

Sexual Misconduct Procedure	Procedure Number	6.3P
	Effective Date	November 28, 2017

1.0 PURPOSE

In accordance with Policy 6.3, the purpose of this procedure is to outline the process of review and potential action of discrimination and sexual misconduct assertions.

2.0 REVISION HISTORY

Adopted on: 11/28/17
 Revised on: 2/21/20

3.0 PERSONS AFFECTED

This procedure applies to any employee, student, contractor or visitor of LCCC.

4.0 DEFINITIONS

- A. *Dating Violence* – Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship, (2) the type of relationship, and (3) the frequency of interaction between the persons involved in the relationship.
- B. *Domestic Violence* – Includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic violence law of the State of Wyoming, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic violence or family violence of the State of Wyoming.
- C. *Effective Consent* – Words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective Consent cannot be gained by force, by ignoring or acting in spite of the objections of another, or by taking advantage of the incapacitation of another, where the accused student knows or reasonably should have known of such incapacitation. Effective Consent is also absent when the activity in question exceeds the scope of Effective Consent previously given. In addition, Effective Consent is absent when a person has not reached the designated minimum age under which a person can give “Effective Consent,” under Wyoming Law. See WYO. STAT. ANN. §§ 6-2-301-320(2011).
- D. *Incapacitation* – Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

A person who is incapacitated is unable, temporarily or permanently, to give consent because of mental or physical helplessness, unconsciousness, or lack of awareness that sexual activity is taking place. A

person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition.

When alcohol or other drugs are involved, incapacitation is an excessive state of drunkenness or intoxication for an individual. A person is not necessarily incapacitated merely as a result of drinking or using drugs; the level of impairment must be significant enough to render the person unable to give consent. The impact of alcohol and other drugs varies from person to person, and a person's level of intoxication may vary based upon the nature and quality of the substance imbibed, the person's weight, tolerance, ingestion of food and other circumstances. A person's level of impairment may also change rapidly.

- E. *Non-Consensual Sexual Contact* – Sexual Contact that occurs without Effective Consent.
- F. *Non-Consensual Sexual Intercourse* – Sexual Intercourse that occurs without Effective Consent.
- G. *Responsible Employee* – Any employee who has the authority to take action to address the harassment or has the duty to report harassment or other types of misconduct to appropriate officials.
- H. *Sexual Contact* – The deliberate touching of a person's intimate parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas), or using Force to cause a person to touch his or her own or another person's intimate parts.
- I. *Sexual Exploitation* – Taking sexual advantage of another person without Effective Consent, and includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks) of another person; allowing third parties to observe private sexual acts; engaging in voyeurism; and/or knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV.
- J. *Sexual Harassing Behavior* – Unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:
 - 1) Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining or retaining employment, of obtaining an education or of obtaining educational benefits or opportunities.
 - 2) Such conduct is pervasive, has the purpose or effect of substantially interfering with an individual's employment, education, educational benefits or opportunities, creating an intimidating, hostile or offensive employment or education environment. Sexual harassment as defined herein is generally conduct or communication by someone in authority but also includes any sexual harassment as defined when perpetrated on any student or employee by any other student or employee.
- K. *Sexual Intercourse* – Penetration (anal, oral or vaginal) by a penis, tongue, finger, or an inanimate object.
- L. *Sexual Misconduct* – A broad term encompassing “Sexual Exploitation,” “Sexual Harassing Behavior,” “Non-Consensual Sexual Contact,” “Sexual Violence,” and “Non-Consensual Sexual Intercourse,” as defined in this procedure. Sexual Misconduct can occur between strangers or acquaintances including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex.

Sexual Misconduct includes but is not limited to:

- 1) Sexual name calling, jokes, spreading sexual rumors, or overly personal conversations of a sexual nature
- 2) Subtle pressure for sexual activity
- 3) Inappropriate patting, pinching or fondling, pulling at clothes, or intentional brushing against an individual's body
- 4) Demanding sexual favors accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status
- 5) Any sexually motivated unwelcome touching, cornering, or blocking an individual's movement
- 6) Conditioning a student's grade or academic progress on submission to sexual activity
- 7) Hanging or displaying sexually explicit pictures, posters, drawings or any other inappropriate items in the workplace
- 8) A pattern of conduct intended to cause discomfort or humiliation, or both, that includes one or more of the following
 - a. Unnecessary touching or hugging
 - b. Remarks of a sexual nature about a person's clothing or body, or remarks about sexual activity or speculations about previous sexual experiences

M. *Sexual Violence* – Physical sexual acts, including but not limited to “Sexual Exploitation”, “Non-Consensual Sexual Contact”, and “Non-Consensual Sexual Intercourse”, perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol, or an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All acts of sexual violence are forms of sexual harassment.

N. *Retaliation* – Taking adverse action against students or employees for the exercise of rights under this procedure; for having brought forward a charge of sexual harassment/misconduct; or for having testified, assisted, or participated in any manner in an investigation or hearing or other proceeding under this procedure.

Forms of retaliation include but are not limited to the following:

- 1) Applying workplace rules more stringently to an employee than to others
- 2) Being improperly “written up” for discipline without justification
- 3) Being wrongfully terminated, demoted, or denied new opportunities
- 4) Being isolated from co-workers
- 5) For students, continued harassment such as name calling or taunting

5.0 RESPONSIBILITY

- A. All members of the LCCC community including students, staff, faculty members, contractors and visitors of LCCC are required to report acts of discrimination and sexual misconduct. It is preferred but may not be likely in all cases of reporting, that the first report is made to the Title IX coordinator and/or HR. In the event the report is made to another LCCC representative, the institution is formally on notice and it is imperative that these individuals report to the Title IX coordinator immediately.
- B. All employees are responsible employees, except health professionals and those covered by statute (e.g., licensed mental health counselors, clergy, etc.) must report sexual misconduct within 24 hours to the Title IX Coordinator regardless of whether a formal complaint was filed.

6.0 TITLE IX COORDINATOR

- A. Title IX – The purpose of Title IX is to eliminate discrimination on the basis of sex in any education program or activity receiving Federal financial assistance.
- B. Title IX Coordinator – The Title IX coordinator is responsible for overseeing LCCC’s Title IX compliance efforts and must:
 - 1) Communicate to all LCCC constituents regarding Title IX and how to gain access to their rights under Title IX
 - 2) Review all LCCC policies to assure institutional compliance with Title IX
 - 3) Ensure training is provided regarding Title IX and designate appropriate officials to serve as investigators
 - 4) Be available to meet with students who believe sexual misconduct, discrimination or assault has occurred
 - 5) Ensure that complaints are handled through consistent practices and standards
 - 6) Upon receiving notice of potential acts of sexual misconduct or assault, either personally investigate the incident or oversee the investigation

7.0 PROCEDURES

- A. The Title IX Coordinator has the authority to investigate the allegations of discrimination and sexual misconduct prohibited by Title IX even absent the filing of a formal complaint, or its subsequent withdrawal. In addition, the Title IX Coordinator may proceed with investigating a formal or informal complaint or report even if a complainant specifically requests that the matter not be pursued. In any circumstance of potential sexual misconduct the Title IX Coordinator will take all reasonable steps to investigate and remediate the matter.
 - 1) Persons who file frivolous or bad faith allegations of sexual misconduct may be subject to disciplinary action in accordance with Policy 6.10 and Procedure 6.10P Employee Conduct and Discipline, or student discipline procedures as found within the Student Discipline Adjudication procedures of the Student Handbook.
- B. The Title IX Coordinator will ensure that several LCCC officials are trained in Title IX investigations and will be responsible for investigating or assigning the investigation to a trained investigator for each complaint under Title IX. For example, it is likely that complaints received involving employee misconduct will be investigated by HR.
- C. The Title IX Coordinator shall receive and investigate anonymous complaints and any complaint against a LCCC contractor, vendor, affiliate, student or employee.
- D. A formal complaint process is initiated when a complainant submits a verbal or written statement alleging sexual discrimination or misconduct prohibited by Title IX to the Title IX Coordinator. In the statement, the complainant must provide any relief sought. Prompt submission of the complaint is encouraged.
- E. The Title IX Coordinator shall conduct a preliminary assessment, and may dismiss the complaint without further process or review if the Title IX Coordinator determines that the complaint on its face is frivolous, not credible, clearly without merit, or outside the scope of these formal complaint procedures.

- F. If the complaint is not dismissed, the Title IX Coordinator will investigate the matter or assign investigators and supervise the investigation. Investigations shall ordinarily be completed within 30 business days following the date the complaint is received. The Title IX Coordinator may approve an extension of time for good cause.
- G. The investigator shall review pertinent records, conduct interviews as appropriate, and prepare a written report.
- 1) Interviews, when appropriate, will be conducted with the complainant and the accused; other individuals may also be interviewed as needed (e.g., witnesses, supervisors, students, department head.)
 - 2) Confidentiality, to the extent possible, shall be respected consistent with LCCC's obligation to investigate all reports of discrimination or misconduct and prevent recurrence of offending behavior.
 - 3) In evaluating consent in cases of alleged incapacitation, LCCC asks two questions: (1) *Did the person initiating sexual activity know that the other party was incapacitated?* And, if not, (2) *Should a sober, reasonable person, in the same situation, have known that the other party was incapacitated?* If the answer to either of these questions is "yes," consent was absent and the conduct is likely a violation of this procedure.

One is not expected to be a medical expert in assessing incapacitation. One must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs often include slurred or incomprehensible speech, unsteady manner of walking, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: Do you know where you are? Do you know how you got here? Do you know what is happening? Do you know whom you are with?

One should be cautious before engaging in sexual activity when either party has been drinking alcohol or using drugs. The use of alcohol or other drugs may impair either party's ability to determine whether consent has been sought or given. If one has doubt about either party's level of intoxication, the safe thing to do is to forego all sexual activity. A Respondent's intoxication will not excuse the Respondent from the obligation to obtain consent as described in this procedure.

- H. The investigator will make a recommendation on corrective action and/or for the dismissal of the formal complaint to the appropriate disciplinary body.
- I. The immediate supervisor or Vice President, based upon the recommendation of the investigator and using a preponderance of the evidence standard [it is more likely than not that sexual misconduct or violence occurred, in accordance with U.S. Department of Education, Office for Civil Rights, *Dear Colleague Letter: Sexual Violence* (with accompanying *Background, Summary, and Fast Facts*) (April 4, 2011)], shall determine either to dismiss the complaint or to take appropriate corrective action, including taking disciplinary action, in accordance with Employee Discipline Policy 6.10 and Procedure 6.10P; or student discipline procedures as found within the Student Discipline Adjudication procedures of the Student Handbook where appropriate. The decision will be in writing and provided to the complainant and the alleged offender simultaneously within 10 (ten) business days of the supervisor's or vice president's decision.

- J. Appeals of disciplinary action against employees, students, contractors or visitors will be in accordance with the Employee Discipline Policy 6.10 and Procedure 6.10P or student discipline procedures as found in the Student Discipline Adjudication procedures within the Student Handbook as appropriate. The decision on the appeal will be in writing and provided to the complainant and the alleged offender simultaneously within 10 (ten) business days of receipt of the written appeal.

7.0 CONFIDENTIALITY

All complaints of sexual misconduct and other forms of unlawful harassment (race, color, sex, religion, gender identity, national origin, age, disability, veteran status or sexual orientation) shall be considered confidential (particularly complaints of sexual harassment) and only those persons necessary for the investigation and resolution of the complaint will be given any information about the complaint. LCCC will respect the confidentiality of the complainant and the individual against whom the complaint is filed to the extent possible consistent with LCCC's legal obligations to protect the rights and security of its employees and students.

8.0 STANDARD OF REVIEW

Allegations of misconduct prohibited by Title IX shall be reviewed by applying a preponderance of the evidence standard.

9.0 RETALIATION

- A. LCCC affirms the rights of individuals to bring complaints of discrimination and/or misconduct without fear of reprisal. Each employee or student, who, in good faith, complains about illegal discrimination of anykind, is protected from retaliation and any act of retaliation will result in appropriate disciplinary action in accordance with Policy 6.10 and Procedure 6.10P Employee Conduct and Discipline, or student discipline procedures as found within the Student Discipline Adjudication procedures of the Student Handbook. Complaints of retaliation shall be treated as separate and distinct from original complaints of discrimination and will be investigated by the LCCC Human Resources Office (for employees accused of retaliation) or the Dean of Students Office (for students accused of retaliation) in accordance with Section 6.0 of this procedure.
- B. Supervisors, students and faculty who are found to be participating in any form of employment or educational based retaliation against any employee or student may be subject to disciplinary action, in accordance with the Policy 6.10 and Procedure 6.10P Employee Conduct and Discipline, or student discipline procedures as found within the Student Discipline Adjudication procedures of the Student Handbook, up to and including termination from employment, or student discipline procedures where appropriate.

10.0 CONSENSUAL/AMOROUS RELATIONSHIPS

Common sense dictates whether supervisors/managers or faculty should enter into intimate relationships with subordinates and students or whether such individuals should supervise those with whom they are intimately involved. Further, LCCC urges supervisors and faculty to consider whether their actions will be seen as unethical by other employees and students who may consider themselves to be disadvantaged by the personal relationship. Such relationships are potentially exploitive and should be avoided. Any questions should be addressed to HR.

11.0 ALTERNATIVE LEGAL REMEDIES

Nothing in this procedure shall prevent the complainant or the alleged offender from pursuing formal legal remedies or resolution through state or federal agencies or the courts.


12.0 CONTACT INFORMATION

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REQUIRED APPROVALS	NAME/SIGNATURE	DATE
Originator(s) Name(s)	Tammy Maas, Human Resources Executive Director Judy Hay, Student Services Vice President, Title IX Coordinator	10/27/17
Approval by President's Cabinet		11/14/17
Ratified by College Council	Sabrina Lane, College Council Co-Chair	11/28/17
Approval by President (Signature)		11/28/17