

SECTION: Personnel

SUBJECT: Sexual Misconduct - Title IX

Point of Contact: HRS; Title IX Coordinator

Other LCSC offices directly involved with implementation of this policy, or significantly affected by the policy: Student Affairs; President's Office; Security

Date of approval by LCSC authority: September 26, 2014

Date of State Board Approval: N/A

Date of Most Recent Review: September 2014

Summary of Major Changes incorporated in this revision to the policy: Revised to add a statement that this policy also includes minors who are participating in campus events and third party reporting.

LCSC is committed to providing an environment that emphasizes the dignity and worth of every member of its community and that is free from harassment and discrimination based upon race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Such an environment is necessary to a healthy learning, working, and living atmosphere because discrimination and harassment undermine human dignity and the positive connection among all people at our College. Acts of discrimination, harassment, sexual misconduct, stalking, and retaliation will be addressed consistent with this policy.

It is important that members of the College community understand that the law does not just prohibit discrimination, and harassment of employees by employers. The law also prohibits discrimination and harassment between members of the College community more generally: for example, between an instructor and a student, between two students, or between a student and an applicant or campus visitor. This policy also includes minors who participate in campus events. The policy applies in all College programs and activities, including, but not limited to, discrimination in athletics, instruction, grading, College housing, and College employment. In addition, the law prohibits retaliation against an individual for opposing any practices forbidden under this policy, for bringing a complaint of discrimination or harassment, for assisting someone with such a complaint, for attempting to stop such discrimination or harassment, or for participating in any manner in an investigation or resolution of a complaint of discrimination or harassment. Any individual, who believes they may have been the target of unlawful discrimination or harassment, or witnesses this type or behavior towards someone else, must feel free to report their concerns for appropriate investigation and response, without fear of retaliation.

All complaints or any concerns about conduct that may violate this policy and retaliation should be filed with the Title IX Coordinator or other college official listed below:

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Title IX Coordinator
Human Resource Services Director
Security Director
Vice President for Student Affairs

Upon receiving a complaint, the designated college official will follow the procedures described in the Sexual Harassment Investigative procedures.

- 1 *Harassment* is covered under this policy if it is based upon an individual's race, color, religion, national origin, creed, service in the uniformed services (as defined in state and federal law), veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation. Harassing conduct may take various forms, including name-calling, graphic or written statements (including any electronic communication device), or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Sex-based harassment includes sexual harassment, which is further defined below, and non-sexual harassment based on stereotypical notions of what is female/feminine v. male/masculine or a failure to conform to those gender stereotypes.

A. Sexual Harassment:

Sexual Harassment can include unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, including sexual assault. Sexual harassment, including sexual assault, can involve persons of the same or opposite sex. Consistent with the law, this policy prohibits two types of sexual harassment:

(1) Tangible Employment or Educational Action:

This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment or participation in a College activity is conditioned upon, either explicitly or implicitly, submission to or rejection of unwelcome sexual advances or requests for sexual favors, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a College program or activity. Generally, perpetrators will be agents or employees with some authority from the College.

(2) Hostile Environment:

Sexual harassment may create a hostile environment as defined in section 1.B below.

B. Hostile Environment Harassment

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Hostile Environment based on race, color, religion, national origin, creed, service in the uniformed services, veteran status, sex, age, political ideas, marital or family status, pregnancy, physical or mental disability, genetic information, gender identity, gender expression, or sexual orientation exists when harassment:

- (1) is sufficiently serious (i.e., severe, pervasive, or persistent) and objectively offensive so as to deny or limit a person's ability to participate in or benefit from the College's programs, services, opportunities, or activities ; or
- (2) when such conduct has the purpose or effect of unreasonably interfering with an individual's employment.

Harassment that creates a hostile environment violates this policy.

A hostile environment can be created by anyone involved in a College program or activity (e.g., administrators, faculty members, students, and even campus guests). Mere offensiveness is not enough to create a hostile environment. Although repeated incidents increase the likelihood that harassment has created a hostile environment, a serious incident, such as a sexual assault, even if isolated, can be sufficient.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive.

- C. *Sexual Misconduct* includes sexual assault, inducing incapacitation for sexual purposes, sexual exploitation, and relationship violence.
- (1) *Sexual Assault* means an actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to:
 - (a) Involvement in any sexual contact when the victim is unable to consent.
 - (b) Intentional and unwelcome touching of, or coercing, forcing, or attempting to coerce or force another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks, or breast).
 - (2) Sexual intercourse without consent, including acts commonly referred to as "rape."
 - (a) *Consent* is informed, freely given, and mutual. If coercion, intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption, or being asleep or unconscious. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim. Silence does not necessarily constitute consent. Past consent to sexual activities does not imply ongoing future

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consent. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

- (3) *Inducing incapacitation for sexual purposes* includes using drugs, alcohol, or other means with the intent to affect or having an actual effect on the ability of an individual to consent or refuse to consent (as “consent” is defined in this policy) to sexual contact.
 - (4) *Sexual Exploitation* occurs when a person takes non-consensual or abusive sexual advantage of another for anyone’s advantage or benefit other than the person being exploited, and that behavior does not otherwise constitute one of the preceding sexual misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:
 - (a) Prostituting another person;
 - (b) Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;
 - (c) Non-consensual distribution of photos, other images, or information of an individual’s sexual activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing an individual who is the subject of such images or information;
 - (d) Going beyond the bounds of consent (such as letting your friends hide in the closet to watch you having consensual sex);
 - (e) Engaging in non-consensual voyeurism;
 - (f) Knowingly transmitting a sexually transmitted disease, such as HIV, to another without disclosing your sexually transmitted disease status;
 - (g) Exposing one’s genitals in non-consensual circumstances, or inducing another to expose his or her genitals;
 - (h) Possessing, distributing, viewing or forcing others to view illegal pornography;
 - (5) *Relationship Violence - Domestic Violence - Dating Violence* is abuse or violence between partners or former partners involving one or more of the following elements:
 - (a) Battering that causes bodily injury;
 - (b) Purposely or knowingly causing reasonable apprehension of bodily injury;
 - (c) Emotional abuse creating apprehension of bodily injury or property damage;
 - (d) Repeated telephonic, electronic, or other forms of communication -- anonymously or directly -- made with the intent to intimidate, terrify, harass, or threaten;
- D. *Stalking* includes repeatedly following, harassing, threatening, or intimidating another which may include telephone, mail, electronic communication, social media, or any other action, device or method that purposely or knowingly causes substantial emotional

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distress or reasonable fear of bodily injury or death.

- E. *Retaliation* is action taken by an accused individual or an action taken by a third party against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy.

2 Off-Campus Conduct

Conduct that occurs off campus can be the subject of a complaint or report and will be evaluated to determine whether it violates this policy, *e.g.* if off-campus harassment has continuing effects that create a hostile environment on campus. Allegations of off-campus sexual misconduct are of particular concern and should be brought to the College's attention.

3 Mandatory Employee Reporting of Sex-based Discrimination, Sexual Harassment and Sexual Misconduct Involving Students

- A. In order to enable the College to respond effectively and to stop instances of sex-based discrimination, sexual harassment and sexual misconduct involving students at the College proactively, all College employees must, within 24 hours, if practical, of receiving the information, report information they have about alleged or possible sex-based discrimination, sexual harassment, and sexual misconduct involving students to the Title IX Coordinator or designated college official. Employees who are statutorily prohibited from reporting such information are exempt from these reporting requirements, including licensed health-care professionals.
- B. Upon receiving a report of alleged or possible sex-based discrimination, sexual harassment, or sexual misconduct, the Title IX Coordinator will evaluate the information received and determine what further actions should be taken based on the preponderance of the evidence. The college official investigating the report will follow the procedures described in the [Discrimination Grievance Procedures](#). He or she will take steps, either directly with the complainant or through a reporting employee, to provide information about the College's Discrimination Grievance Procedures, as well as available health and advocacy resources and options for criminal reporting.
- C. All these incidents can be reported anonymously by clicking on this link:
<https://www.lighthouse-services.com/lcsc>

4 Sanctions and Corrective Action

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A. For Employees:

Violations of this policy will be addressed through the [Discrimination Grievance Procedures](#). Consequences for violating this policy will depend upon the facts and circumstances of each particular situation. Sanctions and Corrective Action could include: a requirement not to repeat or continue the discriminatory, harassing, or retaliatory conduct, a reprimand, a no-contact order, denial of a merit pay increase, reassignment, suspension or termination. The severity of sanctions or corrective action will depend on the frequency and severity of the offense and any history of past discriminatory, harassing or retaliatory conduct. A finding of discrimination, harassment that creates a hostile environment or results in a tangible employment or educational action, or sexual misconduct may be cause for disciplinary action, up to and including the discharge of employees. The College may also take appropriate action if it does not find discrimination or harassment that creates a hostile environment or results in a tangible employment or educational action, but (a) the College found that the respondent engaged in disruptive behavior or (b) to prevent the creation of a hostile environment.

B. For Students:

Any student found responsible for violating the policy on sexual harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

*The conduct body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officer(s) nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

5 Amnesty for Drug or Alcohol Possession and Consumption Violations

The College strongly encourages students to report instances of sex-based discrimination, sexual harassment, and sexual misconduct involving students. Therefore, students who report information about sex-based discrimination, sexual harassment, or sexual misconduct involving students will not be disciplined by the College for any violation of the College's drug or alcohol possession or consumption policies in which they might have engaged in connection with the reported incident.

6 Free Speech and Academic Freedom

- A. Lewis-Clark State College has a long tradition of, and a deep commitment to, academic freedom. The welfare and strength of the College and of society at large depend upon the ability to engage in free expression in the search for meaning. To this end, LCSC recognizes and protects full freedom of inquiry, teaching, research, discussion, study, publication, and for artists, the creation and exhibition of works of art, without hindrance,

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restriction, equivocation, or reprisal. This right extends to other facets of campus life to include the right of a faculty member or student to speak on general educational questions or about the Administration and operation of his/her own institution.

- B. Constitutionally protected speech and traditional notions of academic freedom are valued in higher education. These ideals help to create the stimulating and challenging learning environment that should characterize higher education. In the spirit of a true College environment, individuals are encouraged to invite, rather than inhibit, discourse on ideas. In addressing all complaints and reports under this policy, the College will take all permissible actions to ensure the safety of students and employees while complying with free speech requirements for students and employees. While the College will vigilantly protect students' and employees' rights against sex discrimination under this policy, this policy does not apply to curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials.

7 External Complaints:

If you filed a complaint with a college official and believe the College's response was inadequate, or you otherwise believe you have been discriminated against by the College on the basis of race, color, national origin, sex, including sexual harassment, disability, age, or retaliation, you may file a complaint with the Office for Civil Rights (OCR) of the U.S. Department of Education based in Seattle or the Educational Opportunities Section (EOS) of the Civil Rights Division of the U.S. Justice Department of Justice, and a complaint based on religion with EOS of the U.S. Justice Department.

As a student or employee, if you filed a complaint with a college official and believe the College's response was inadequate, or you otherwise believe you have been discriminated against by the College on the basis of race, color, national origin, sex, including sexual harassment, disability, age, religion, creed, pregnancy, marital status, familial status (housing only), or political beliefs, or retaliation, you may file a complaint with the Office of Human Rights at: <http://humanrights.idaho.gov/> or 208-334-2873 or 888-249-7025.