

7.1.8.11 Sexual Misconduct

Lenoir Community College (LCC) is firmly committed to maintaining a campus environment free from sexual misconduct. The College will promptly, fairly, and impartially investigate sexual harassment and/or sexual violence complaints by members of the College community (students, employees, and third parties such as contracted workers and volunteers) or by visitors regarding conduct that affects the learning experience of students, the work environment of employees, or the campus climate. The College will provide complainants with appropriate processes and accommodations to prevent the recurrence of sexual misconduct incidents and address its effects.

(July 24, 2017)

PROCEDURE

A. Sexual Misconduct Defined

Sexual Misconduct is inappropriate or unlawful conduct of a sexual nature, including any sexual act perpetrated against an individual without consent. Sexual Misconduct can occur between strangers, acquaintances, or people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can be directed at an individual or group. This policy also forbids complicity in Sexual Misconduct and retaliation against individuals who report Sexual Misconduct. The College encourages reporting of all Sexual Misconduct. Sexual Misconduct includes but is not limited to:

Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

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 cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence

laws of the State of North Carolina, or by any other person who is protected from that person's acts under the domestic or family violence laws of the State of North Carolina.

Sexual Harassment. Unwelcome advances, requests for or offers of sexual favors, or other verbal, nonverbal, or physical conduct constitute sexual harassment when:

1. Submission to unwelcome advances, requests or conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or status in a course, program, or activity.
2. Submission to or rejection of unwelcome advances, requests, or conduct is used as a basis for employment or educational decisions affecting an individual or group.
3. Unwelcome advances, requests, or conduct has the purpose or effect of unreasonably interfering with an individual or group's work or educational performance or of creating an unlawfully intimidating or hostile working/learning environment.

Sexual harassment may take different forms:

1. Verbal - Comments of sexual nature, including innuendoes, suggestive statements, jokes, propositions, threats, and degrading/discriminating/ stereotypical words whether directed at the victim or made in the victim's presence
2. Nonverbal - Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, and obscene gestures that are severe, persistent, unreasonably impactful, and outside the scope of academic pursuits
3. Physical - Unwanted physical contact, including touching, pinching, grabbing, and stroking

Sexual Assault means any actual, attempted, or threatened sexual act with another person without that person's consent. Sexual Assault includes but is not limited to:

1. Fondling (the touching of the private body parts of another person for the purpose of sexual gratification);
2. Rape and attempted Rape;
3. Statutory rape (sexual intercourse with an individual under the statutory age of consent, as defined by North Carolina law);
4. Incest (sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by North Carolina law);
5. Intentional and unwelcome sexual touching (including disrobing or exposure), however slight, with any body part or any object, by a man or a woman upon a man or a woman,

without effective consent, of a person's breasts, buttocks, groin, or genitals (or clothing covering such areas), or coercing, forcing, or attempting to coerce or force another to touch you, themselves, or a third party with any of these body parts or areas when such touching would be reasonably and objectively offensive; and

6. Any sexual act in which there is force, violence, or use of duress or deception upon the victim.

Sexual Exploitation means any act of taking non-Consensual, unjust or abusive sexual advantage of another person for one's own advantage or benefit; or to benefit or advantage anyone other than the person being exploited. Sexual Exploitation includes, but is not limited to:

1. Causing or attempting to cause another person to be incapacitated in order to gain a sexual advantage over such person;
2. Prostituting another person (i.e., personally gaining money, privilege or power from the sexual activities of another);
3. Non-Consensual videotaping, photographing, or audio-taping of sexual activity and/or distribution of these materials via media such as, but not limited to, the Internet;
4. Exceeding the boundaries of Consent (e.g., allowing another person to observe Consensual sex without the knowledge of or Consent from all participants);
5. Voyeurism; and
6. Knowingly or recklessly transmitting a sexually transmitted disease (including HIV) to another individual.

Sexual Intimidation includes but is not limited to:

1. Threatening, expressly or impliedly, to commit a sexual act upon another person without his or her Consent;
2. Stalking or cyber-stalking; and
3. Engaging in indecent exposure with the intention of alarming, distressing, and/or offending others.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

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

For 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; “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling; and “reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.

Additional definitions applicable in this policy include:

Consent is informed, freely and actively given and mutually understandable words or actions that indicate a willingness to participate in mutually agreed-upon activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a clear and unambiguous agreement between them to engage in certain conduct with each other. Consent cannot be gained by ignoring or acting in spite of the objections of another.

Consent cannot be inferred from:

1. Silence, passivity, or lack of resistance alone;
2. A current or previous dating or sexual relationship alone (or the existence of such a relationship with anyone else);
3. Attire;
4. Acceptance of gifts, dinner, etc.; or
5. Consent previously given (for example, Consenting to one sexual act does not imply Consent to another sexual act).

Consent is not effective if it is obtained through the use of physical force, violence, duress, intimidation, coercion or the threat, expressed or implied, of bodily injury. Whether a party used intimidation or coercion to obtain Consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.

Consent may never be given by:

1. Minors, even if the other participant did not know the minor’s age;
2. Mentally disabled persons, if their disability was reasonably knowable to a sexual partner who is not mentally disabled; or
3. Persons who are asleep, unconscious, or otherwise incapacitated.

The use of alcohol or drugs does not diminish one's responsibility to obtain Consent and does not excuse conduct that constitutes Sexual Misconduct under these Procedures.

If at any time during a sexual act any confusion or ambiguity is or should reasonably be apparent on the issue of Consent, it is incumbent upon the initiating party in the activity to stop and clarify the other's willingness to continue and capacity to Consent. Neither party should make assumptions about the other's willingness to continue.

Incapacitated means lacking the physical and/or mental ability to make informed, rational judgments. A person may be incapacitated for a variety of reasons, including but not limited to being asleep or unconscious, having consumed alcohol or taken drugs, or experiencing blackouts or flashbacks.

B. Reporting Sexual Misconduct

The College encourages all students, faculty, and staff to report acts of sexual misconduct so that the matters can be addressed. Any employee or student who believes he or she has been subjected to sexual misconduct has the right to file a complaint and to receive prompt and appropriate handling of the complaint.

A Complaint of Sexual Misconduct may be filed at any time, regardless of the length of time between the alleged Sexual Misconduct and the decision to file the Complaint. The College strongly encourages individuals to file Complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a Complaint may compromise the College's investigation.

The report may be made by:

1. A student or employee who believes they experienced sexual misconduct (a "Complainant"); or
2. A person who has information that sexual misconduct may have been committed by a student or employee, or that a student or employee may have been a victim of sexual misconduct (a "Reporter").

If the Reporter or Complainant chooses not to participate in the College's review of the report, the College may pursue the report without their participation.

In emergency situations, Campus Security is the first line of communication:

Campus Security
Student Center, Room 107C
Phone: (252) 361-1326 or
(252-527-6223 ext. 208

You may also call 911 for local law enforcement.

Complaints and/or concerns may be reported to LCC's Title IX Office as follows:

Title IX Coordinator
Dr. John Paul Black
Dean of Student Services
Admin Building 140 C
Phone: (252) 527-6223 ext. 318
Fax: (252) 233-6879
Email: jpblack73@lenoircc.edu

Deputy Title IX Coordinator
Tasha Johnson
Director of Human Resources
Administration (Building 003), Room 120B
Phone: (252) 527-6223, ext. 397
Fax: (252) 233-6899
Email: tvjohnson90@lenoircc.edu

A Complaint may be initiated in one of the following ways:

1. An alleged victim may file a written Complaint with the College or a third party may file a written Complaint on his or her behalf. The Complaint may be filed by submitting a written statement to the Title IX Coordinator or Deputy Coordinator.
2. An alleged victim or reporter may meet in person with the Title IX Coordinator or Deputy Coordinator to report alleged Sexual Misconduct.
3. The Title IX Coordinator may determine, based on the information of which he or she becomes aware, that it is necessary and/or appropriate to initiate an investigation despite the lack of a formal Complaint.
4. An alleged victim or reporter may make a complaint anonymously either verbally or in writing. Lack of information may limit the College's ability to investigate the complaint.
5. Complaints and/or concerns may be reported to college administrators or faculty members who will relay those reports to the Title IX Office.

Once a Complaint is initiated, an alleged victim will be referred to as a "Complainant" and the individual who has been accused in a Complaint of committing sexual misconduct will be referred to as a "Respondent."

Once the college is put on notice of possible sexual misconduct, the Complainant will be provided verbally and in writing with:

1. Contact information for trained off-campus counselors/advocates who will be contacted immediately at the request of the Complainant
2. Information on seeking treatment for injuries, STD prevention or other health needs
3. Information on preserving evidence (e.g. not showering, seeking medical treatment)

4. His/her rights and options for a campus investigation
5. The option to notify police, with assistance from campus authorities
6. Confidentiality information

The College also will take steps to prevent and/or address retaliatory conduct following receipt of a report.

As appropriate, other participants in the process (such as Reporters or witnesses) may also be offered appropriate support services and information.

Community-Based Support and Health Services

ENC Psychological Services, 304 N. Queen Street, Kinston, (252) 208-0027

SMEG Family Mental Health, 610 Old Tar Village Rd, Winterville, (252) 364-8972

Lenoir County Health Department, 201 N. McLewean St., Kinston, (252) 526-4200

Solstas/Quest Diagnostics, 2459 Emerald Place, Greenville, (252) 695-6178

The College may also implement interim interventions appropriate for the individuals involved, such as separation of the Complainant's and Respondent's academic schedules and activity participation; or temporary suspension. These interim interventions may be kept in place until the end of any review or appeal process.

C. Confidentiality in Sexual Misconduct Allegations

LCC officials are aware of the sensitive nature of sexual misconduct allegations and treat all phases of the review and investigatory process with discretion. LCC endeavors to protect the privacy of all individuals consistent with rights of due process and the school's responsibility to conduct a thorough investigation. Personally Identifiable Information (PII) will not be disclosed in the reporting of crime statistics to the public.

D. Review Process and Decision to Proceed with Sexual Misconduct Investigation

If the Complainant is willing to participate in the review and investigation process, the College will proceed as described in the Investigation section, below.

If the complainant requests that an investigation not be pursued, that request, along with any other pertinent information about the incident, will be reviewed by the Title IX Coordinator. The

Title IX Coordinator will collect additional information as necessary and assess the request in the context of the College's responsibility to maintain a safe and hostility-free campus environment.

Upon completion of the assessment, a determination will be made as to:

1. Whether, how, and to what extent, the College should further investigate the report of sexual misconduct;
2. What steps may be possible and appropriate to support the Complainant;
3. What other measures or remedies might be considered to address any effects of the reported sexual misconduct on the campus community

In all cases, the final decision as to whether, how, and to what extent the College will conduct an investigation, and whether other measures will be taken in connection with any allegation of sexual misconduct, rests solely with Lenoir Community College. Under some circumstances, a different or less formal response to the report may be warranted.

E. Investigation of Alleged Sexual Misconduct

At the Complainant's request, or if the Title IX Coordinator determines one is warranted, a full-scale investigation may be conducted. The college will strive to complete the investigative process within 30 days when possible:

1. The Title IX Coordinator or a trained designee (the Investigator) will gather information by conducting a thorough investigation, which typically includes interviews with the Complainant (if participating), the Respondent, the Reporter (if applicable), and any witnesses as necessary.
2. At any time during the course of an investigation, the Complainant, Respondent, or any witnesses may provide a written statement, other supporting materials, or identify other potential witnesses, regarding the matter under investigation.
3. Throughout the process, both the Complainant and Respondent may have a support person, such as a friend, family member, or LCC employee present at any meeting related to the investigation of the reported sexual misconduct. The support person may not actively participate in the proceeding.

F. Investigation Report

In most cases, the Investigator will prepare a written report at the conclusion of an investigation. The Investigator's final written report will generally contain, at a minimum:

1. A summary of the investigation;

2. The Investigator's findings of fact; and
3. The specific policy violations, if any, with which Respondent should be charged.

Under typical circumstances, the Complainant and Respondent may review the investigative report, but will not be provided with a copy of it.

G. Administrative Resolution by the Title IX Office

At the conclusion of the investigation, the Title IX Office may refer the matter for hearing or propose an administrative resolution to the Complainant and Respondent. If an administrative resolution is proposed and both the Complainant and the Respondent accept it, that resolution will be implemented and no further adjudication will take place. If either the Complainant or Respondent rejects the proposed resolution, the matter will be referred for hearing.

H. Notice of Charge

If a matter is referred for hearing, the Respondent will receive a formal Notice of Charge which lists the policy violations that will be considered at the hearing. If information arises during the course of a hearing which makes additional or different charges appropriate, the hearing panel may consider those charges.

I. Hearing Process

Through the process of a hearing, a panel of faculty and staff (trained adjudicators) determines – by a preponderance of the evidence – whether it is more likely than not that Respondent violated college policy. This standard requires that the information supporting a finding of responsibility be more convincing than the information in opposition to it. Under this standard, individuals are presumed not to have engaged in sexual misconduct unless a preponderance of the evidence supports a finding that sexual misconduct occurred.

1. Hearing panels typically consist of three members, one of whom is designated to serve as chairperson. The hearing chair has general authority over the conduct of the hearing.
2. Notice: Both Complainant and Respondent will be notified at least five days in advance of the date and time of the hearing and the name(s) of the hearing panelists.
3. Recusal: A complainant or respondent may challenge the participation of a hearing panelist who he/she perceives to have a conflict of interest. Such challenges, including their rationale, must be made to the hearing panel chairperson at least four days prior to the commencement of the hearing. In his/her discretion, the hearing panel chairperson will determine whether the challenged panelist should be replaced.
4. Hearing Packet: In advance of the hearing, the Title IX Coordinator will prepare a hearing packet with information relevant to the case for the hearing panelists. The hearing packet will typically include the investigator's report. The Title IX Coordinator

will make the hearing packet available to both Complainant and Respondent at least three days in advance of the hearing. As discussed above, Complainant and Respondent may review the packet at a designated office but will not be provided with a copy of the packet.

5. Additional Information: If Complainant or Respondent wishes to share additional relevant written information or evidence with the hearing panel, it must be submitted to the Title IX Coordinator at least two days in advance of the hearing. The Title IX Coordinator will share the additional material with the other party at least one day before the hearing.
6. Witnesses: Complainants and Respondents may offer relevant material witnesses to provide testimony. Complainants/Respondents must provide (in writing) the names of any witnesses they wish to testify and a description of each witness's relevant information to the Title IX Coordinator at least two days in advance of the hearing. Names of witnesses submitted to the Title IX Coordinator by the Complainant or Respondent will be shared with the other party in advance of the hearing. The hearing panel may exclude witnesses or witness testimony deemed irrelevant or duplicative. Participants are reminded that any information shared during a hearing is confidential.
7. Hearing Format: The general format of a hearing is as follows: introductions; statement of Complainant; questions; statement of Respondent; questions; witnesses; closing comments from the Complainant; and closing comments from the Respondent.
8. A complainant or respondent may not question one another or other witnesses directly, but may submit questions to the hearing panel, which will determine whether to ask them.
9. Notice of Decision: Written notification of the hearing panel's decision regarding responsibility and sanction (if any) will be provided to Respondent and Complainant at approximately the same time no later than five business days after the hearing.

J. Determination of Sanctions

If the hearing panel renders a finding of "Responsible," the panel also will determine appropriate sanctions to be imposed on the Respondent. Consideration will be given to the impact of Respondent's policy violation(s) and the Respondent's disciplinary history. Some behavior is so harmful to the College community or so detrimental to the educational process that it may require removal from specific courses or activities, suspension, or expulsion/termination of employment. Possible sanctions include, but are not limited to:

1. A campus restriction, which may include either areas of a given campus or one or more campuses as a whole.
2. A change of academic and/or work schedule.
3. A no contact order.

4. **Expulsion:** Expulsion strips a student Respondent of his or her status as a student and dismisses him or her from the College for an indefinite period. Expulsion will be recorded in the student Respondent's file. An expelled student Respondent may be readmitted to the College only with the written approval of the Title IX Coordinator.
5. **General probation:** A student Respondent placed on general probation will be given a chance to show his or her capability and willingness to observe LCC's Sexual Misconduct Policy and these Procedures going forward. If he or she does so for the entirety of the time that the general probation is in effect, no further penalty will be imposed; if he or she violates the Sexual Misconduct Policy or these Procedures during the time that the general probation is in effect, further disciplinary action will be taken. A general probation may be imposed for a period of time no longer than two semesters.
6. **Loss of Technology Privileges:** A student Respondent may be excluded from all privileges associated with College technology access, including but not limited to email and network access and storage.
7. **Mandatory counseling.**
8. **Reprimand:** A written or verbal communication that gives official notice to the student Respondent that any subsequent offense against the Sexual Misconduct Policy or these Procedures will carry heavier penalties because of this prior infraction.
9. **Restrictive probation:** Restrictive probation results in loss of the student Respondent's good standing and will be recorded in the student Respondent's file. Restrictive probation limits a student Respondent's activity in the College community, including but not limited to exclusion from class(es), program(s), and/or specific campus locations. Generally, student Respondents on restrictive probation will not be eligible for initiation into any local or national organizations, may not receive any College award or other honorary recognition, and may not occupy a position of leadership or responsibility with any College or student organization, publication, or activity. A restrictive probation may be imposed for a period of time no shorter than two semesters. Any violation of restrictive probation may result in immediate suspension.
10. **Restitution:** Student Respondents may be required to pay for damages suffered by the College, College employees, or other students.
11. **Suspension:** Suspension excludes a student Respondent from all College privileges and activities for a specified period of time. This sanction is reserved for those offenses warranting discipline more severe than probation or for repeated misconduct. Suspension will be recorded in the student Respondent's file. A suspended student Respondent may return to the College only with the written approval of the Title IX Coordinator.

Sanctions for employees may include counseling, involuntary reassignment or demotion, termination of employment, administrative leave, mandated external counseling, and/or

mandated training, suspension with or without pay, no contact (restriction from entering specific College areas and/or from all forms of contact with certain persons), formal reprimand (a formal notice that the employee has violated LCC policy and that future violations may be dealt with more severely).

K. Post-Resolution Conduct

The Title IX Coordinator will coordinate action to prevent future misconduct and/or retaliation. Both parties are encouraged to report any subsequent problems, and the Title IX Coordinator will take prompt corrective action if either party is mistreated or if any sanctions imposed fail to protect the safety and well-being of the Complainant or other members of the College community. In cases involving a finding of responsibility for Sexual Harassment, the Title IX Coordinator will also take reasonable steps to eliminate any hostile environment that has been created.

L. Appeal Process

The hearing panel's determination regarding the Respondent's responsibility and/or sanction for Sexual Misconduct may be appealed by either the Respondent or the Complainant but only on the following grounds:

1. Procedural error that significantly impacted the outcome of the resolution process and that was prejudicial to the appellant, and/or
2. The availability of previously unavailable relevant evidence that would have significantly impacted the outcome of the resolution process and the absence of which was prejudicial to the appellant.

Any appeal must be made in writing to the Title IX Coordinator within seven days of the notice of decision. The Title IX Coordinator will provide the appeal to the opposing party who may submit a response within seven days. If the Title IX Coordinator deems the appeal to be warranted by the additional evidence, he or she will refer the appeal to the hearing panel to re-issue a determination in light of the new evidence. The hearing panel may re-convene the hearing in its discretion.

If an appeal is made on the basis of procedural error, it will be referred to the Senior VP of Instruction and Student Services. In addition to reviewing the written record, the Senior VP of Instruction and Student Services may choose to interview the parties, the Title IX Coordinator, and/or the hearing panelists for clarification.

In either instance, a written decision on the appeal will be issued within fourteen days of the submission of the appeal. That decision is final and no further appeal is allowed.

M. Prohibition on Providing False Information

LCC prohibits the provision of false information at every stage of the investigation and adjudication process. Any individual who knowingly provides false information in bad faith will be subject to appropriate disciplinary action, up to and including termination of employment or, in the case of a student, expulsion.

N. Education and Awareness

LCC shall provide primary awareness education about, but not limited to, dating violence, domestic violence, sexual assault and stalking as part of orientation. This will include information on bystander intervention, how to report an incident, and the policies and procedures relating to disciplinary proceedings.