

# Student-on-Student Sexual Misconduct Policy and Protocol

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## I. Introduction

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 student on student sexual harassment or sexual misconduct including sexual violence, such as rape, sexual assault, sexual battery and sexual coercion. The Student Affairs Division has established this Student on Student Sexual Misconduct Policy & Protocol to assist and respond to complaints of student on student sexual misconduct.

Students should report all forms of sexual harassment and sexual misconduct (student on student; student and non-student) by filing a report with the LMU Department of Public Safety (310.338.2893 or x222 on campus).

In addition, a Judicial Affairs case for alleged student on student sexual harassment or sexual misconduct will be initiated and adjudicated in the context of an alleged Student Conduct Code violation. Sexual harassment or sexual misconduct involving a student and any non-student in the University Community is handled under the LMU Staff Sexual Harassment Policy. Further information about the LMU Staff Sexual Harassment Policy and the processing of complaints thereunder may be found at <http://www.lmu.edu/Assets/Student+Affairs+Division/Judicial+Affairs/Discriminatory+Harassment+and+Complaint+Process.pdf>.

## II. Policy

Under Title IX, sexual harassment is broadly defined as unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature including sexual violence. Under this policy, Sexual Misconduct includes all forms of sexual harassment under Title IX including sexual violence, such as rape, sexual assault, sexual battery and sexual coercion. All forms of Sexual Misconduct are unacceptable in our University community and will not be tolerated. Any student alleged to have participated in Sexual Misconduct will be referred to Judicial Affairs and if found responsible will be subject to disciplinary action.

## III. Definitions

A. For purposes of this policy, **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 sexually related object.

B. For purposes of this policy, **Sexual Misconduct** is defined as Sexual Assault 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.

C. For purposes of this policy, **Sexual Harassment** is defined as unwelcome conduct of a sexual nature including, without limitation, unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual nature that is sufficiently serious enough to interfere with or limit a student's ability to participate in or benefit from the University's educational program.

D. **Consent** is defined as the unambiguous and willing participation or cooperation in act or attitude that is commonly understood to be consistent with the exercise of free will. Consent requires participants who are lawful adults, fully conscious, are 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 gestures, body language or attitude. Prior sexual history between the complainant and respondent, by itself, does not constitute consent.

1. Consent is not freely given if:

a. It is obtained through the use of force, through the fear of or the threat of force, or by kidnap; or

b. 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:

1. 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); or

2. The individual is unable to consciously respond for whatever reason including lack of consciousness, sleep, illness or shock; or

3. The individual is under the age of eighteen and therefore legally incapable of giving consent; or

4. The individual is known by reason of impairment, mental condition or developmental or physical disability to be reasonably unable to consent.

c. The individual has acted or spoken in a manner which expresses a lack of consent or a refusal to consent.

#### **IV. California Law**

The following excerpts are only intended to be partially explanatory of certain California laws pertaining to criminal 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 Sections 11165.1, 261 and 289 of the California Penal Code:**

Sexual assault includes rape, statutory rape, rape in concert, sodomy, oral copulation, and penetration of the genital or anal opening by any foreign object.

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 the victim's spouse, 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 "any sexual penetration, however slight, is sufficient to complete the crime" (Code 263) and 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.

## **V. Complainant/Respondent**

A. Complainants in a Sexual Misconduct Case have the right to:

1. An appointed Advisor who will assist them through the student judicial process.
2. Make a complaint to the Department of Public Safety.
3. File a police report and take legal action separate from and/or in addition to filing a Student Conduct Code complaint seeking disciplinary action.
4. Be informed of the disciplinary finding (responsible or not responsible).
5. Refuse any/all of the above.

B. Respondents in a Sexual Misconduct Case have the right to:

1. An appointed Advisor who will assist them through the student judicial process.
2. Make a complaint to the Department of Public Safety.
3. File a police report and take legal action separate from and/or in addition to responding to the Student Conduct Code complaint seeking student disciplinary action.
4. Be informed of the disciplinary finding (responsible or not responsible).
5. Refuse any/all of the above.

## **VI. Title IX**

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

Even if a student does not want to file a Student Conduct Code complaint or does not request that LMU take any action on the student's behalf, if LMU knows or reasonably should know about possible sexual harassment or sexual violence, it must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation.

A criminal investigation into allegations of sexual harassment or sexual violence does not relieve LMU of its duty under Title IX to resolve complaints promptly and equitably.

LMU has a Title IX Coordinator, Sara Trivedi, EEO Officer in the Human Resources Department, who can be reached at 310.568.6105 or [strivedi@lmu.edu](mailto:strivedi@lmu.edu).

## **VII. Sexual Misconduct Point Person**

An LMU Sexual Misconduct Point Person is available to separately assist complainants and respondents in identifying University and external resources that are available to them in the context of alleged sexual misconduct. A Sexual Misconduct Point Person is a member of the Student Affairs Division who is trained to assist the parties in identifying University and external resources and explaining the University's judicial process in cases of alleged Student Conduct Code violations relating to sexual misconduct. The Point

Person is not an advocate. The role of the Point Person is to:

A. Provide information regarding on and off campus resources such as Student Psychological Services (SPS), Student Health, Residence Life, Public Safety, Los Angeles Police Department, Santa Monica Rape Treatment Center, Campus Ministry and Judicial Affairs.

B. Explain all stages of the LMU Student Conduct Code Judicial Affairs process, including potential outcomes for both complainants and respondents.

C. Provide information, explanation and review so that the parties can make an informed decision about the options available to them, including filing and responding to Student Conduct Code complaints, and documenting their decisions.

#### **VIII. Advisor**

Prior to the commencement of Student Conduct Code proceedings, both the complainant and the respondent will be assigned Advisors by the Dean of Students or designee to assist the students as they progress through the University conduct process. Students are not required to utilize their appointed Advisors, and may select a different Advisor from the LMU community, provided they adhere to the guidelines set forth in Section III (A) of the Student Conduct Code.