



LOYOLA MARYMOUNT UNIVERSITY
HUMAN RESOURCES POLICIES AND PROCEDURES

DIVISION: Administration/Human Resources	
SUBJECT: Reporting Sexual Misconduct	Page 1 of 11
Policy Number:	Supersedes: Reporting Sexual Misconduct
Effective Date: 08/14/20	Previously Issued: 08/01/19

1. STATEMENT OF POLICY:

The University does not tolerate sexual misconduct in any form. Sexual misconduct violates the sanctity of the human body and spirit and will not be tolerated within the University community. This policy applies regardless of sex, sexual orientation, gender, gender identity or gender expression. Any violations of this policy will be treated as serious misconduct and result in appropriate disciplinary action. The University also does not tolerate sexual harassment in any form. For more information regarding reporting sexual harassment, see [Discriminatory Harassment & Complaint Process](#) policy.

It is important for all members of the community to know that anyone can be a victim or perpetrator of sexual misconduct. This policy applies to all reports of sexual misconduct except those involving child abuse. Reports of child abuse are subject to the University’s Reporting Child Abuse policy.

It is the policy of the University to protect its students, faculty, staff, vendors, guests and other visitors to the University from sexual misconduct. It is the responsibility of every faculty and staff member to report all sexual misconduct. It is possible that, as a student, faculty or staff member, you may be the first person to whom a victim reports sexual misconduct, or you may witness or become aware of an incident of sexual misconduct. The purpose of this policy is to inform you how to report sexual misconduct.

2. DEFINITIONS:

“**Consent**” is defined as the unambiguous and willing participation or cooperation in act, behavior or attitude that is commonly understood to be consistent with the exercise of free will. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other(s) to engage in the sexual activity. Consent requires participants who are lawful adults, fully conscious, equally free and legally competent to act, have clearly communicated their willingness, cooperation, or permission to participate in the specific sexual activity engaged in, are positive and clear about their desires, and are able to cease ongoing consensual activity at any time. Refusal to consent does not have to be verbal; it can be expressed with clear gestures, body language or attitude. Lack of protest or resistance does not mean consent, nor does silence mean consent. Prior sexual history between the complainant and respondent, by itself, does not constitute consent, nor does consenting to sexual activity with one person imply consent to sexual activity with another person. Consent is not freely given if:

1. It is obtained through the use of force, through the fear of or the threat of force, through the abuse of a power positions over another (such as employment status or position within an organization) or by kidnap; or
2. A reasonable person in the position of the alleged perpetrator at the time the alleged conduct occurred should have known that the other person was unable to give consent for any of the following reasons:
 - a. The individual is unable to make an informed decision as a result of the use of alcohol, drugs or other substances (including but not limited to predatory drugs or prescribed medications);
 - b. The individual is unable to consciously respond for whatever reason including lack of consciousness, sleep, illness or shock;
 - c. The individual is under the age of eighteen and therefore legally incapable of giving consent; or
 - d. The individual is known by reason of impairment, mental condition or developmental or physical disability to be reasonably unable to consent.
3. The individual has acted or spoken in a manner that expresses a lack of consent or a refusal to consent.

The following are invalid excuses for failing to obtain affirmative consent from the Complainant:

1. The responding party's belief in affirmative consent arose from the intoxication or recklessness of the responding party; or
2. The responding party did not take reasonable steps, in the circumstances known to the responding party at the time, to ascertain whether the complaining party affirmatively consented.

“Sexual Misconduct” is defined as Sexual Assault, Sexual Exploitation, Interpersonal Misconduct, or the act of making sexual contact with the intimate body part of another person without that person's consent including as the result of sexual coercion. Intimate body parts include the sexual organs, the anus, the groin or buttocks of any person, and the breasts. Student-on-student sexual misconduct also includes sexual harassment.

“Sexual Assault” is defined to include engaging in sexual intercourse or any of the sexual activities listed below with another person without that person's consent. Sexual Assault includes, but is not limited to, rape, sexual battery, anal intercourse, oral copulation or penetration of a body cavity by a foreign object. Sexual intercourse includes the penetration, however slight, of the vagina or anus with any object or body part and of the mouth with a body part or any object in a sexual manner.

“Sexual exploitation” is sexual misconduct that occurs when a person takes unjust or abusive sexual advantage of another for his or her benefit or for the benefit of anyone other than the exploited party; and that behavior does not otherwise constitute sexual assault. Examples of sexual exploitation include, but are not limited to, invasion of sexual privacy, audio or video recording or photographing of a sexual nature utilizing webcam, camera, Internet exposure, *etc.* without knowledge and consent of all persons; going beyond the boundaries of consent (such as letting another person hide and watch you have consensual sex without the knowledge of the other party), engaging in unconsented voyeurism, coercing another against their will to expose their genitals or breasts, and prostituting another person.

“Interpersonal Misconduct” includes Dating Violence, Domestic Violence and Stalking, as defined below.

“Dating Violence” is defined as violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship shall be determined based on the complaining party’s statement with consideration of the following factors:
 - a. The length of the relationship
 - b. The type of the relationship
 - c. The frequency of interaction between the persons involved in the relationship.
3. Dating Violence includes, but is not limited to, sexual or physical abuse or threat of such abuse.

Dating violence does not include acts covered under the definition of domestic violence.

“Domestic Violence” is defined as a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under California law, or by any other person against an adult or youth victim who is protected from that person’s acts under California law.

“Stalking” is defined as engaging in a course of conduct directed at a specific person(s) that would cause a reasonable person to fear for his or her safety or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker 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.

For the purposes of this definition “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

"Sexual Harassment" for the purposes of this policy is defined as unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, physical or visual conduct by a person of either the same or opposite sex where:

1. submission to or rejection of the conduct is made either an explicit or implicit condition of academic achievement and/or employment;
2. submission to or rejection of the conduct is used as the basis for an academic and/or employment decision; or

3. the conduct has the purpose or effect of unreasonably interfering with academic, or work performance or creating an intimidating, hostile, or offensive, living, academic, or work environment.

“**Retaliation**” means adverse, non-permitted action taken against a person who reports a violation of this policy, assists someone with a report of a violation of this policy, or participates in any manner in an investigation or resolution of a report of a violation of this policy. Retaliation can include but is not limited to: threats, intimidation, coercion, harassment, reprisals, spreading negative information about an individual, exclusions from academic and non-academic programs, and/or adverse actions related to employment.

3. POLICIES/PROCEDURES:

All forms of sexual misconduct are unacceptable and will not be tolerated. A member of the University community who has been sexually assaulted or has been exposed to any form of sexual misconduct is strongly encouraged to make a report to activate the appropriate response and support, as soon as possible, by following the reporting steps below, regardless of the amount of time that has passed since the alleged misconduct occurred. The University will promptly investigate and take appropriate action to eliminate the sexual misconduct, prevent its recurrence and address its effects.

Duty to Report

Faculty and staff are required to report information received about an incident of sexual misconduct where either a student, faculty or staff member has experienced sexual misconduct, where a student has experienced sexual harassment, or where the incident of sexual misconduct occurred on campus or at a University controlled premises.

Faculty and staff with questions about their reporting requirements may contact Sara Trivedi, Title IX Coordinator/EEO Specialist in the Human Resources Department, at Human Resources, 1 LMU Drive, Suite 1900, Los Angeles, CA 90045, phone: 310.568.6105 [x86105 from campus, email: strivedi@lmu.edu.]

How to Report Sexual Harassment of a Student

Sexual harassment of a student may be reported to the Department of Public Safety at 310.338.2893 [x82893 on campus] / Campus Safety and Security (Law School Campus) at 213.736.1121 [x1121 on campus.] All other complaints of sexual harassment are subject to the University’s [Discriminatory Harassment & Complaint Process](#) policy.

How to Report Sexual Misconduct

If you witness sexual misconduct in progress or an imminent threat of sexual misconduct where it appears that sexual misconduct is likely to take place, emergency assistance should be obtained immediately by contacting the Department of Public Safety at x222 or 310.338.2893 (x82893 on campus)/Campus Safety and Security (Law School Campus) at 213.736.1121 (x1121 on campus), and the situation should be immediately reported concurrently to the LAPD by dialing 9-911.

If You Learn that a Student Experienced Sexual Misconduct

Faculty and staff who learn that a student has experienced sexual misconduct must report all information they have about the misconduct to the Department of Public Safety at 310.338.2893 [x82893 on campus] / Campus Safety and Security (Law School Campus) at 213.736.1121 (Law School Campus) or to Sara Trivedi, Title IX Coordinator/EEO Specialist in the Human Resources Department, at Human Resources, 1 LMU Drive, Suite 1900, Los Angeles, CA 90045, phone: 310.568.6105 [x86105 from campus, email: strivedi@lmu.edu.] The Department of Public Safety/Campus Safety and Security (Law School Campus) is charged with initial intake of information.

If You Learn that a Non-Student Affiliated with the University Experienced Sexual Misconduct

Faculty and staff who learn that a non-student affiliated with the University (faculty, staff, visitor) has experienced sexual misconduct, or who learn that sexual misconduct occurred on campus or on University controlled premises must report information they have about the misconduct to the Title IX Coordinator. Faculty and staff are not obligated to report identifying information of the complainant unless the Title IX Coordinator, in consultation with the appropriate Senior Vice President/Dean or designee (Westchester/Playa Vista [hereinafter "Westside Campuses"]) / the appropriate Associate Dean or designee (Law School Campus) determines that one or more of the following factors exists:

- a) The respondent has known prior allegations of sexual misconduct and a potential for a campus safety risk exists;
- b) The location in which the alleged incident occurred is a location where previous complaints of sexual misconduct occurred creating the potential for a unsafe environment for the University/Law School community;
- c) A threat to the campus community at large has been identified;
- d) A frequency or pattern is detected that suggests an unsafe environment exists for the University/Law School community or a University/Law School community member;
- e) The sexual misconduct was perpetrated with a weapon;
- f) The victim is a minor; or
- g) Some combination of the above factors exists.

If the decision is made that one or more of the above factors exists, then the reporting faculty or staff member must disclose the name of the individual who experienced sexual misconduct to the Title IX Coordinator. The University will only inform the necessary individuals and entities on campus required to provide resources, supportive measures, and perform a thorough investigation and adjudication of the complaint.

If You Are Unsure of What You Witnessed/What Has Been Reported to You

A faculty or staff member who is unsure whether what the faculty or staff member has witnessed or what has been reported to the faculty or staff member constitutes sexual misconduct should contact Sara Trivedi, Title IX Coordinator/EEO Specialist in the Human Resources Department, at Human Resources, 1 LMU Drive, Suite 1900, Los Angeles, CA 90045, phone: 310.568.6105 [x86105 from campus, email: strivedi@lmu.edu] or the Department of Public Safety at 310.338.2893 [x82893 on campus] / Campus Safety and Security (Law School Campus) at 213.736.1121 (x1121 on the Law School Campus) and report the incident. Responsive action will be taken based on the information provided.

Responsible Employees

Title IX requires all universities to identify “responsible employees” as those who are obligated to report all details of an incident as set forth above.

Responsible employees include faculty, administrative staff and some student staff. Responsible employees do not include the following:

Professional, licensed counselors, such as: the psychologists at Student Psychological Services, 310.338.2868 (Westside Campuses) / psychologists contracted by Student Affairs (Law School Campus), are not required to report any information regarding alleged sexual misconduct, to the Department of Public Safety (Westside Campuses) / Campus Safety and Security (Law School Campus), the Title IX Coordinator or any other reporting body, without consent from the complainant.

Pastoral counselors, such as Catholic priests and women religious, are not required to report any information regarding alleged sexual misconduct, to the Department of Public Safety/Campus Safety and Security (Law School Campus), the Title IX Coordinator or any other reporting body, without consent from the complainant provided they receive the information in performance of their pastoral duties.

Student Health Center Staff, such as: doctors and nurse practitioners at Student Health Services, 310.338.2881, are not required to report any information regarding alleged sexual misconduct, to the Department of Public Safety/Campus Safety and Security (Law School Campus), the Title IX Coordinator or any other reporting body on campus, without consent from the complainant. The Student Health Center Staff will be required to report signs of physical or sexual abuse to local law enforcement.

Community Resource Advisors, their names can be found on the LMU CARES website, may speak with students regarding incidents of sexual misconduct without automatically triggering a University investigation into the matter. These individuals do have time and place reporting responsibilities under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), but are not immediately obligated to report identifying information of the complainant. If the respondent’s name is presented to a Community Resource Advisor, they will be obligated to report that information to the Title IX Coordinator. Reports by the Community Resource Advisors will not trigger a University investigation unless the Title IX Coordinator in consultation with the Senior Vice President for Student Affairs or designee/Associate Dean for Student Services or designee (Law School Campus) (for student-on-student cases) or with the Executive Vice President and Chief Administrative Officer or designee/ Dean (Law School Campus) (for cases involving faculty or staff), or the Senior Vice President and Chief Finance Officer or designee (for cases involving a respondent who is not a student, faculty or staff member) determines that an investigation is necessary because of the existence of one or more of the factors described above.

Sharing of information related to a complaint of sexual misconduct

When the Department of Public Safety/Campus Safety and Security (Law School Campus) receives a report of sexual misconduct, the Department of Public Safety/Campus Safety and Security (Law School Campus) will notify governmental agencies, as appropriate. The Department of Public Safety/Campus Safety and Security (Law School Campus) will promptly notify the Title IX Coordinator. Confidentiality will be maintained to the extent possible. The University reserves the right to share information

regarding a report of sexual misconduct on a need-to-know basis, as determined in the University's sole discretion.

Retaliation

All persons are prohibited from taking any retaliatory action against any other member of the University Community, including the complainant, respondent, or witnesses involved in a complaint of sexual misconduct. Retaliation may be subject to a separate complaint under this policy and/or appropriate disciplinary action up to and including dismissal from the University. The University will respond to any accusations of retaliation. Individual(s) who believe that retaliation has occurred because the individual(s) filed or participated in the investigation of a complaint of sexual misconduct should immediately notify the Department of Public Safety at 310.338.2893 (x82893 from campus phone) / Campus Safety and Security (Law School Campus) at 213.736.1121 or the Title IX Coordinator at 310.568.6105 [x86105 from campus.]

False or Harassing Complaints Prohibited

It is a violation of this policy to file a false complaint in bad faith against anyone for the purpose of injuring the reputation of or harassing another. Any person found to have filed a false complaint in bad faith against another or for the purpose of injuring the reputation of or harassing another will be subject to appropriate discipline. This proscription is in no way intended to discourage the filing of good faith complaints of sexual misconduct, even if those complaints do not result in a finding of misconduct or sanction under the University's policies.

Chart: Reporting Sexual Misconduct Procedures (University, excluding Law School Campus)

TYPE OF REPORT	REPORTING PROCEDURE
In-progress or imminent sexual misconduct	Immediately report concurrently to the LAPD by dialing 9-911 and the Department of Public Safety at x222 or 310.338.2893 (x82893 on campus).
If you learn that a student experienced sexual misconduct	Call the Department of Public Safety at 310.338.2893 (x82893 on campus) or the Title IX Coordinator at 310.568.6105 (x86105 on campus.)
If you learn that a non-students affiliated with the University (faculty, staff or visitor) experienced sexual misconduct or that sexual misconduct has occurred on campus or on University controlled premises	Call the Title IX Coordinator at 310.568.6105 (x86105 on campus).
Student-on-student sexual harassment	Call the Department of Public Safety at 310.338.2893 (x82893 on campus).
All other complaints of sexual harassment	Follow reporting procedures in the Discriminatory Harassment and Complaint Process policy.

Chart: Reporting Sexual Misconduct Procedures (Law School Campus)

TYPE OF REPORT	REPORTING PROCEDURE
In-progress or imminent sexual misconduct	Immediately report concurrently to the LAPD by dialing 9-911 and Campus Safety and Security at 213.736.1121 (x1121 on campus).
If you learn that a student experienced sexual misconduct	Call Campus Safety and Security at 213.736.1121 (x1121 on campus) or the Title IX Coordinator at 310.568.6105 (x86105 on campus.)
If you learn that a non-students affiliated with the University (faculty, staff or visitor) experienced sexual misconduct or that sexual misconduct has occurred on campus or on University controlled premises	Call the Title IX Coordinator at 310.568.6105.
Student-on-student sexual harassment	Call Campus Safety and Security at 213.736.1121 (x1121 on campus).
All other complaints of sexual harassment	Follow reporting procedures in the Discriminatory Harassment and Complaint Process policy.

Additional Information regarding State Law and Sexual Misconduct

For additional information regarding California law regarding sexual misconduct, please see Appendix "A" - *California Law regarding Sexual Misconduct*, below.

APPENDIX "A" - California Law regarding Sexual Misconduct

The following excerpts are only intended to be partially explanatory of certain California laws pertaining to sexual misconduct. These excerpts are not intended to be an exhaustive description or list of California laws pertaining to sexual misconduct or inappropriate or criminal sexual behavior.

Excerpts from the California Penal Code, §§11165.1 and 261:

Sexual assault includes rape, statutory rape, rape in concert, incest, sodomy, lewd or lascivious acts upon a child, oral copulation, sexual penetration, child molestation and the following:

1. Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is emission of semen.
2. Sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.
3. Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.

4. The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.
5. The intentional masturbation of the perpetrator's genitals in the presence of a child.

Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

1. Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act;
2. Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another;
3. Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused;
4. Where a person is at the time unconscious of the nature of the act, and this is known to the accused;

As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

- a. Was unconscious or asleep.
 - b. Was not aware, knowing, perceiving, or cognizant that the act occurred.
 - c. Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.
 - d. Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.
5. Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief;
 6. Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat.

As used in this paragraph, "threatening to retaliate," means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.]

7. Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. The perpetrator does not actually have to be a public official.

California law also states that, “the essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime” (Code 263). California law further defines both marital rape (Code 262) and “statutory rape” (Code 261.5). Though laws vary from state to state, intercourse in which consent was not obtained or was obtained under coercive conditions will usually be considered rape.

Excerpt from Section 67386 of the California Education Code:

The governing boards of independent postsecondary institutions shall adopt policies concerning sexual assault, domestic violence, dating violence and stalking, as defined in the federal Higher Education Act of 1965 involving a student, both on and off campus. This policy shall include an affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. “Affirmative consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

Excerpts from Section 261.6 and 261.7 of the California Penal Code:

In prosecutions under Section 261, 262, 286, 287, or 289, in which consent is at issue, “consent” shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in a prosecution under Section 261, 262, 286, 287, or 289. Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent. In prosecutions under Section 261, 262, 286, 287, or 289, in which consent is at issue, evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device, without additional evidence of consent, is not sufficient to constitute consent.

Excerpts from Section 646.9 of the California Penal Code:

Any person who willfully, maliciously and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking, punishable by:

1. Imprisonment in a county jail for not more than one year, or
2. By a fine of not more than \$1,000, or
3. By both that fine and imprisonment, or by imprisonment in the state prison.

For purposes of this section, “harasses” means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose. For purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

Excerpts from Section 13700 of the California Penal Code and 6211 of the California Family Code

“Domestic Violence” means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant or person with whom the suspect has had a child or is having or has had a dating or engagement relationship, a child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected, or any other person related by consanguinity or affinity within the second degree.

For the purposes of this subdivision, “cohabitant” means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to:

1. Sexual relations between the parties while sharing the same living quarters;
2. Sharing of income or expenses;
3. Joint use or ownership of property;
4. Whether the parties hold themselves out as spouses;
5. The continuity of the relationship; and
6. The length of the relationship.