

POLICIES AND PROCEDURES

Subject: Sexual Misconduct Policy Reference: E-XXVIII-a
Source: Board of Trustees Eff. Date: September 25, 2018
Approval Auth.: Board of Trustees Approved: _____
Remarks: Replaces previous policy dated July 25, 2015
Date: September 25, 2018

Sexual Misconduct/ Title IX Policy

Title IX of the Education Amendments of 1972 is a Federal civil rights law that prohibits discrimination on the basis of sex in educational programs and activities that receive Federal funds. Examples of discrimination prohibited under Title IX include discrimination on the basis of sex include gender discrimination, pregnant and parenting discrimination, sexual harassment, or sexual violence, such as rape, dating violence, domestic violence, stalking, sexual assault, sexual battery, and sexual coercion. Individuals aware of incidents involving sexual misconduct are encouraged to report offenses immediately to the Title IX Coordinator or the Deputy Title IX Coordinators.

Title IX Coordinator

Dr. Drew Canham, Title IX Coordinator
Vice President, Student Success
McLennan Community College
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1400 College Drive
Waco, TX 76708
254-299-8692
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titleix@mclennan.edu

Deputy Title IX Coordinators

Dr. Staci Taylor
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McLennan Community College
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Ms. Shawn Trochim
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Reporting

Students and employees wishing to report sexual misconduct, and the personnel assisting those filing reports should primarily be concerned with the health and safety of the reporting party and campus community, and getting the report filed in a timely manner.

As used in this document, the term "reporting party" refers to the person impacted by the alleged incident. The term "responding party" refers to the person who has allegedly engaged in discrimination, harassment and/or retaliation.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. All McLennan Community College employees are designated as mandated reporters (except the MCC Counseling Center) and will share a report with the Title IX Coordinator promptly—within one (1) college business day.

On campus, MCC Counseling Center employees may maintain confidentiality - meaning they are not required to report actual or suspected discrimination or harassment to appropriate campus officials—thereby offering options and advice without any obligation to inform an outside agency or campus official unless a reporting party has requested information to be shared. Other resources exist for reporting parties to report crimes and policy violations and these resources will act when an incident is reported to them.

Every effort is made by McLennan Community College to preserve the privacy of reports. Such reports may also be anonymous. Anonymous reports will be investigated to determine if remedies can be provided, but the college's ability to adjudicate anonymous reports may be limited.

The following methods may be used to report sexual misconduct at McLennan Community College:

- 1) Report directly to the Title IX Coordinator, Dr. Drew Canham, at 254-299-8645 or titleix@mclennan.edu;
- 2) Confidentially to the MCC Counseling Center, 254-299-8210;
- 3) Online, using the reporting form posted at <https://www.lighthouse-services.com/mclennan/> (there is an

- option to report anonymously); or
4) For emergencies notify Campus Police, 254-299-8911

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to McLennan Community College President, Dr. Johnette McKown, at 254-299-8601 or jmckown@mcclennan.edu.

DEFINITIONS

Reference to the Texas Penal Code is made where necessary.

A. Sexual Harassment

(Texas Penal Code - PENAL § 42.07.Harrassment)

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC) and the State of Texas regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. McLennan Community College has adopted the following definition of sexual harassment, to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.

Sexual harassment is:

- unwelcome,
- sexual, sex-based and/or gender-based,
- verbal, written, online and/or physical conduct.

Anyone experiencing sexual harassment in any McLennan Community College program is encouraged to report it immediately to the Title IX Coordinator. Remedies, education and/or training will be provided in response.

Sexual harassment may be disciplined when it takes the form of *quid pro quo* harassment, retaliatory harassment and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- severe, or
- persistent or pervasive, and
- objectively offensive, such that it:
unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the McLennan Community College's educational or employment programs.

Quid Pro Quo Sexual Harassment:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's educational development or

performance.

B. Sexual Misconduct

Texas State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, McLennan Community College has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Alleged incidents involving discrimination allegations shall be administered using the Discrimination Resolution Process (*F-V-s, Discrimination Resolution Process*).

McLennan Community College considers all sexual misconduct violations to be serious offenses. McLennan Community College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved. Violations include:

i. Sexual Harassment (as defined in Section A. above)

ii. Non-Consensual Sexual Intercourse

Defined as: any sexual intercourse, however slight, with any object, by a person upon another person, which is without consent and/or by force.

Sexual intercourse includes: Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

iii. Non-Consensual Sexual Contact

Defined as: any intentional sexual touching, however slight, with any object, by a person upon another person, that is without consent and/or by force.

Sexual touching includes: Intentional contact with the breasts, groin, or genitals, mouth or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any other bodily contact in a sexual manner.

iv. Sexual Exploitation

(*Texas Penal Code - PENAL § 21.15. Invasive Visual Recording, § 21.17. Voyeurism, § 21.18. Harassment*)

Sexual Exploitation refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse or Non-Consensual Sexual Contact. Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).
- Invasion of sexual privacy.
- Taking pictures or video or audio recording another in a sexual act, or in any other private 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).
- Prostitution.
- Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.
- Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
- Exposing one's genitals in non-consensual circumstances.
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

v. Force and Consent

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

Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, 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.

NOTE: Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is non-consensual, but non-consensual sexual activity is not by definition forced.

Consent: Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. 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. Consent can be withdrawn once given, if the withdrawal is clearly communicated.

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 dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

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 due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

Incapacitation is defined as a state where 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). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint and/or from the taking of incapacitating drugs.

In Texas, a minor (meaning a person under the age of 17 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 17

years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act (Texas Penal Code Chapter 21, Section 21.11).

Other Civil Rights Offenses

In addition to the forms of sexual misconduct described above, the following behaviors are also prohibited as forms of discrimination under the *Violence Against Women Act* (VAWA).

- Intimate Partner Violence, defined as violence or abuse between those in an intimate interaction and/or relationship to each other;
(Texas Penal Code - PENAL § 71.003.Family, § 71.004.Family Violence, § 71.005.Household, § 71.006.Member of a Household)
- Stalking is a course of conduct directed at a specific person based on actual or perceived membership in a protected class that is unwelcome and would cause a reasonable person to feel fear.

Stalking may also be repetitive and menacing or involve pursuit, following, harassing and/or interfering with the peace and/or safety of another.