

Aquinas College's Policy Prohibiting Sexual Misconduct & Harassment

A. Rationale For Policy

Aquinas College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from sexual misconduct and harassment as defined in this policy. When an alleged violation of this policy is reported, the allegations are subject to resolution under "Formal Grievance Process Under 2020 Title IX Regulations ("Process A")," "Administrative Resolution for Student Respondents ("Process B")," or "Administrative Resolution for Employee Respondents ("Process C")," as determined by the Title IX Coordinator, and as detailed in applicable procedures.

B. Sexual Misconduct (applicable to students)

This section is applicable to students at Aquinas College. Aquinas College prohibits the following forms of sexual misconduct.

Conduct on the basis of sex that satisfies one or more of the following:

1. Sexual Exploitation

Sexual exploitation is taking non-consensual or abusive sexual advantage of another for the person's own advantage or benefit, or for the advantage or benefit of anyone other than the person being exploited. Examples include, but are not limited to:

- a. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed);
- b. Causing or attempting to cause the *incapacitation* of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give *consent* (as defined in this policy) to sexual activity;
- c. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as disseminating sexual pictures/videos without the photographed/videoed person's consent), including the making or posting of revenge pornography;
- d. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection.

2. Sexual Harassment: Hostile Environment

- a. Unwelcome conduct,
- b. taken against a person on the basis of sex, and
- c. determined to be so severe, or
- d. pervasive, or
- e. persistent,
- f. that it effectively interferes with or denies an individual's ability to participate in or benefit from Aquinas College's education program or activity, and/or

Harassment may be in the form of verbal, written, graphic, or physical conduct.

Aquinas College will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." When harassment rises to the level of creating a hostile environment, Aquinas College may also impose sanctions on the Respondent through application of the appropriate grievance process.

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Aquinas College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under Aquinas College policy, but may be addressed through respectful conversation, remedial actions, education, formal resolution, and/or informal resolution mechanisms.

3. **Sexual Assault** (defined in 20 U.S.C. 1092(f)(6)(A)(v)):

an offense classified as forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, and further defined as:

a. Sex Offenses, Forcible:

- 1) Any sexual act directed against another person
- 2) without consent of the Complainant,
- 3) including instances in which the Complainant is incapable of giving consent.

a) **Rape:**

- i. Penetration, no matter how slight,
- ii. of the vagina or anus with any body part or object, or
- iii. oral penetration by a sex organ of another person,
- iv. without consent of the Complainant.

b) **Sodomy:**

- i. Oral or anal sexual intercourse with another person,
- ii. forcibly, and/or
- iii. against that person's will (non-consensually), or
- iv. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

c) **Sexual Assault with an Object:**

- i. The use of an object or instrument to penetrate,
- ii. however slightly,
- iii. the genital or anal opening of the body of another person,
- iv. forcibly, and/or
- v. against that person's will (non-consensually), or
- vi. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

d) **Fondling:**

- i. The touching of the private body parts of another person (buttocks, groin, breasts),
- ii. for the purpose of sexual gratification,
- iii. forcibly, and/or
- iv. against that person's will (non-consensually), or
- v. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

b. Sex Offenses, Non-Forcible:

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- 1) Unlawful
- 2) non-forcible
- 3) sexual intercourse, including the following two types:
 - a) **Incest**:
 - i. Non-forcible sexual intercourse,
 - ii. between persons who are related to each other,
 - iii. within the degrees wherein marriage is prohibited by Michigan law.
 - b) **Statutory Rape**:
 - i. Non-forcible sexual intercourse,
 - ii. with a person who is under the statutory age of consent of 16.

4. **Dating Violence** (defined in 34 U.S.C. 12291(a)(10)):

- a. Violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - 1) 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. For the purposes of this definition—
 - 2) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - 3) Dating violence does not include acts covered under the definition of domestic violence.

5. **Domestic Violence** (defined in 34 U.S.C. 12291(a)(8)):

- a. Violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Michigan, or
- g. by 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 Michigan.

6. **Stalking** (defined in 34 U.S.C. 12291 (a)(30)):

- a. Engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
 - 1) would cause a reasonable person to fear for the person's safety, or
 - 2) the safety of others; or
 - 3) Suffer substantial emotional distress.

For the purposes of this definition—

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- a) *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.
- b) *Reasonable Person* means a reasonable person under similar circumstances and with similar identities to the Complainant.
- c) *Substantial Emotional Distress* means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

C. Title IX Sexual Harassment (applicable to students, faculty, & staff)

Section C of this policy is applicable to students, faculty, and staff at Aquinas College. Aquinas College has adopted the following definition of "*Title IX Sexual Harassment*" in order to comply with the requirements mandated by the 2020 Title IX Regulations, 34 CFR 106.30. Sexual harassment that does not meet the definition(s) set forth in this section may be addressed under Section B. Sexual Misconduct of this policy (for students), or other applicable Human Resources policies (for employees).

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

1. Quid Pro Quo Sexual Harassment:

- a. An employee of the College,
- b. conditions the provision of an aid, benefit, or service of the College,
- c. on an individual's participation in unwelcome sexual conduct.

2. Hostile Environment Sexual Harassment:

- a. Unwelcome conduct, that is
- b. sexual or based on sex, and
- c. determined by a reasonable person,
- d. to be so severe, and
- e. pervasive, and,
- f. objectively offensive,
- g. that it effectively denies a person equal access to the College's education program or activity.

3. Sexual Assault (as defined in Section B. of this policy)

4. Dating Violence (as defined in Section B. of this policy)

5. Domestic Violence (as defined in Section B. of this policy)

6. Stalking (as defined in Section B. of this policy)

D. Consent

Aquinas College applies this definition of consent to all forms of prohibited conduct under this policy:

- a. **Consent** is
 - 1) affirmative, and
 - 2) knowing, and

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- 3) voluntary, and
 - 4) clearly communicated
 - 5) by word or action.
- b. Consent may be withdrawn by either party at any time. Once consent is withdrawn, the sexual activity must cease immediately, and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.
 - c. Consent to one form of sexual activity does not constitute consent to other forms of sexual activity. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in each sexual activity.
 - d. In evaluating whether consent was obtained, the presence of physical violence, threats, intimidation, and/or *coercion* will be considered.
 - 1) **Coercion** is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent.
 - a) When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
 - e. Consent cannot be obtained by taking advantage of the *incapacitation* of another, where it was known, or reasonably should have been known, that the other was incapacitated.
 - 1) **Incapacitation** is such that it renders the person incapable of self-care and protection and occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give informed (knowing) consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
 - b) Incapacitation could be the result of alcohol, other drugs, sleep or unconsciousness, a temporary or permanent physical or mental health condition, or involuntary physical restraint.

E. Prohibition of Retaliation

Retaliation is taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual: reported an incident of prohibited conduct under this policy, participated in a grievance process related to this policy, supported an impacted party, assisted in providing information relevant to an investigation, and/or acted in good faith to oppose conduct that constitutes a violation of this policy.

Acts of alleged Retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated and addressed.

F. Jurisdiction of This Policy

This policy applies to the education programs and activities of the College, to conduct that takes place on the campus or on property owned or controlled by the College, at college-sponsored events, or in buildings owned or controlled by the College's recognized student organizations. This policy also applies to activities on the College's computer and internet networks, digital platforms, and computer hardware or software owned or operated by the College.

Off-Campus Conduct: This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the College's educational programs. The College may also extend jurisdiction to off-campus locations and activities when the Title IX Coordinator determines

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that the conduct meets the definition of sexual harassment or retaliation and affects a substantial College interest.

A substantial College interest includes:

1. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
2. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
3. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
4. Any situation that is detrimental to the educational interests or mission of the College.

Regardless of where the conduct occurred, the College will address reports/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off campus sponsored program or activity.

Unless otherwise determined by the College in its discretion, the Respondent must be a member of the College's community for the Formal Grievance Process to apply. However, irrespective of whether the Respondent is known or is a member of the Aquinas College Community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Further, even when the Respondent is not a member of the College community, Supportive Measures, Remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from college property and/or events.

The scope of Title IX does not extend to activities occurring outside the United States. However, conduct that occurs abroad in connection with the College's educational programming and meets the definition of Sexual Harassment under this policy is still prohibited by the College even if not within the scope of Title IX law and regulations.

When a situation involves both conduct alleged to violate this policy and conduct alleged to have violated one or more other rules or policies of the College, the College may, at its discretion and with notice to the parties, elect to utilize the Formal Grievance Process to consider and address all such allegations in one proceeding.

G. Online Behavior

The policies of Aquinas College are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College's education program and activities or use the College networks, technology, or equipment.

Although Aquinas College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the College Community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social

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media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Aquinas College community.

H. Notifying the College of Concerns Under this Policy

Any person who experiences or observes any conduct believed to constitute a violation of this policy is encouraged to report it in accordance with the College's procedures. The Title IX Coordinator will provide information and support as outlined in the procedures.

I. Mandated Reporters

All faculty, staff, administrators, and student employees in Residence Life and the Center for Diversity, Inclusion, & Equity (except for licensed counselors in Counseling, Health, & Wellness Services, Chaplains, and medical professionals in the Student Health Center) are designated as Mandated Reporters and are expected to immediately report all known details to the Title IX Coordinator when they become aware of any act of sexual misconduct or sexual harassment involving a member of the Aquinas College community. Reports from Mandated Reporters should be made through the online reporting form at www.aquinas.edu/titleix.

In the event of notification by a Mandated Reporter, the Title IX Coordinator will connect with the Complainant to provide information about supportive measures, resources, rights, and options related to reporting as outlined in the procedures.