



SEXUAL/GENDER HARASSMENT, DISCRIMINATION AND MISCONDUCT POLICY

INTRODUCTION

Members of the LeMoyne-Owen College (“LOC”) community, guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. LOC believes in zero tolerance for sex/gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator’s attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and a mechanism for determining when those expectations have been violated.

LOC’s sex/gender harassment, discrimination and misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom.

LOC uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt, “innocence” and “burdens of proof” are not applicable, but LOC never assumes a responding party is in violation of LOC’s policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.



TITLE IX COORDINATOR

LOC's Title IX Coordinator oversees compliance with all aspects of the sex/gender harassment, discrimination and misconduct policy. The Coordinator reports directly to the LOC's president. Questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to discrimination or harassment may do so by reporting the concern to LOC's Title IX Coordinator:

Name: Dr. Teresa Jones
Title: Title IX Coordinator
Address: 807 Walker Ave, Memphis, TN 38126
Telephone number: 901-435-1601
Email address: Teresa.Jones@loc.edu

Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)
Atlanta Office
U.S. Department of Education
61 Forsyth Street S.W., Suite 19T10
Atlanta, GA 30303-8927
Telephone #: (404) 974-9406
Facsimile: (404) 974-9471
Email: OCR.Atlanta@ed.gov
Web: <http://www.ed.gov/ocr>

In the event that an incident involves alleged misconduct by the Title IX Coordinator, reports should be made directly to the LOC's President at (901) 435-1676 or president@loc.edu.

OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/student/employee handbooks. LOC does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of LOC. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff- student, administrator-student, supervisor-supervisee) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

SEXUAL VIOLENCE -- RISK REDUCTION TIPS

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “NO” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.

- Don't take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or substances.
- Realize that your potential partner could feel intimidated or coerced by you. You may have a power advantage simply because of your gender or physical presence. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

- 1. Sexual Harassment**
- 2. Non-Consensual Sexual Contact (or attempts to commit same)**
- 3. Non-Consensual Sexual Intercourse (or attempts to commit same)**
- 4. Sexual Exploitation**

1. SEXUAL HARASSMENT

Sexual harassment is: unwelcome sexual, sex-based and/or gender-based verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any LOC program is encouraged to report it immediately to the Title IX Coordinator. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of quid pro quo harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- sufficiently severe, or
- persistent or pervasive, and
- objectively offensive that it unreasonably interferes with, denies or limits someone's ability to participate in or benefit from LOC's educational [and/or employment], social and/or residential program.

Quid Pro Quo Harassment is:

- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature
- By a person having power or authority over another constitutes sexual harassment when
- Submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational [or employment] progress, development, or performance.
- This includes when submission to such conduct would be a condition for access to receiving the benefits of any educational [or employment] program.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

2. NON-CONSENSUAL SEXUAL CONTACT

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Sexual Contact includes:

- Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner.

3. NON-CONSENSUAL SEXUAL INTERCOURSE

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- however slight,
- with any object,
- by a person upon another person,
- that is without consent and/or by force.

Intercourse includes:

- vaginal or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact), no matter how slight the penetration or contact.

4. SEXUAL EXPLOITATION

Occurs when one person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another person;
- Non-consensual digital, video or audio recording of nudity or sexual activity;
- Unauthorized sharing or distribution of digital, video or audio recording of nudity or sexual activity;
- Engaging in voyeurism;
- Going beyond the boundaries of consent (such as letting your friend hide in the closet to watch you having consensual sex);
- Knowingly exposing someone to or transmitting an STI, STD or HIV to another person;
- Intentionally or recklessly exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

- ADDITIONAL APPLICABLE DEFINITIONS:

- Consent:
 - Consent is
 - clear, and
 - knowing, and
 - voluntary [or affirmative, conscious and voluntary],
 - words or actions,
 - that give permission for specific sexual activity.
 - Consent is active, not passive.
 - Silence, in and of itself, cannot be interpreted as consent.
 - Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.
 - Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
 - Previous relationships or prior consent cannot imply consent to future sexual acts.
 - Consent can be withdrawn once given, as long as that withdrawal is clearly communicated.
 - In order to give consent, one must be of legal age.
 - Sexual activity with someone you know to be or should know to be incapacitated constitutes a violation of this policy.
 - Incapacitation can occur mentally or physically, from developmental disability, by alcohol or other drug use, or blackout.¹
 - The question of what the responding party should have known is objectively based on what a reasonable person in the place of the responding party, sober and exercising good judgment, would have known about the condition of the reporting party.
 - Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
 - This policy also covers a person whose incapacity results from mental disability, sleep, unconsciousness, involuntary physical restraint, or from the taking of rape drugs. [Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy.]

- Force: Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcomes free will or resistance or that produces consent (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).

¹ Blackout, as it is used in scholarly literature, refers to a period where memory formation is blocked. A period of consistent memory loss is termed a blackout, whereas periods where memory is both lost and formed intermittently can be referred to in the literature as a brownout. Neither state of blackout nor brownout automatically indicates incapacitation, but factual context can establish that a blackout or a brownout is occurring in an individual who is incapacitated (where incapacity is defined as an inability to make rational, reasonable decisions or judgments). It is a mistake to automatically associate memory loss with incapacitation; they are often coupled, but not always.

- Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want sex, 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.
 - NOTE: There is no requirement for a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.
- Use of alcohol or other drugs will never function to excuse any behavior that violates this policy.
 - This policy is applicable regardless of the sexual orientation and/or gender identity of individuals engaging in sexual activity.
 - For reference to the pertinent state statutes on sex offenses, please see [insert reference here, or place in Appendix].

OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex or gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the LOC community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as
 - a. Repeated and/or severe
 - b. Aggressive behavior
 - c. Likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
 - d. That is not speech or conduct otherwise protected by the 1st Amendment.
6. Intimate Partner Violence, defined as violence or abuse between those in an intimate relationship to each other;
7. Stalking
 - a. Stalking 1:
 - i. A course of conduct
 - ii. Directed at a specific person
 - iii. On the basis of actual or perceived membership in a protected class
 - iv. That is unwelcome, AND
 - v. Would cause a reasonable person to feel fear
 - b. Stalking 2:
 - i. Repetitive and Menacing
 - ii. Pursuit, following, harassing and/or interfering with the peace and/or safety of another]

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. Retaliation against an individual for an allegation, for supporting a reporting party or for assisting in providing information relevant to an allegation is a serious violation of LOC policy.

SANCTIONS

The following sanctions may be imposed upon any member of the community found to have violated the Sex/Gender Harassment, Discrimination and Misconduct Policy. Factors considered in sanctioning are defined in [reference or link to Student Handbook, Faculty Handbook, Staff Handbook]. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

Student Sanctions (listed below and/or defined in the Student Handbook)

- Warning
- Probation
- Suspension
- Expulsion
- Other Actions

Employee Sanctions (listed below and/or defined in the Employee Handbook)

- Warning – Written or Verbal
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Demotion
- Loss of Annual Pay Increase
- Suspension without Pay
- Suspension with Pay
- Revocation of Tenure
- Termination

Sanctioning for Sexual Misconduct

- Any person found responsible for violating the Non-Consensual Sexual Contact policy (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.*
- Any person found responsible for violating the Non-Consensual Sexual Intercourse policy (where intercourse or attempted intercourse has occurred) will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).
- Any person found responsible for violating the Sexual Exploitation or Sexual Harassment policies will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.

CONFIDENTIALITY, PRIVACY & REPORTING POLICY

Confidentiality and Reporting of Offenses Under This Policy

All LOC employees (faculty, staff, administrators) are expected to immediately report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate LOC officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless a victim has requested information to be shared. Other resources exist for a victim to report crimes and policy violations and these resources will take action when an incident is reported to them. The following describes the two reporting options at LOC:

Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- Licensed professional counselors
- Local rape crisis counselors
- Domestic violence resources,
- Local or state assistance agencies,
- Clergy/Chaplains

Formal Reporting Options

All LOC employees have a duty to report sex discrimination or harassment to the Title IX Coordinator. Employees must share all details of the reports they receive. Remedial actions may result without formal LOC action.

If a victim does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the victim may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. In cases indicating pattern, predation, threat, weapons and/or violence, LOC will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow LOC to honor that request, LOC will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by LOC when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: LOC's President, the Vice-President of Student Affairs and the Vice-President of Academic Affairs. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy.

Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

Name: Dr. Teresa Jones
Title: Title IX Coordinator
Address: 807 Walker Ave, Memphis, TN 38126
Telephone number: 901-435-1601
Email address: Teresa.Jones@loc.edu

Failure of an employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a violation of LOC policy and can be subject to disciplinary action for failure to comply with LOC's policies.