or in a manner related to, College's educational purposes, that is owned by the College but controlled by another person, is frequently used by students, and supports College purposes such as a food or other retail vendor.^[2]

Campus Safety Authority

A campus safety authority of the College is any individual or individuals who have responsibility for campus safety but who do not constitute a campus police department or a campus safety department, such as an individual who is responsible for monitoring entrance into College property. Any individual or organization specified in the College's statement of campus safety policy as an individual or organization to which students and employees should report criminal offenses. An official of the College who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings.^[3]

Complainant

An individual who is alleged to be the target of conduct that could constitute Section I - Title IX Sexual Harassment or Section II - Sexual Misconduct (hereafter defined).^[4]

Consent

Consent is an active giving of permission to engage in activity. Consent is clear, knowing and voluntary. Consent may be given through words or actions. Silence is not and should not be interpreted as consent. Absence of protest is not consent. Previous history does not imply consent for future activity. Likewise, consent to one activity does not imply consent to another. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Consent cannot be given under pressure, force, threats, intimidation, coercion or while incapacitated due to the influence of alcohol and/or drugs. In order to give consent, one must be of legal age and not incapacitated mentally or physically. Lack of consent occurs when:

1. A person is forced to submit.
2. The person does not expressly or implicitly agree with the respondent's conduct under circumstances other than forcible compulsion or incapacity to consent.
3. A person is deemed to be incapable of consenting if he/she is less than 16 years old, is mentally challenged, suffers from mental illness, or is physically helpless or is totally incapacitated.
4. A person is rendered temporarily incapable of appraising or controlling his/her conduct as a result of a controlled or intoxicating substance administered to him/her with or without consent or knowledge.
5. A person is unable to consent when he/she is unconscious, or for any other reason is physically unable to communicate unwillingness to act.^[5]

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on the reporting party'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. "Dating violence" includes, but is not limited to, sexual or physical abuse or the threat of such abuse. "Dating violence" does not include acts covered under the definition of domestic violence. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.^[6]

Decision Maker

The administrator(s) who oversee(s) any hearing or appeal which takes place as part of the formal resolution process. The Decision Maker(s) determine(s) whether College policy has been violated.

Domestic Violence

A felony or misdemeanor crime of violence committed by: (a) a current or former spouse or intimate partner of the victim, (b) a person with whom the complainant shares a child in common, (c) a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner, (d) a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or (e) 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 jurisdiction in which the crime of violence occurred.^[7]

Education Program or Activity of the College

Locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.^[8]

Formal Complaint

A document filed by a complainant or signed by the Title IX Coordinator alleging conduct, which is prohibited under Section I this Policy, against a respondent and requesting that the College investigate the allegation(s). At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the College with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator in Appendix "A", and by any additional method designated by the College. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the College) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under 34 CFR 106 or under 34 CFR 106.45, and must comply with the requirements of 34 CFR 106, including 34 CFR 106.45(b)(1)(iii).^[9]

Hostile environment

An environment where the conduct of one or more individuals is sufficiently serious that it denies or limits a student's, employee's, or applicant's ability to participate in or benefit from the College's program based on sex. In determining whether a hostile environment exists, the College shall consider all relevant circumstances, including the following factors: (a) the degree to which the conduct affected the College's educational programs, (b) the type, frequency, and duration of the conduct, (c) the age and sex of the alleged harasser and the subject or subjects of the harassment, (d) the location of the incidents and the context in which they occurred, (e) other incidents at the College, and (f) incidents of gender-based, but nonsexual harassment.

Improper Conduct Related to Sex

Conduct that is unprofessional or inappropriate that does not fall under Section I Title IX Prohibited Conduct, Section II Sexual Misconduct, or Section II Sexual Exploitation, but that nevertheless is sexual and/or sex-based in nature and has the effect of unreasonably interfering with an individual's educational experience, working conditions, or living conditions.

Incapacitation

Any situation in which a person is incapable of giving consent due to the student's age, state of consciousness, use of drugs or alcohol, or an intellectual or other disability.

Intimidation

The intentional act of coercing or frightening someone to engage or not engage in conduct of a sexual nature against the person's will.

Investigator

An individual assigned by the Title IX Coordinator to investigate the alleged Sexual Harassment and oversee the investigative hearing.

Mandatory Reporter

All Georgetown College employees, other than those listed as confidential employees, are required to report to the Title IX Coordinator any knowledge or disclosure of sexual harassment, sex-based discrimination, retaliation, or sexual misconduct that involves a Georgetown College student, employee, applicant, or visitor. Exempt are confidential employees from Health Services, Counseling Center and Campus Ministry.

Non-consensual Sexual Contact

Any physical touching of a sexual nature which is not preceded by consent or which continues after a previous consent is withdrawn.

Non-consensual Sexual Intercourse

Any sexual intercourse which is not preceded by consent or which continues after previous consent is withdrawn.

Party or parties

Refers to the complainant(s) and the respondent(s).

Quid Pro Quo

Refers to conduct or acts of an employee of the College conditioning the provision of aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.

Preponderance of Evidence

Preponderance of evidence means that it is more likely than not, based on all the relevant evidence and reasonable inferences from the evidence, that the respondent violated this policy.

Report

Refers to information brought to the attention of a campus safety authority alleging conduct prohibited under Section I or Section II, a report is not considered to be a formal complaint. A party may bring a report and then subsequently file a formal complaint, as defined in this Policy.

Respondent

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute conduct which is prohibited under this Policy.^[10]

Retaliation

Retaliation is generally the act of seeking revenge upon another person.^[11] The College expressly prohibits any form of retaliatory action against any member of the College community who in good faith: (1) files a report, complaint, or grievance under Sections I or II (or with an external entity); (2) opposes in a reasonable manner an action or policy believed to constitute a violation of Sections I or II; or (3) participates in College investigations, compliance reviews, or discipline proceedings under Sections I or II. Depending on the circumstances referenced above, retaliatory acts may include (but are not limited to): (a) Adverse employment action; (b) Adverse action relating to participation in an educational or working program; (c) Unreasonably interfering with the academic or professional career of another individual; (d) Engaging in conduct which constitutes stalking, harassment, or assault; (e) Engaging in efforts to have others engage in retaliatory behavior on one's behalf.

Section I Title IX Prohibited Conduct

Refers to and is expressly limited to, conduct which is prohibited by Title IX, meets the Title IX jurisdictional requirements set out in Section I, and is one of the following acts/behaviors (1)-(8) as defined herein: (1) sex-based discrimination; (2) quid pro quo sexual harassment; (3) sexual harassment, defined as unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies an individual equal access to the College's education program or activity; (4) sexual assault, which includes: (a) rape, (b) sodomy, (c) sexual assault with an object, (d) fondling, (e) incest, and (f) statutory rape; (5) domestic violence; (6) dating violence; (7) stalking, and (8) Section I retaliation.

Section II Sexual Misconduct

Conduct that otherwise meets the definition of Section I Title IX Prohibited Conduct but fails to meet the jurisdictional requirements of Title IX as set out in Section I, shall be "prohibited conduct" under Section II, and any conduct which is one of the following acts/behaviors as defined herein: (1) sexual misconduct, (2) sexual exploitation, and (3) improper conduct related to sex, and (4) Section II retaliation.

Sex-based Discrimination

Treating a student, employee, applicant, or visitor unfavorably because of that person's sex.

Sexual Assault

Any sexual act directed against another person, without the consent of the complainant, including instances where the complainant is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. This includes the following:

1. Rape: The carnal knowledge of a person, 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;
2. Sodomy: Oral or anal sexual intercourse with another person, 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;
3. 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 another person, 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;

4. Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, 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;
5. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
6. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.^[12]

Sexual Exploitation

Any act whereby one individual violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent, and that does not constitute non-consensual sexual penetration or non-consensual sexual contact. Examples may include (but are not limited to): (1) recording, photographing, transmitting, viewing, or distributing intimate or sexual images or sexual information without the knowledge and consent of all parties involved; or (2) voyeurism (i.e., spying on others who are in intimate or sexual situations).

Sexual Harassment

Unwelcome conduct, determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity

Sexual Intercourse

Vaginal or anal penetration by a penis, object, tongue, or finger, and oral copulation.

Sexual Misconduct

Unwelcome verbal or physical behavior that is directed at an individual based on sex, when these behaviors are sufficiently severe or pervasive to have the effect of unreasonably interfering with an individual's educational experience, working conditions, or living conditions by creating an intimidating, hostile, or offensive environment. Examples of conduct that can constitute sexual misconduct if based on an individual's sex include (but are not limited to): (1) Unwelcome jokes or comments (e.g., sexist jokes); (2) Disparaging remarks about sex, gender identity, or gender expression (e.g., negative or offensive remarks or jokes about an individual's self-presentation); (3) Displaying negative or offensive posters or pictures about sex; (4) Electronic communications, such as e-mail, text messaging, and internet use, that violate Section II.

Sexual Violence

Physical sexual acts perpetrated against a person's will or with a person who suffers from incapacitation. It also means same-sex conduct that violates the College's prohibition on sexual violence.

Stalking^[13]

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for the person's safety or the safety of others or (b) suffer substantial emotional distress.^[14] Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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.^[15]

Standard of evidence - preponderance of the evidence

A finding of responsibility by a preponderance of the evidence means that it is more likely than not, based on all the relevant evidence and reasonable inferences from the evidence, that the respondent violated this policy.

Supportive measures

Non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the 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 the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College'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, and other similar measures. The College must maintain, as confidential, any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.^[16]

Title IX Coordinator

The person designated as such by the College's President or the person temporarily designated by the Title IX Coordinator to serve in that capacity during the Title IX Coordinator's incapacity or absence from the College's campus.

Title IX Sexual Harassment

An umbrella category, that includes the actual or attempted offenses of the following: (a) Quid Pro Quo; (b) Sexual Harassment; (c) Sexual Assault, (d) Dating Violence; (e) Domestic Violence; and (f) Stalking.^[17]

Unwelcome conduct

Conduct is unwelcome if an individual did not request or invite it and regarded the conduct as undesirable or offensive. Acquiescence in the conduct or the failure to complain does not always mean that the conduct was welcome.^[18]

[1] 34 CFR §106.30(a).

[2] 34 CFR § 668.46(a).

[3] 34 CFR § 668.46(a).

[4] 34 CFR §106.30(a).

[5] 34 CFR §106.30(a) The Assistant Secretary will not require Colleges to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.

[6] 34 CFR §668.46.

[7] 34 CFR § 668.46.

[8] 34 CFR §106.44(a).

[9] 34 CFR §106.30(a).

[10] 34 CFR §106.30(a). <https://definitions.uslegal.com/r/retaliation/> (July 19, 2019).

[12] 34 CFR § 668.46(a); These offenses are defined as used in the FBI's UCR program.

[13] 34 CFR § 668.46(a).

[14] 34 CFR § 668.46(a).

[15] 34 CFR § 668.46(a).

[16] 34 CFR §106.30(a)

[17] 34 CFR § 106.30(a)

[18] 2001 Revised Sexual Harassment Guidance, pp. 7-8.