

McLennan Community College

POLICIES AND PROCEDURES

Reference:	E-XXVIII-a	Effective Date:	08/14/2020
Subject:	Sexual Misconduct Policy		
Source:	Board of Trustees		
Approval Authority:	Board of Trustees	Approval Date:	07/28/2020
History:			
Remarks:	Replaces previous policy dated 09/25/2018		

Sexual Misconduct/Title IX Policy

I. 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.

A. Title IX Coordinator

Dr. Drew Canham, Title IX Coordinator Vice President, Student Success
McLennan Community College
Administration Building, Room 408
1400 College Drive
Waco, TX 76708
254-299-8692
Fax: 254-299-8654
titleix@mclennan.edu

B. Deputy Title IX Coordinators Dr. Staci Taylor

Director, Center for Teaching and Learning
McLennan Community College
Administration Building, Room 307
1400 College Drive
Waco, TX 76708
254-299-8363
staylor@mclennan.edu

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C. Ms. Shawn Trochim Director, Athletics
McLennan Community College Math Building, Room 109
1400 College Drive
Waco, TX 76708
254-299-8811
strochim@mclennan.edu

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II. 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 Complainant and campus community, and getting the report filed in a timely manner.

As used in this document, the term “Complainant” refers to the person impacted by the alleged incident. The term “Respondent” 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. MCC Counseling Center employees will submit anonymous statistical information for Clery Act purposes unless doing so would be harmful to their client. Other resources exist for Complainants 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.

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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:

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

Reports of alleged misconduct or discrimination claims shall be administered using the *Discrimination Resolution Process* (Policy F-V-s).

III. Definitions

Reference to the U.S. Code and Texas Penal Code are made where necessary to meet the requirements for Federal Title IX Regulations (34 C.F.R 106) and S.B. 212.

A. Actual Knowledge

Defined as: notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College.

B. Complainant

Defined as: an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

C. Consent

Defined as: 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

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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.

1) 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.”).

2) Coercion

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.

3) Incapacitation

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).

A person cannot consent if unable to understand what is happening or 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 respondent was intoxicated and, therefore, did not realize the incapacity of the complainant.

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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).

D. Formal Complaint

Defined as: a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment.

E. Notice

Defined as: a report of sexual harassment to the Title IX Coordinator as described in 34 C.F.R. § 106.8(a).

F. Respondent

Defined as: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

G. Sexual Exploitation

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. (Texas Penal Code – PENAL § 21.15. Invasive Visual Recording, § 21.17.Voyeurism, § 21.18.Harrassment)

Examples of Sexual Exploitation include, but are not limited to:

- 1) Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaged in sexual acts without the consent of the person observed).
- 2) Invasion of sexual privacy.
- 3) 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).

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- 4) Prostitution.
- 5) 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.
- 6) 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).
- 7) Exposing one’s genitals in non-consensual circumstances.
- 8) Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

H. Sexual Harassment

Defined as: conduct on the basis of sex that satisfies one or more of the following:

- 1) An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct (also known as Quid Pro Quo).
- 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to McLennan Community College’s employment or education program or activity.

I. Sexual Assault

Defined as: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. (20 U.S.C. 1092(f)(6)(A)(v)). Sexual Assault is any sexual act directed against another person, without the consent of the complainant, including instances where the complainant is incapable of giving consent. (34 C.F.R. Pt. 668, Subpt. D, App. A)

- 1) Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the complainant.
- 2) Fondling: The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person’s will (non-consensually) or not forcibly or against the person’s will in instances where the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

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- 3) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- 4) Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

J. Sexual Misconduct

Texas State law defines various violent and/or non- consensual sexual acts as crimes. (Texas Penal Code – PENAL § 21.01 Definitions, 22.011 Sexual Assault)

1) 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, genitals, or 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.

2) 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.

- 3) 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.

4) Dating Violence

Federal and State definitions related to dating violence differ. Both definitions are provided below, and will be used when appropriate to determine whether alleged dating violence incidents meet either the Federal or State definition.

a. Federal Definition (34 U.S.C. 12291(a)(10)):

Defined as: violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant and where the existence of such a relationship shall be determined based on consideration of the length of the relationship, type of relationship, and frequency of interaction between those involved in the relationship. (34 U.S.C. 12291(a)(10))

- i. Dating violence includes, but is not limited to, sexual or physical abuse

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or the threat of such abuse.

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

b. State Definition: (Texas Penal Code – PENAL § 71.0021) Defined as: an act, other than a defensive measure to protect oneself, by a respondent that is committed against a complainant for a protective order with whom the respondent has or has had a dating relationship or because of the respondent's marriage to or dating relationship with an individual with whom the respondent is or has been in a dating relationship or marriage and is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the complainant in fear of imminent physical harm, bodily injury, assault, or sexual assault.

5) Domestic Violence

Defined as: a felony or misdemeanor crime of violence committed—

- a. By a current or former spouse or intimate partner of the complainant;
- b. By a person with whom the complainant shares a child in common;
- c. By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner;
- d. By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the state;
- e. By any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the state. (34 U.S.C. 12291(a)(8))

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

6) Family Violence

Defined as: an act by a member of a family or household against another member that is intended to result in physical harm, bodily injury, assault, or a threat that reasonably places the member in fear of imminent physical harm. (Texas Penal Code – PENAL § 71.003.Family, § 71.004.Family Violence, § 71.005.Household, § 71.006.Member of a Household)

K. Stalking

A course of conduct directed at a specific person that would cause a reasonable person to:

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- 1) Fear for his or her safety or the safety of others; or
- 2) Suffer substantial emotional distress.

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 interfere with a person's property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling. (34 U.S.C. 12291(a)(30))