

Contents

Introduction	3
Policy Statement	3
Policy Scope	3
Title IX Coordinators	4
ADA/504 Coordinators	5
Equal Opportunity and Nondiscrimination	5
Discrimination	5
Discriminatory Harassment	5
Sexual Harassment	6
Other Civil Rights Offenses	8
Disability Discrimination and Accommodations	9
Students with Disabilities	9
Employees with Disabilities	9
Pregnancy and Parenting	9
Students	10
Employees	10
Reporting Alleged Policy Violations	10
Amnesty	11
Responsible Employees	11
Anonymous Reporting	12
False Allegations	12
Supportive Measures	12
Confidentiality	12
First Amendment Statement	13
Independence and Conflict-of-Interest	13
Emergency Removal	14
Students	14
Employees	14
Retaliation	14
Standard of Responsibility and Sanctions	14
Appeals	15

Discretion in Application 15

Training 15

Record Keeping 15

College Compliance..... 16

APPENDIX A: Definitions of Relevant Terms..... 17

Links to state/federal regulations 21

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POLICY TITLE: Equal Opportunity, Harassment and Nondiscrimination Policy¹
RESPONSIBLE ASSOC. /VICE PRESIDENT: Vice President of Student Affairs/CSSO
Associate Vice President of Human Resources

Introduction

Madison Area Technical College (“Madison College” or “College”) is committed to maintaining an environment in which students, faculty, and staff can work and learn together in an atmosphere free of all forms of harassment and discrimination. In order to foster a climate of respect that effectively contributes to a safe campus, Madison College has developed policies and procedures that provide a prompt, fair, and impartial process for resolving complaints of harassment and discrimination. The policy and procedures are in compliance with College values and federal and state laws and regulations.

Policy Statement

It is the policy of Madison College to maintain a workplace and educational environment free from harassment and discrimination. Discrimination, at times, may include restriction from and/or involvement in activities such as admissions, enrollment, athletics, or employment. Discrimination can also be in the form of harassment, sex-based discrimination, sexual harassment, sexual assault, stalking, sexual exploitation, and dating or domestic violence. Violations of this Policy are subject to resolution using the College’s Title IX / Sexual Harassment Grievance Process or the Harassment / Discrimination Grievance Process.

Policy Scope

This policy applies to all members of the Madison College community. The community includes, but is not limited to, students², employees, and third parties (i.e., vendors, contractors, visitors, guests, etc.).

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² For the purpose of aspects of this Policy that are covered under Title IX, “student” is defined as an individual who is participating in or attempting to participate in an education program or activity of the College. (*Per 34 CFR Part 106, §106.3*). For instances outside of Title IX, “student” refers to a broader context and may also include student applicants.

This policy applies to all Madison College programs, activities, practices, operations, and to behaviors that take place on campus, on property owned or controlled by the College, and at College-sponsored events³ (whether on- or off-campus).

All actions by a member of the College community that involve the use of the College's computing and network resources from a remote location, including but not limited to accessing email accounts, are considered to have occurred on campus.

This policy may also apply to off-campus or online conduct when the College determines that the conduct affects a substantial Madison College interest. A substantial College interest is defined to include:

- a. Any action that constitutes a criminal offense as defined by law.
- b. Any situation where it appears that the Respondent may present a danger or threat to the health or safety of self or others.
- c. Any situation that significantly imposes upon the rights, property or achievements of a student OR causes significant social disruption.
- d. Any situation that is detrimental to the workplace and/or educational environment of Madison College.

Any online postings or other electronic communication by students and employees, including cyber-bullying/harassment that occurs completely outside of the College's control will be subject to this policy when the online behaviors cause a substantial on-campus disruption or use College networks and/or technology. While Madison College may not control websites, social media, and other venues in which harassing communications are made, when such communication is reported to the College, the College maintains a responsibility to review and attempt to resolve the situation.

Consistent with the U.S. Department of Education's implementation regulations for Title IX, complaints regarding incidents that occur outside of the United States will not be reviewed under the College's Title IX / Sexual Harassment Grievance Process. They can, however, be reviewed under other standards detailed in this Equal Opportunity, Harassment and Non-Discrimination Policy or other College policies and standards.

Title IX Coordinators

Madison College's Title IX Coordinators are the College's officials with responsibility for coordinating Madison College's efforts to comply with and carry out the requirements under Title IX and all associated regulations. Contact information for the Title IX Coordinators are listed on the [College's website](#).

³ For the purpose of aspects of this Policy that are covered under Title IX, reported incidents must occur against a person in the United States.

The Title IX Coordinators oversee the implementation of this policy in partnership with the Dean of Students Office and Human Resources Department.

When actual knowledge of an alleged violation of this policy is reported to the College, the Title IX Coordinator determines if the allegations are subject to resolution using Madison College's Title IX / Sexual Harassment Grievance Process or the College's Harassment / Discrimination Grievance Process.

ADA/504 Coordinators

Madison College's ADA/504 Coordinators are the College's officials with responsibility for coordinating Madison College's efforts to comply with and carry out the requirements under Title I and Title II of the Americans with Disability Act. These responsibilities include the centralized review, investigation, and resolution of reports of Title I and Title II complaints. Contact information for the ADA/504 Coordinators are listed on the [College's website](#).

The ADA/504 Coordinators coordinate efforts related to the investigation, resolution and implementation of corrective measures to stop, remediate, and prevent disability discrimination, harassment, and retaliation prohibited under this policy.

Equal Opportunity and Nondiscrimination

Madison College is committed to Equal Opportunity /Affirmative Action for its employees and students as required by law. Madison College will provide a workplace and educational environment that is free of discrimination and harassment.

Discrimination

Discrimination is defined as unfair or unequal treatment on the actual or perceived basis of:

- Age
- Ancestry
- Arrest or Conviction Record
- Color
- Creed
- Disability
- Gender Identity
- Genetic Testing
- Marital Status
- Military Service
- National Origin
- Political Affiliation
- Race
- Sex
- Sexual Orientation
- The Use or Non-Use of Lawful Products during Non-Working Hours

Discriminatory Harassment

Discriminatory harassment is unwanted, deliberate, or repeated unsolicited comments, slurs, demeaning references, gestures, graphic materials, physical contact, solicitation of favors, advances, bullying, or other adverse treatment when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, student status or academic participation.
- Submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting an individual.
- The conduct has the purpose or effect of substantially creating an intimidating, hostile, or offensive environment that tangibly affects or interferes with an individual's job performance or other employment or academic opportunities.

The College does not permit any form of discrimination or harassment on any basis prohibited by law. All members of the College community share a collective responsibility for creating and maintaining an environment that is free from discrimination and harassment.

Madison College provides a grievance process for individuals who believe they are victims of discrimination or harassment. If it is determined that discrimination or harassment has occurred, Madison College will take appropriate remedial action as identified in the [Harassment / Discrimination Grievance Process](#). (PDF, 1715KB)

NOTE: The College reserves the right to address harassment even if it is not based on a protected status and/or does not create a hostile environment.

Sexual Harassment

Sexual harassment is a form of discriminatory harassment and is prohibited. The College has adopted the following definition of sexual harassment (per 34 CFR Part 106, §106.3), in order to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual Harassment is conduct on the basis of sex that constitutes or includes the offenses of Quid Pro Quo sexual harassment, hostile environment sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking, and includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Sexual Harassment

Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:

- 1) An employee of the College conditioning the provision of an aid, benefit, or service of the College, on an individual's participation in unwelcome sexual conduct (**quid pro quo sexual 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 the College's education program or activity (**hostile environment sexual harassment**).

NOTE: In determining whether a hostile environment exists, the College will consider the totality of circumstances. This includes factors such as the impact the conduct has had on the Complainant, the nature and severity of the conduct, the frequency and duration of the conduct, the relationship

between the parties (including accounting for whether one individual has power or authority over the other), the respective ages of the parties, the context in which the conduct occurred, and the number of persons affected. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

3) **Sexual Assault.** As defined in 20 U.S.C. § 1092(f)(6)(A)(v), an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of temporary or permanent mental or physical incapacity. Sexual assault offenses include, but are not limited to, the following:

- **Forcible Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. (Also includes attempted rape.)
- **Forcible Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim.
- **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 victim.
- **Forcible Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Wisconsin law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent, under Wisconsin law.

For the State of Wisconsin's definition of sexual assault, refer to Wis. Stat. § 940.225 at <http://www.legis.state.wi.us/rsb/stats.html>.

4) **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, 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.

5) **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.

6) **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.

For the purposes of this definition of stalking:

- *Course of conduct* means two or more acts, including, but not limited to, acts 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.
- *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the victim.
- *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

NOTE: Madison College prohibits consensual amorous or sexual relationships between a supervisor and an employee or between employees and students at Madison College, even when both parties have or appear to have consented to the relationship.

Other Civil Rights Offenses

Offenses, outside of those covered by Title IX and described above, that are additionally prohibited as harassment under this policy when directed toward an individual with actual or perceived membership in a protected class include, but are not limited to, the following offenses:

- **Sexual Exploitation** which is defined as taking non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute sexual harassment under this policy.
- **Threatening** or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person.
- **Discrimination**, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.

- **Ostracism** or exclusion of any person within the College community, when related to admission, joining or any other group-affiliation activity.
- **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another.
- **Bullying**, defined as repeated and/or severe aggressive behavior, likely to intimidate or intentionally hurt, control, or diminish another person, physically or mentally; that is not speech or conduct otherwise protected by the First Amendment.

Violation of any other Madison College Policy may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Disability Discrimination and Accommodations

Madison College is committed to full compliance with the American with Disabilities Act of 1990 (ADA and ADAAA) and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. An individual with a disability is defined by the ADA as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is regarded by others as having such an impairment.

Students with Disabilities

Madison College is committed to creating conditions that empower and support students with disabilities to reach their chosen learning goals. The College ensures equal access to all academic programs and activities by offering students with disabilities reasonable accommodations and support.

Employees with Disabilities

To ensure equal opportunity, reasonable accommodations are provided to employees or applicants with a disability unless such accommodations will result in undue hardship to the College.

- Employment opportunities are not to be denied because of the need to make reasonable accommodations for an individual's disability.
- Reasonable accommodations are provided in accordance with the Americans with Disabilities Act in a timely and cost-effective manner.

Pregnancy and Parenting

Madison College is committed to the protection and equal treatment of pregnant employees, students, students with pregnancy-related conditions, and students who are new parents in all aspects of an educational program. This includes Madison College-sponsored extracurricular activities and

internships, athletics, financial aid and scholarships, career counseling/advising, and lab and clinical work.

Students

According to the Title IX of the Education Amendments of 1972, students must be allowed to take time off school for pregnancy, childbirth, miscarriage, abortion and/or recovery therefrom for as long as their doctor says is medically necessary. That could mean absences for necessary medical appointments, or a longer leave of absence for a high-risk pregnancy or childbirth. This rule applies even if taking medically necessary leave would require an absence for longer than the school's leave policy ordinarily allows. A student cannot be penalized for taking such leave and must be able to return to school in the same status they held before taking leave.

Pregnant students and those with related medical conditions may also be eligible for disability protections and services under the Americans with Disabilities Act (ADA), depending upon their condition. **Although pregnancy is NOT a disability under the law, the medical conditions that may affect a pregnant student may qualify as disabling conditions.**

When necessary, Madison College will make adjustments to the regular program of a student that are reasonable and responsive to the student's temporary pregnancy status. Examples of this may include, but are not limited to, providing a larger desk, allowing frequent trips to the bathroom or permitting temporary access to elevators.

- Students with pregnancy-related conditions should submit the [Student Pregnancy Accommodation Request](#) form on the College's website or contact Disability Resource Services at 608-246-6716 or drstransition@madisoncollege.edu to make a request for accommodations under this policy.

Employees

Employees with pregnancy-related conditions should refer to the [Employee Handbook](#) for information regarding their eligibility for disability protections and services, and contact their [Human Resources Business Partner](#) to make a request for accommodations under this policy.

Reporting Alleged Policy Violations

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and associated procedures, should be made internally using any of the following options:

- Report online, using the [Harassment / Discrimination Report](#) form located on the College's website.
- Report directly to the Title IX Coordinators or ADA/504 Coordinators, referenced above.
- File an incident report with Public Safety Services. (All campuses - (608) 245-2222; Truax Campus – Room B1240; Goodman South Campus – Room 101)

More specific information for reporting sexual harassment can be found in the [Title IX / Sexual Harassment Grievance Process](#). (PDF, 4960KB) More specific information for reporting other forms of harassment or discrimination can be found in the [Harassment / Discrimination Grievance Process](#). (PDF, 1715KB)

Inquiries may also be made externally to:

**Office for Civil Rights (OCR)
U.S. Department of Education**

400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline:
800-421-3481
Fax: 202-453-6012
TDD# 877-521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

**Wisconsin Department of
Workforce Development
Division of Equal Rights
Madison Office**

201 E Washington Ave; Room A100
Madison, WI 53703
Phone: 608-266-6860
TTY: 608-264-8752
Web: <https://dwd.wisconsin.gov/er/>

**Equal Employment Opportunity
Commission (EEOC)
Reuss Federal Plaza**

310 West Wisconsin Avenue, Suite 500
Milwaukee, WI 53203-2292
Phone : 1-800-669-4000
Fax : 414-297-4133
TTY : 1-800-669-6820
ASL Video Phone : 844-234-5122
Web: <http://www.eeoc.gov/ocr>

Alleged violations of this policy should be reported as soon as possible after the incident occurred. While there is no time limitation on reporting, if the Respondent is no longer a student or employee at the time of the complaint or report, the College may be unable to effectively take disciplinary action against the Respondent. However, the College will still seek to meet its obligations by providing support for the Complainant and taking steps to end the prohibited behavior, prevent its recurrence, and address its effects.

Amnesty

The College recognizes that individuals who have consumed alcohol when they are not of legal drinking age or who have been using illegal drugs may be hesitant to report a violation of this policy. In cases when a Complainant or witness(es) was under the influence of alcohol or illicit drugs at the time of an alleged incident, the College will not pursue college-based disciplinary actions against the Complainant (or against a witness) for a policy violation (e.g., underage drinking, drug use). However, the College reserves the right to require counseling, education, or other preventative measures to help prevent alcohol or drug violations in the future. The College's commitment to amnesty in these situations does not prevent action by police or other legal authorities against an individual.

Responsible Employees

All College employees, except for College counseling staff, have a duty to report allegations of discrimination, harassment, or retaliation to the Title IX Coordinator, or other appropriate College designee. All employees observing or receiving reports of a potential violation of the Equal Opportunity, Harassment, and Nondiscrimination Policy must promptly file a [report](#) including all relevant details about the alleged incident. This includes the name of the alleged Respondent (if

known), the individual who experienced the alleged incident, possible witnesses, as well as relevant facts, including the date, time, and location.

Anonymous Reporting

Anonymous reports are accepted but may hinder an investigation. The Complainant may request to dismiss the complaint at any time. The College will comply unless there is a compelling threat to health or safety.

False Allegations

It is considered a serious offense to make deliberate false and/or malicious allegations. In addition, parties or witnesses that knowingly provide false evidence, tamper with, or destroy evidence after being directed to preserve such evidence, or deliberately mislead an official investigating a complaint, can be subject to appropriate disciplinary action. This does not include allegations made in good faith.

Supportive Measures

Upon receiving a report of an alleged policy violation, the College will offer supportive measures to involved parties as appropriate. Supportive measures are made available when the College is provided actual knowledge of allegations of harassment, discrimination, or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant and/or the Respondent. Such measures are designed to restore or preserve equal access to Madison College's education programs or activities without unreasonably burdening the other party. Such measures can be requested by the involved parties and are subject to approval. These 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
- Work accommodations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- No contact orders (Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.)
- Or similar measures

Confidentiality

Madison College makes every effort to preserve confidentiality of reports that fall under this policy. Generally, those individuals with a role in the grievance process will be informed about the complaint to preserve the rights and privacy of the involved parties. The College reserves the right to designate which college officials have a legitimate interest in being informed about incidents that fall within this policy.

First Amendment Statement

Speech or conduct protected by the First Amendment will NOT be considered a violation of Madison College's Equal Opportunity, Harassment and Nondiscrimination Policy. Discrimination, harassment, and retaliation against members of the College community are NOT protected expression or the proper exercise of academic freedom. The College considers academic freedom in the investigation of reports of discrimination or harassment that involve an individual's statements or speech in an academic context.

The College is committed to the protection of individual rights under the First Amendment (and related principles of academic freedom) and in preserving the widest possible dialogue within its educational environment. Off-campus discriminatory or harassing speech by employees may be regulated by the College only when such speech is made in the employee's official or work-related capacity or is directed at a student or employee of the College and creates or has the propensity to create a hostile environment in the educational or work activities of the College.

Independence and Conflict-of-Interest

The Title IX and ADA/504 Coordinators act with independence and authority free from material bias and material conflicts of interest. The Coordinators oversee all resolutions under this policy and act to ensure that all Madison College representatives act with objectivity and impartiality. Any party who believes one or more of these individuals has a material conflict of interest or a material bias must raise the concern promptly so the Madison College may evaluate the concern and find a substitute if appropriate.

To raise any concern involving bias, conflict of interest, or complaints of misconduct and/or discrimination by the Title IX or ADA/504 Coordinators, contact Madison College's President:

Dr. Jack E. Daniels, III

JDanielsIII@madisoncollege.edu

1701 Wright St., AB148

Madison, WI 53704

To raise a concern involving bias, conflict of interest, or complaints of harassment and/or discrimination by an investigator or any other team member involved in the Title IX / Sexual Harassment Grievance Process or the Harassment / Discrimination Grievance Process, contact a Title IX Coordinator.

The failure of a party to timely raise a concern of conflict of interest or bias may result in a waiver of the issue for purposes of any appeal.

Emergency Removal

Students

Madison College can act to temporarily remove a Respondent entirely or partially from their education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Behavioral Intervention Team using standard objective violence risk assessment procedures.

Employees

Employees of Madison College may be placed on a paid administrative leave during the duration of a grievance process. During a paid administrative leave, the employee will suffer no loss of pay or benefits. The Title IX Coordinator and Director of Employee Relations will determine whether to place an employee on a paid administrative leave. Employees on a paid administrative leave are expected to remain available during normal business hours and to cooperate with the investigative process.

Retaliation

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Protected activity under this policy includes, but is not limited to, reporting an incident, participating in a grievance process, supporting a party involved in the process, providing relevant information to an allegation, etc. Retaliation is a serious violation of Madison College's Equal Opportunity, Harassment and Nondiscrimination Policy. Acts of alleged retaliation should be reported immediately to a Title IX Coordinator and will be promptly investigated.

Retaliation includes, but is not limited to: ostracizing the person; pressuring the person to drop, not support the complaint, or to provide false or misleading information; or engaging in conduct that may reasonably be perceived to affect adversely that person's educational, living, or work environment; threatening, intimidating, or coercing the person; or otherwise discriminating against any person for exercising their rights or responsibilities under this policy.

Standard of Responsibility and Sanctions

The standard of evidence used, when addressing allegations of discrimination and harassment, is the ***preponderance of evidence*** standard; that is, ***it is more likely than not***, that a violation of this policy has occurred. When there is a decision that a violation has occurred, the College will take prompt corrective action and impose appropriate sanctions. The specific sanction will depend on a variety of factors which may include, but is not limited to, the type of conduct, severity, and other factors of misconduct.

Appeals

Both parties have the right to appeal the decision rendered in regard to a complaint. The right to appeal is solely limited to the following bases (a) significant procedural errors or (b) the appearance of substantive new evidence not available at the time of the original decision or (c) a material conflict of interest or material bias by a Title IX Coordinator, investigators, or decision-makers assigned to the grievance process that was raised prior to the decision being issued. No other grounds for appeals are permitted under this policy.

NOTE: Employees have the right to appeal disciplinary action resulting from the Title IX / Sexual Harassment Grievance Process that involves employee termination, employee discipline or workplace safety in accordance with College [grievance procedures](#).

Discretion in Application

The College retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the College's interpretation or application differs from the interpretation of the parties. Despite the College's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the College retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable. The provisions of this policy and the Hearing Procedures associated herewith are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the College retains discretion to revise this policy and the related grievance processes at any time, and for any reason. The College may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

Training

The College will ensure that College officials acting under this policy, including but not limited to the Title IX Coordinators, investigators, hearing panel members, administrative officers, informal resolution facilitators, College provided advisors, and appeal officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

Record Keeping

The College will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in the College's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

College Compliance

The College complies with federal, state, and local laws, including, but not limited to, laws that require the reporting of crimes to law enforcement authorities.

APPENDIX A: Definitions of Relevant Terms

Additional definitions may be found in the Title IX / Sexual Harassment Grievance Process and the Harassment / Discrimination Grievance Process.

Actual Knowledge. Notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of Madison College who has authority to institute corrective measures on behalf of the college (per 34 CFR Part 106, §106.3)

Coercion. Use of intimidation or unreasonable pressure for sexual activity.

College Community. The Madison College community includes, but is not limited to, students, employees, and third parties (i.e., vendors, contractors, visitors, guests, etc.). For the Title IX/ Sexual Harassment Grievance Process, Student is defined as an individual who is participating in or attempting to participate in an education program or activity of the College. (Per 34 CFR 106, §106.3).

Complainant. An individual who is alleged to be the victim of conduct that could constitute sexual harassment (per 34 CFR Part 106, §106.3). At the time of filing a complaint, a complainant must be participating in or attempting to participate in the education program or activity of Madison College.

Consent. Wisconsin law defines consent as words or overt actions by a person who is competent to give informed consent. Wis. Stat. § 940.225 (4). Consent is informed, freely and actively given, and mutually understood permission/agreement. If physical force, coercion, intimidation, and/or threats are used, there is no consent. If a person is mentally or physically incapacitated or impaired so that they cannot understand the sexual situation, there is no consent. This includes impairment due to alcohol or drug consumption and being asleep or unconscious.

Examples of some of the behaviors that would constitute a lack of consent include, but are not limited to, the following:

- Engaging in sexual activity with an unconscious or semi-conscious person;
- Engaging in sexual activity with someone who is asleep or passed out;
- Engaging in sexual activity with someone who has said “no”;
- Engaging in sexual activity with someone who is not reciprocating by body movement;
- Engaging in sexual activity with someone who is vomiting, unable to stand without assistance, or must be carried to bed;
- Allowing another person to engage in sexual activity with your partner without his or her consent;
- Requiring any person to perform any sexual activity as a condition of acceptance into a student club, athletic, or any other organization affiliated with the College;
- Telling someone you will “out” him/her if he/she does not engage in sexual activity (e.g., threatening to disclose the person’s sexual orientation without his/her consent);
- Telling someone you will fail him/her or give him/her a grade different from what is deserved if he/she do not agree to engage in sexual activity; or

- Facilitating or assisting in a sexual assault including purchasing or providing alcohol or drugs to further a sexual assault.

Lack of consent is a critical factor in determining whether Sexual Harassment has occurred. As defined above, consent is a mutual, voluntary, and informed agreement to participate in specific sexual acts with another person that is not achieved through unreasonable manipulation or coercion—or any kind of physical force or weapon—and requires having cognitive ability to agree to participate. Consent requires an outward demonstration, through mutually understandable words, conduct or action, indicating that an individual has freely chosen to engage in the specific sexual acts. A verbal “no” constitutes lack of consent, even if it sounds insincere or indecisive.

Impairment or incapacitation due to alcohol and/or drug use, permanent/ temporary psychological or physical disability, and being below the age of consent in the applicable jurisdiction are factors that detract from or make consent impossible.

Silence or an absence of resistance does not imply consent, and consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Even in the context of an ongoing relationship, consent must be sought and freely given for each specific sexual act. Consent may be withdrawn at any time. When consent is withdrawn, sexual activity must immediately stop.

FERPA. The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children’s education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student (“eligible student”). The FERPA statute is found at 20 U.S.C. § 1232g and the FERPA regulations are found at 34 CFR Part 99.

Force. Use of physical violence and/or physical imposition to engage in sexual activity. Force is committed in four primary ways: physical force; coercion; threat; or intimidation, which is an implied threat.

Formal Complaint. A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that MC investigate the allegation of sexual harassment.

Incapacitation. Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One's own intoxication is not an excuse for failure to recognize another person's incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol or other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

Investigation. Systematic and formal inquiry into allegations of prohibited discrimination or protected status harassment brought by complainants through the process described

Parties. The Complainant(s) and the Respondent(s), collectively.

Reasonable Person. As pertains to the definition of stalking, a reasonable person under similar circumstances and with similar identities to the victim.

Respondent. An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment (per 34 CFR Part 106, §106.3)

Responsible Employee. Under Title IX, a responsible employee includes any employee: who has the authority to take action to redress sexual violence; who has been given the duty of reporting incidents of sexual violence or any other misconduct by students to the Title IX coordinator or other appropriate college designee; or whom a student could reasonably believe has this authority or duty.

All College employees, with the exemption of College counseling staff, must report to the school's Title IX Coordinator, or other appropriate College designee, all relevant details about the alleged sexual violence that the student or another person has shared and that the College will need to determine what occurred and to resolve the situation. This includes the names of the alleged respondent (if known), the student who experienced the alleged sexual violence, other students involved in the alleged sexual violence, as well as relevant facts, including the date, time, and location.

Report. See definition of "Actual Knowledge."

Sexual Misconduct. A broad term that identifies forms of discrimination and harassment based on sex including, sexual harassment, sexual assault, sexual exploitation, dating violence, domestic violence, and stalking. Sexual misconduct includes other acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereotyping, even if those acts do not involve conduct of a sexual nature.

Links to state/federal regulations

- Title IX of the Education Amendments of 1972 prohibits gender-based discrimination and harassment in educational programs or activities at institutions that receive Federal financial assistance. Learn more from the [U.S. Department of Education](#). It also prohibits discrimination based on pregnancy, marital status, or parental status and protects a student's right to take necessary medical leave and to be free of harassment, intimidation, or other unfairness because of pregnancy-related conditions.