

LOYOLA LAW SCHOOL
HUMAN RESOURCES POLICIES AND PROCEDURES

DIVISION: Law School/Human Resources	
SUBJECT: Reporting Sexual Misconduct	Page 1 of 10
Policy Number:	Supersedes: N/A
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1. STATEMENT OF POLICY:

Title IX of the Education Amendments of 1972 (“Title IX”) is a federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities. Under Title IX, discrimination on the basis of sex can include sexual assault, sexual exploitation or sexual harassment.

The Law School does not tolerate sexual misconduct, as defined below, in any form. Sexual misconduct violates the sanctity of the human body and spirit and will not be tolerated within the Law School community. This policy applies regardless of sexual orientation or gender identity. Any violations of this policy will be treated as serious misconduct and result in appropriate disciplinary action. The Law School 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. It is the policy of the Law School to protect its students, faculty, staff, vendors, guests and other visitors to the Law School 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. This policy applies to all sexual misconduct complaints except those involving child abuse or student-on-student sexual misconduct. Complaints of child abuse are subject to the Law School’s Reporting Child Abuse policy. Student-on-student sexual misconduct complaints are subject to the Law School’s Student-on-Student Sexual & Interpersonal Misconduct Policy & Protocol.

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 which 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/or the breasts. Student-on-student sexual misconduct also includes sexual harassment, as defined below.

“Sexual Assault” is defined as 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, videotaping or photographing of any type (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, exposing one's genitals or breasts in non-consensual circumstances; 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 in accordance with the reauthorization of the Violence Against Women Act, 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 in accordance with the reauthorization of the Violence Against Women Act 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 in accordance with the reauthorization of the Violence Against Women Act as engaging in a course of conduct directed at a specific person 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.

“Hostile Environment” is defined as any situation in which there is harassing conduct that is sufficiently severe, pervasive and objectively offensive that it limits, interferes with or denies educational or

employment benefits or opportunities from both a subjective (the complainant) and objective (reasonable person's) viewpoint.

“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:**

A member of the Law School 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 Law School will promptly investigate and take appropriate action to eliminate the sexual misconduct, prevent its recurrence and address its effects.

All forms of sexual misconduct are unacceptable and will not be tolerated. A student found to have violated this policy will be subject to the sanctions set forth in the Student-on-Student Sexual & Interpersonal Misconduct Policy & Protocol up to, and including, dismissal from the Law School. A faculty or staff member found to have violated this policy will be subject to disciplinary action up to, and including, dismissal from the Law School. The Law School reserves the right to take disciplinary action regarding allegations involving current students, faculty or staff without regard to the length of time since the alleged misconduct occurred. Violation of this policy may also subject the offender to criminal prosecution or third party civil litigation.

Title IX and Sexual Misconduct

Under Title IX, the Law School has a responsibility to respond promptly and equitably to address sexual harassment, sexual violence, and interpersonal misconduct. If the Law School knows or reasonably should know about sexual harassment, sexual violence, or interpersonal misconduct that creates a hostile environment, the Law School must take action to eliminate the sexual harassment, sexual violence, or interpersonal misconduct, prevent its recurrence, and address its effects.

The Law School encourages prompt reporting of crime to Campus Safety and Security and/or law enforcement. Even if a student, faculty or staff member does not want to file a complaint or does not request that the Law School take any action on his/her behalf or is unable to make a report to the Law School or law enforcement, if the Law School knows or reasonably should know about possible sexual harassment, sexual violence, or interpersonal misconduct, it must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. In appropriate circumstances, the Law School may report crimes to law enforcement when a victim decides not to report or cannot report the crime.

A criminal investigation into allegations of sexual misconduct does not relieve the Law School of its duty under Title IX to resolve complaints promptly and equitably. The Law School has a Deputy Title IX Coordinator in the Human Resources Department who may be reached at 213-736-1415 [x1415 from campus.]. The Deputy Title IX Coordinator is notified of reported incidents of sexual and interpersonal

misconduct and monitors the Law School's response to such conduct. The Law School's Deputy Title IX Coordinator is Barbara Lu-Baltazar, Director of Human Resources (Barbara.Lu-Baltazar@lls.edu).

Duty to Report

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

Faculty and staff with questions about their reporting requirements may contact Barbara Lu-Baltazar, Deputy Title IX Coordinator/Director of Human Resources in the Human Resources Department, at Human Resources, 919 Albany Street, C501, Los Angeles, CA 90015, phone: 213-736-1415 [x1415 from campus, email: Barbara.Lu-Baltazar@lls.edu].

How to Report Sexual Misconduct

All reports of sexual misconduct should be made to Campus Safety and Security at 213-736-1121 [x1121 on campus.] Campus Safety and Security is charged with initial intake of information.

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 Campus Safety and Security at 213-736-1121 [x1121 on campus], and the situation should be immediately reported concurrently to the LAPD by dialing 911 [9-911 on campus].

A student, faculty or staff member who is unsure whether what he/she has witnessed or what has been reported to him/her constitutes sexual misconduct should contact Campus Safety and Security at 213-736-1121 [x1121 on campus] and report the incident. Campus Safety and Security will take appropriate responsive action based on the information provided.

How to Report Sexual Harassment

Student-on-student sexual harassment is handled through the Law School's Student-on-Student Sexual & Interpersonal Misconduct Policy & Protocol and may be reported to Campus Safety and Security at 213-736-1121 [x1121 on campus]

All other complaints of sexual harassment are subject to the Law School's Discriminatory Harassment & Complaint Process policy.

Confidentiality

Title IX requires all universities to identify "responsible employees" as those who are obligated to report all details of an incident, including the identities of those involved, to Campus Safety and Security whenever that information is brought forward to the employee. Responsible employees include faculty, administrative staff and some student staff. Responsible employees do not include the following:

Professional, licensed counselors, such as: the psychologists contracted by Student Affairs, are not required to report any information regarding alleged sexual misconduct, to Campus Safety and Security, the Deputy Title IX Coordinator or any other reporting body, without consent from the student.

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

University Student Health Center Staff, such as: doctors and nurse practitioners at the Student Health Services (310) 338-2881, are not required to report any information regarding alleged sexual misconduct, to the Department of Public Safety, Law School Campus Safety and Security, the Deputy Title IX Coordinator, Title IX Coordinator, or any other reporting body on campus, without consent from the student. The Student Health Center Staff will be required to report signs of physical or sexual abuse to the local law enforcement.

Community Resource Advisors, their names can be found on the Student Affairs website, may speak privately with students regarding incidents of sexual and interpersonal misconduct without automatically triggering a Law School 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 obligated to report identifying information of the complainant. If the respondent's name is presented to Community Resource Advisors, they will be obligated to report that information to the Deputy Title IX Coordinator. Reports by the Community Resource Advisors will not trigger a Law School investigation unless the Deputy Title IX Coordinator in consultation with the Associate Dean for Student Services or designee (for student-on-student cases) or with the Associate Dean for Finance and Administration or designee (for cases involving faculty, staff, or cases involving a respondent who is not a student, faculty or staff member), and/or the University Title IX Coordinator determines that an investigation is necessary because:

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

Requesting Confidentiality

Individuals reporting an incident of sexual misconduct to a responsible employee may request confidentiality. The responsible employee will disclose to Campus Safety and Security that the individual reporting an incident of sexual misconduct wishes to maintain confidentiality. Individuals reporting an incident of sexual misconduct should be aware that if they request confidentiality, then the Law School's ability to effectively investigate and adjudicate the instance(s) of sexual misconduct may be impaired. The Law School cannot guarantee confidentiality in this instance, and certain factors will be considered in determining whether the confidentiality request can be honored. Those factors include those listed above.

The Deputy Title IX Coordinator in consultation with the appropriate Associate Dean or designee is responsible for determining whether the confidentiality of the complainant can be honored. If the decision is made that confidentiality cannot be honored, then the Law School will only inform the necessary individuals

and entities on campus required to perform a thorough investigation and adjudication of the complaint. The Law School will respond to any accusations of retaliation against the complainant or witnesses brought upon by the investigation or adjudication of the misconduct.

Sharing of Information Related to a Complaint of Sexual Misconduct

When Campus Safety and Security receives a report of sexual misconduct, Campus Safety and Security will notify governmental agencies as appropriate. Campus Safety and Security will notify the Deputy Title IX Coordinator. Confidentiality will be maintained to the extent possible. The Law School reserves the right to share information regarding a report of sexual misconduct on a need-to-know basis, as determined in the Law School’s sole discretion.

Retaliation

All persons are prohibited from taking any retaliatory action against any other member of the Law School Community, including the complainant, respondent, or witnesses involved in the 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 Law School. Any person who believes that she/he has been retaliated against for having filed or participated in the investigation of a complaint of Sexual Misconduct should immediately notify the Deputy Title IX Coordinator/Director of Human Resources at 213-736-1415 (x1415 from campus phone.)

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 Law School's policies.

Chart: Reporting Sexual Misconduct Procedures

TYPE OF REPORT	REPORTING PROCEDURE
Sexual misconduct (general)	Call Campus Safety and Security at 213-736-1121[x1121 on campus].
In-progress or imminent sexual misconduct	Immediately report concurrently to the LAPD by dialing 911 [9-911 on campus]. Call Campus Safety and Security at 213-736-1121 [x1121 on campus]
Student-on-student sexual harassment	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.
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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, oral copulation, sexual penetration, lewd or lascivious acts upon a child, 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 purpose 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.

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:

University policies concerning sexual assault, domestic violence, dating violence and stalking 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 he or she has 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, 288a, 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, 288a, 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, 288a, 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. A fine of not more than \$1,000, or
3. by both that fine and imprisonment, or by imprisonment in the state prison.

For the 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.

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, person with whom the suspect has had a child or is having, 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 husband and wife;
5. The continuity of the relationship;
6. The length of the relationship.