



## VII. Prohibited Conduct

This policy prohibits all forms of Discrimination and Discriminatory Harassment on the basis of a Protected Characteristic. The policy also prohibits retaliation against any individual participating in any role in a reporting, investigation, or resolution process under this policy.

Federal regulations provide for certain procedures that must be used in the case of conduct that meets the definition of sexual harassment under Title IX. However, where conduct does not meet certain threshold requirements under Title IX, the same or similar conduct is still prohibited by the College. Where the types of prohibited conduct are listed as both, they are labeled as “Title IX” or “Non-Title IX” for clarity.

### A. Discrimination on the Basis of a Protected Characteristic

Discrimination occurs when a behavior or policy has the purpose or effect of restricting or denying an individual’s access to opportunities, programs, or resources in relation to a Protected Characteristic in a manner that interferes with an individual’s working, academic, residential, or social environment or athletic participation or performance.

The College recognizes that, in some cases, behavior that may otherwise appear to constitute discrimination based on the above definitions may nevertheless be permissible under federal and state laws, regulations, and guidance. In such cases, permissible actions under such laws, regulations, and guidance shall not be considered a violation of this Policy. For example, the offering of or participation in programs for the benefit of veterans and/or military personnel constitutes the provision of different aid, benefits, or services on the basis of veteran/military

status, but it is permissible under federal law and therefore would not constitute a violation of this policy. Discrimination on the basis of sex/gender in employment is permissible in situations where sex/gender is a bona fide occupational qualification reasonably necessary to the normal operation of the College. Note that the federal regulations regarding Title IX include certain exceptions, such as single-gender housing, athletic participation and chorus participation, that do not constitute Sex/Gender Discrimination.

Note that for purposes of an individual that is entitled to reasonable accommodations (see Section V), those reasonable accommodations shall be taken into account in determining whether there is a Policy violation. For example, if an individual is permitted to wear different clothing or to change vacation days because of religion, that will not be considered a violation under this policy.

## **B. Harassment or Intimidation on the Basis of a Protected Characteristic**

Discriminatory Harassment or Intimidation is any unwanted verbal or physical conduct on the basis of a Protected Characteristic when one or more of the following conditions is present:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, participation in a program or activity, or grade in a course or coursework;
- Submission to or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting an individual; or
- Such conduct is sufficiently pervasive, offensive, or abusive to have the purpose or reasonable effect of interfering with an individual's work or educational performance, or creating an intimidating, hostile, or offensive work or educational environment, under both an objective and subjective standard. A single incident may create a hostile environment if the incident is sufficiently severe.

The determination as to whether a hostile environment exists is based on the totality of the circumstances, including but not limited to:

- The nature and severity of the conduct;

- The type, frequency and duration of the conduct;
- The identity of, and relationship between, the respondent and the complainant;
- The number of individuals involved;
- The age and maturity levels of the respondent and complainant; and
- The location of the conduct and the context in which it occurred.

## C. Sexual Harassment — Title IX

There are six types of prohibited conduct that qualify as “sexual harassment” under Title IX, each of which is defined more specifically below: (1) quid pro quo sexual harassment, (2) unwelcome conduct sexual harassment, (3) sexual assault, (4) dating violence, (5) domestic violence, and (6) stalking. The definitions used here are required by federal regulations.

For reported behavior to qualify as prohibited conduct under this section, in addition to meeting the elements of the specific type of sexual harassment below, it must meet all of the following threshold requirements, as determined by the Coordinator and as mandated by federal regulations:

- The conduct must have occurred against a person in the United States.
- The conduct must have occurred within the College’s education program or activity. For purposes of this provision, this means that the conduct must have occurred either (a) in a location, event, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs or (b) in relation to a building owned or controlled by a student organization that is officially recognized by the College.
- The complainant must be participating in or attempting to participate in the education program or activity of the College at the time the formal complaint is filed.

Conduct that does not meet these threshold requirements is subject to a Title IX Dismissal, but may still be resolved through the Investigator Resolution (Non-Title IX) as described more fully in Section XI.G.5.

- **Quid Pro Quo.** Conduct on the basis of sex where a College employee conditions the provision of a College aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or,
- **Unwelcome Conduct.** Unwelcome conduct on the basis of sex that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or,
- **Sexual Assault.** Sexual assault is engaging or attempting to engage in one of the following activities with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity:
  - Sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g. penis, finger, hand, or tongue) or an object, however slight;
  - Intentional or forced touching of clothed or unclothed body parts for the purpose of sexual gratification, sexual degradation or sexual humiliation. *(Effective as of 8/11/2025)*  
Intentional touching of the intimate body parts of another for the purpose of sexual gratification. Intimate body parts include the breasts, buttocks, groin and genitals. *(Effective up to 8/10/2025)*
  - Sexual intercourse (anal, oral, or vaginal) between individuals who are not permitted to marry. In Ohio, this means that individuals closer in kin than second cousins may not have sexual intercourse.
  - Sexual intercourse (anal, oral, or vaginal) with a person who is under the statutory age of consent. In Ohio, state law prohibits sex with any individual under the age of 13; additionally, individuals over the age of 18 may not have sex with individuals under the age of 16.
- **Dating violence.** Conduct on the basis of sex that consists of 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 complainant'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.
- **Domestic violence.** Felony or misdemeanor crimes constituting conduct on the basis of sex committed by:
  - a current or former spouse or intimate partner of the victim;

- a person with whom the victim shares a child in common;
- a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or 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 in which the crime of violence occurred.
- **Stalking.** Conduct on the basis of sex that consists of engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition:
  - Course of conduct means two or more acts, including, but not limited to, acts in which the respondent 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 complainant; or,
  - Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

## D. Sexual Assault — Non-Title IX

Conduct that meets the definition of Sexual Assault in Section C.3., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A. above will be charged as "Sexual Assault — Non-Title IX."

## E. Dating Violence — Non-Title IX

Conduct that meets the definition of Dating Violence in Section A.4., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A will be charged as "Dating Violence — Non-Title IX."

## **F. Domestic Violence — Non-Title IX**

Conduct that meets the definition of Domestic Violence in Section C.5., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A will be charged as “Domestic Violence - Non-Title IX.”

Conduct that otherwise meets the definition of Domestic Violence in Section C.5., above, except that it is not “conduct on the basis of sex” shall also be charged as “Domestic Violence — Non-Title IX.”

## **G. Stalking — Non-Title IX**

Conduct that meets the definition of Stalking in Section C.6., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A will be charged as “Stalking — Non-Title IX.”

Conduct that otherwise meets the definition of Stalking in Section C.6., above, except that it is not “conduct on the basis of sex” shall also be charged as “Stalking - Non-Title IX.”

## **H. Sexual Harassment — Non-Title IX**

“Sexual Harassment — Non-Title IX” is any unwelcome sexual advance, request for sexual favors, or other unwanted verbal or physical conduct of a sexual nature when one or more of the following conditions are present:

- Submission to or rejection of such conduct is an explicit or implicit condition of an individual’s employment, evaluation of academic work, or any College program or activity; or
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance, i.e. it is sufficiently serious, pervasive, or persistent as to create an intimidating, hostile, demeaning, or sexually offensive working, academic, residential, or social environment under both an objective and subjective standard.

A single incident of Sexual Harassment — Non-Title IX alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a pattern of incidents to create a hostile environment. The determination of whether an environment is “hostile” will be based on the totality of the circumstances, including, but not limited to:

- The frequency of the speech or conduct;
- The nature and severity of the speech or conduct;
- Whether the speech or conduct was physically threatening;
- The effect of the speech or conduct on the individual’s mental and/or emotional state;
- Whether the speech or conduct was directed at more than one person;
- Whether the speech or conduct arose in the context of other discriminatory conduct;
- Whether the speech or conduct unreasonably interfered with the individual’s educational opportunities or performance (including off campus study), Kenyon-controlled living environment, work opportunities or performance;
- Whether a statement is a mere utterance of an epithet that engenders offense in an employee or a student or offends by mere discourtesy or rudeness; and/or  
Whether the speech or conduct deserves the protections of academic freedom.

Sexual Harassment — Non-Title IX can take many forms:

- May be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated;
- Does NOT have to include intent to harm, be directed at a specific target, or involve repeated incidents;
- May be committed by anyone, regardless of gender, age, position, or authority;
- May be committed by a stranger, an acquaintance, or someone with whom the individual has an intimate or sexual relationship;
- May be committed by or against an individual or may be a result of the actions of a group;

- May occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation;
- May occur in the classroom, in the workplace, in residential settings, over electronic media (including the internet, telephone, and text), or in any other setting; and
- May affect the individual and/or others who witness or observe the harassment.

There may be situations where respondent's reported conduct constitutes both "Sexual Harassment — Title IX" and "Sexual Harassment — Non-Title IX." The respondent will receive notice of both charges and the resolution process will investigate both charges. If the reported conduct is adjudicated and the respondent is found responsible for the charge of "Sexual Harassment — Title IX," the respondent will not be separately sanctioned for the charge of "Sexual Harassment — Non-Title IX."

## I. Threats Toward an Intimate Partner

Threats Toward an Intimate Partner means any threatened act of violence between individuals who are involved or have been involved in a sexual, dating, spousal, domestic or other intimate relationship. The College will evaluate the existence of an intimate relationship based upon the reporting party's statements and taking into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

## J. Sexual Exploitation

Sexual Exploitation is knowingly, intentionally or purposefully taking advantage of the sexuality of another person without consent or in a manner that extends the bounds of consensual sexual activity without the knowledge of the other individual. Examples of Sexual Exploitation include:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved; Voyeurism;
- Non-consensual sharing of images, photography, video, or audio recording (this could also include items that are AI generated or digitally edited) of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;

- Non-consensual recording of individuals in locations in which they have a reasonable expectation of privacy, such as restrooms or locker rooms, regardless of whether the images captured reveal sexual activity or nudity;
- Prostituting another individual;
- Exposing one's genitals in non-consensual circumstances;
- Removal of a condom, without consent, during sexual intercourse;
- Knowingly exposing another individual to a sexually transmitted infection or virus without that individual's knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity, e.g., by using alcohol or other drugs (such as Rohypnol or GHB).

## K. Retaliation

Retaliation is defined as intimidating, threatening, coercing or discriminating against any individual:

- For the purpose of interfering with any right or privilege secured by this Policy, Title IX or its implementing regulations; or
- Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy or under the complaint procedures relating to complaints filed with the U.S. Department of Education's Office of Civil Rights, or Title IX complaints filed with the U.S. Department of Education's Office for Civil Rights.
- Retaliation also includes filing a complaint against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX law or regulations.

A complaint may allege conduct of a sexual nature that might not meet the definition of sexual harassment under Title IX. The conduct could occur against a person outside the US (study abroad), might not occur within the institution's program or activity, or might not meet the severe, pervasive, or objectively offensive standard in this policy. Nonetheless, if someone files a complaint relating to such conduct, retaliation for doing so would be prohibited.

Retaliation does not include the College's decision to charge an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a proceeding under this Policy. A determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith. For example, if a Respondent is found not responsible for a violation of this Policy, this finding alone does not mean that the Complainant has provided materially false information in bad faith.

When a student is found responsible for retaliation, the recommended sanction is a minimum of one semester suspension from the College.

---

# Kenyon

Address

**Gambier, Ohio 43022,**

**USA**

Phone

**740-427-5000**