

SECTION: Personnel

SUBJECT: Discrimination, Sexual Harassment, and Retaliation Prohibited

Point of Contact: Title IX Coordinator; HRS

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: Interim Policy; August 14, 2020

Date of State Board Approval: N/A

Date of Most Recent Review: Interim Policy - August 14, 2020; December 2020

Summary of Major Changes incorporated in this revision to the policy: Updated for compliance with federal law and new Title IX rule issued May 6, 2020.

1. Purpose

Lewis Clark State College (the College) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, the College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. The College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

2. Scope

The core purpose of this policy is to outline and describe the prohibition of all forms of discrimination. Discrimination may involve exclusion from activities, such as admission, athletics, or employment. The College has developed a [process](#) to resolve such complaints and this process is referred to as Process B. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. The College will use a [process](#) referred to as Process A to resolve this type of complaint. When an alleged violation of this policy is reported, the Title IX Coordinator will determine which process is applicable to the allegations.

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When the Respondent is a member of the College community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the College community. This community includes, but is not limited to, students,¹ student organizations, faculty, administrators, staff, and third parties such as guests, visitors and volunteers. The related procedures may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

3. Glossary of Terms

- A. *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- B. *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- C. *Complaint (formal)* means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the recipient investigate the allegation.
- D. *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act [Campus Security Authority](#) status).
- E. *Day* means a business day when the College is in normal operation.
- F. *Education program or activity* means locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.
- G. *Final Determination*: A conclusion by the standard of proof that the alleged conduct occurred and whether it did or did not violate policy.
- H. *Finding*: A conclusion by the standard of proof that the conduct did or did not occur as alleged.
- I. *Formal Grievance Process* means “Process A,” a method of formal resolution designated by the College to address conduct that falls within the policies included below, and which complies with the requirements of [Title IX](#).

¹ For the purpose of this policy, the College defines “student” as any individual who is enrolled in a college credit or non-credit course on the first day of the course.

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- J. *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- K. *Hearing Panel* refers to those who have decision-making and sanctioning authority within the College's Formal Grievance process.
- L. *Investigator* means the person or persons charged by the College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- M. *Mandated Reporter* means an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator and/or their supervisor⁴.
- N. *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- O. *Official with Authority (OWA)* means an employee of the College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the College.
- P. *Parties* include the Complainant(s) and Respondent(s), collectively.
- Q. *Process A* means the Formal Grievance Process.
- R. *Process B* means the informal alternative resolution procedures.
- S. *Recipient* means a postsecondary education program that is a recipient of federal funding.
- T. *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College's educational program.
- U. *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- V. *Resolution* means the result of an informal or Formal Grievance Process.
- W. *Sanction* means a consequence imposed by the College on a Respondent who is found to have violated this policy.
- X. *Sexual Harassment* is the umbrella category including the offenses of sexual

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harassment, sexual assault, stalking, and dating violence and domestic violence. [See Section 17.b.](#), for greater detail.

- Y. *Title IX Coordinator* is at least one official designated by the College to ensure compliance with Title IX and the College's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- Z. *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

4. Title IX Coordinator

The Coordinator for the Office of Equity, Inclusion and Compliance serves as the Title IX Coordinator and the 504 Coordinator. The Coordinator oversees implementation of the College's policy on equal opportunity, harassment, nondiscrimination and disability compliance. The Title IX Coordinator has the primary responsibility for coordinating the College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

5. Independence and Conflict of Interest

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and related procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the President of the College in the Administration Building, Room 207, by email at president@lsc.edu, or by phone at 208-792-2216. Concerns of bias, a potential conflict of interest, misconduct, or discrimination by any other Title IX Team member should be raised with the Title IX Coordinator.

6. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and related procedures, may be made internally to:

Ashley Edwards
Title IX Coordinator
Office of Equity, Inclusion and Compliance
Administration Building, Room 102
500 8th Avenue
Lewiston, Idaho 83501

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208-792-2689

Email: anedwards@lcsc.edu

Web: lcsc.edu/title-ix

The College has determined the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. These Officials with Authority listed below may also accept notice or complaints on behalf of the College:

- Director of Campus Security;
- Director of Human Resource Services
- Director of Residence Life;
- Athletics Director;
- Deans;
- Vice Presidents; or
- President

The College has also classified all employees as Mandated Reporters (with limited exceptions) of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. [Section 19](#) on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries about or concerns regarding this policy and related procedures, may be made externally to:

U.S. Office of Civil Rights Department of Education
915 Second Avenue Room 3310
Seattle, WA 98174-1099
206-607-1600
800-421-3481
OCR@ed.gov
OCR.Seattle@ed.gov

U.S. Equal Employment Opportunity Commission
(EEOC) Federal Office Building
909 First Avenue; Suite 400
Seattle, WA 98104-1061
800-669-4000
www.eeoc.gov

Idaho Department of Labor
1158 Idaho Street
Lewiston, ID 83501-1960
208-799-5000
lewistonmail@labor.idaho.gov

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Idaho Human Rights Commission
317 W. Main St. – Second floor
Boise, ID 83735-0660
208-334-2873
inquiry@ihrc.idaho.gov

7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- A. File a complaint with, or give verbal notice to the Title IX Coordinator, Deputy Coordinator (appointed by the Title IX Coordinator), or Official with Authority. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed above.
- B. Report online, using the reporting form posted at <https://www.lighthouse-services.com/lcsc/IncidentLandingPage-LewisClark.asp>. Anonymous reports are accepted but may give rise to a need to investigate. The College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.
- C. Report the alleged conduct to any staff or faculty member designated as a [Mandated Reporter](#).

A complaint (formal) means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the College investigate the allegation(s). A complaint may be filed with the Title IX Coordinator as set forth in this policy. Formal complaints **must** contain the Complainant's physical or digital signature.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

8. Supportive Measures

The College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College's education program or activity, including measures designed to protect the safety of all parties or the College's educational environment, and/or deter harassment, discrimination, and/or retaliation.

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The College will maintain the privacy of the supportive measures, and will only share information about specific supportive measures with others on a need to know basis. The College will act to ensure as minimal an academic impact on the parties as possible and will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- A. Referral to counseling, medical, and/or other healthcare services
- B. Referral to the Employee Assistance Program
- C. Referral to community-based service providers
- D. Visa and immigration assistance
- E. Student financial aid counseling
- F. Education to the community or community subgroup(s)
- G. Altering campus housing assignment(s)
- H. Altering work arrangements for employees or student-employees
- I. Safety planning
- J. Providing campus safety escorts
- K. Providing transportation accommodations
- L. Implementing contact limitations (no contact orders) between the parties
- M. Academic support, extensions of deadlines, or other course/program-related adjustments
- N. [Timely warnings](#)
- O. Class schedule modifications, withdrawals, or leaves of absence
- P. Increased security and monitoring of certain areas of the campus
- Q. Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

9. Emergency Removal

The College can act to remove a Respondent entirely or partially from its 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 Behavior Response Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator and the Vice President for Student Affairs (students) or the Director of Human Resource Services (employees) prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner (defined on a case by case basis and communicated with the party),

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objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

10. Promptness

All allegations are acted upon promptly by the College once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in the College's procedures will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

11. Privacy

Every effort is made by the College to preserve the privacy of reports.²The College will not share

² For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of college employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the College's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the College's FERPA policy. The privacy of employee records will be protected in accordance with Human Resources policies.

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the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The College reserves the right to designate which College officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: The Office of Equity, Inclusion and Compliance, Office of Student Affairs, Human Resource Services, and the Behavior Response Team. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The College may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so. Confidentiality³ and mandated reporting are addressed more specifically below.

12. Jurisdiction of the College

This policy applies to the education program 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. The Respondent must be a member of the College's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to the College's educational program. The recipient may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest.

³ **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The College has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see pages 21-22. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

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Regardless of where the conduct occurred, the College will address notice/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. A substantial College interest includes:

- A. 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;
- B. 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;
- C. 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
- D. Any situation that is detrimental to the educational interests or mission of the College.

If the Respondent is unknown or is not a member of the 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 law enforcement or campus security if the individual would like to file a police and/or security report.

Further, even when the Respondent is not a member of the Recipient's 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.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

13. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document

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allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the notice/complaint.

14. Online Harassment and Misconduct

The policies of the College are written and interpreted broadly to include online and cyber 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.

While the 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 community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, 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 College community.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of the College's control (e.g. not on the College networks, websites, or between the College email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption.

Otherwise, such communications are considered free speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by the College only when such speech is made in an employee's official or work-related capacity.

15. Policy on Nondiscrimination

The College adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education.

The College does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- A. Race;
- B. Color;
- C. Religion;

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- D. Creed;
- E. Sex/Gender;
- F. Age;
- G. National Origin;
- H. Disability, including physical, mental, sensory disabilities and/or disability requiring the use of a trained service animal;
- I. Marital Status;
- J. Veteran Status;
- K. Genetic Information;
- L. Sexual Orientation;
- M. Gender Identity/Expression;
- N. or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the College community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of the College community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the College's policy on nondiscrimination.

When brought to the attention of the College, any such discrimination will be promptly and fairly addressed and remedied by the College according to the appropriate grievance process described below.

16. Policy on Disability Discrimination and Accommodation

The College is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the College, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Director of Human Resource Services has been designated as the College's ADA Coordinator and is responsible for overseeing efforts to comply with these disability laws. The Coordinator for the Office of Equity, Inclusion and Compliance has been designated as the College's 504 Coordinator and is responsible for responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

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Students with Disabilities

The College is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of the College.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the [Office of Accessibility Services](#), who coordinates services for students with disabilities.

The Office of Accessibility Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).

Employees with Disabilities

Pursuant to the ADA, the College will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the College.

An employee with a disability is responsible for submitting a request for an accommodation to the ADA Coordinator and providing necessary documentation. The ADA Coordinator will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties (See [LCSC Policy 3.201 Employee Disability and Accommodation Request Procedures](#)).

17. Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. The College's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under the College policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of the College policy, though supportive measures will be offered to those impacted.

A. Discriminatory Harassment

Discriminatory harassment constitutes a form of discrimination that is prohibited by the College policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of

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the community on the basis of actual or perceived membership in a class protected by policy or law.

The College does not tolerate discriminatory harassment of any employee, student, visitor, or guest. The 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.”

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities.⁴ This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive *and* objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, the College may also impose sanctions on the Respondent through application of the appropriate grievance process.

The 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 may be addressed through respectful conversation, remedial actions, education, effective alternative resolution, and/or other resolution mechanisms.

For assistance with alternate resolution and other informal resolution techniques and approaches, employees should contact the Director of Human Resource Services, and students should contact the Vice President for Student Affairs.

B. Sexual Harassment

The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Idaho regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

The College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

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

⁴ This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Recipients Investigative Guidance.](#)

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

- (1) Quid Pro Quo:
 - (a) an employee of the recipient,
 - (b) conditions the provision of an aid, benefit, or service of the recipient,
 - (c) on an individual's participation in unwelcome sexual conduct; and/or

- (2) Sexual Harassment:
 - (a) unwelcome conduct,
 - (b) determined by a reasonable person,
 - (c) to be so severe, and
 - (d) pervasive, and,
 - (e) objectively offensive,
 - (f) that it effectively denies a person equal access to the College's education program or activity.⁵

- (3) Sexual assault, defined as:
 - (a) Sex Offenses, Forcible:
 - (i) Any sexual act directed against another person,
 - (ii) without the consent of the Complainant,
 - (iii) including instances in which the Complainant is incapable of giving consent.⁶
 - (b) Forcible Rape:
 - (i) Penetration,
 - (ii) no matter how slight,
 - (iii) of the vagina or anus with any body part or object, or
 - (iv) oral penetration by a sex organ of another person,
 - (v) without the consent of the Complainant.
 - (c) Forcible Sodomy:
 - (i) Oral or anal sexual intercourse with another person,
 - (ii) forcibly,
 - (iii) and/or 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 age⁷ or because of temporary or permanent mental or physical incapacity.

⁵ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

⁶ This definition set is not taken from SRS/NIBRS verbatim. ATIXA has substituted Complainant for "victim," has removed references to his/her throughout, has defined "private body parts," has removed the confusing and unnecessary term "unlawfully," and has inserted language clarifying that the Recipient interprets "against the person's will" to mean "non-consensually." These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.

⁷ Per state law.

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- (d) 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,
 - (v) and/or against that person's will (non-consensually),
 - (vi) or 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.
- (e) Forcible Fondling:
 - (i) The touching of the private body parts of another person (buttocks, groin, breasts),
 - (ii) for the purpose of sexual gratification,
 - (iii) forcibly,
 - (iv) and/or against that person's will (non-consensually),
 - (v) or 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.
- (f) Sex Offenses, Non-forcible:
 - (i) Incest:
 - 1. Non-forcible sexual intercourse,
 - 2. between persons who are related to each other,
 - 3. within the degrees wherein marriage is prohibited by Idaho law.
 - (ii) Statutory Rape:
 - 1. Non-forcible sexual intercourse,
 - 2. with a person who is under the statutory age of consent of 16.
- (4) Dating Violence, defined as:
 - (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.
 - (i) 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—
 - (ii) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - (iii) Dating violence does not include acts covered under the definition of domestic violence.
- (5) Domestic Violence, defined as:
 - (a) violence,
 - (b) on the basis of sex,
 - (c) committed by a current or former spouse or intimate partner of the Complainant,

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- (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 Idaho, 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 Idaho.

To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- (6) Stalking, defined as:
 - (a) engaging in a course of conduct,
 - (b) on the basis of sex,
 - (c) directed at a specific person, that
 - (i) would cause a reasonable person to fear for the person's safety, or
 - (ii) the safety of others; or
 - (iii) Suffer substantial emotional distress.

For the purposes of this definition—

- (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.

The College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

C. Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity

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is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: 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. 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.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

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Consent in relationships must also be considered in context. When parties consent to BDSM⁸ or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

D. Other Civil Rights Offenses

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, the College additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.

- (1) Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation 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) Invasion of sexual privacy.

⁸ Bondage, discipline/dominance, submission/sadism, and masochism

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- (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 allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
- (d) Prostituting another person
- (e) 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
- (f) 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 to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- (g) Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
- (h) Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- (i) Knowingly soliciting a minor for sexual activity
- (j) Engaging in sex trafficking
- (k) Creation, possession, or dissemination of child pornography
- (2) Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- (3) Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- (4) Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- (5) Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
- (6) Bullying, defined as:
 - (a) Repeated and/or severe
 - (b) Aggressive behavior
 - (c) Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
 - (d) That is not speech or conduct otherwise protected by the First Amendment.

Violation of any other College policies 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.

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Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

18. Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting 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. The College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for the College or any member of the College community 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 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 and procedure.

Charges 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 complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

19. Mandated Reporting

All College employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, 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 and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

The following sections describe the reporting options at the College for a Complainant or third-

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party (including parents/guardians when appropriate):

A. Confidential Resources – On Campus

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

LCSC Student Health Services
Sam Glenn Complex; 205
208-792-2251

LCSC Student Counseling Center
Sam Glenn Complex; 212
208-792-2211

B. Confidential Resources – Off Campus

YWCA
208-746-9655

St. Joseph Regional Medical
Center 208-743-2511

Idaho Public
Health 208-799-
3100

Tri-State Memorial
Hospital 509-758-4665

Quality Behavior Health
WA Residents only
509-758-4655

All of the above-listed resources will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

The College counselors and student health teams will timely submit anonymous statistical

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information for Clery Act purposes unless they believe it would be harmful to their client, or patient.

C. Mandated Reporters and Formal Notice/Complaints

All employees of the College (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator. Information shared through the College petition processes will be reported to the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the College.

Supportive measures may be offered as the result of such disclosures without formal action from the College.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of the College policy and can be subject to disciplinary action for failure to comply.

When a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though the College is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

When a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

20. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they 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

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and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the College to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The College may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the College's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that the College's ability to remedy and respond to notice may be limited if the Complainant does not want the College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the College to honor that request, the College will offer informal resolution options (see [related procedures](#)), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College, and to have the incident(s) investigated and properly resolved through these procedures.

21. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the College must issue timely warnings for incidents reported to them that

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pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

22. False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under the College policy.

23. Amnesty for Complainants and Witnesses

The College community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to the College officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, College maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious conduct allegations. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

The College maintains a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need (See [LCSC Policy 5.315 Student Medical Amnesty Policy](#)).

24. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report

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the following for federal statistical reporting purposes (Clery Act):

- A. All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- B. Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- C. VAWA⁹-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- D. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to The College Campus Security regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, campus security, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

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