

PREVENTING DISCRIMINATION AND HARASSMENT AND WORKPLACE INCLUSION TRAINING

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**SOSF Chief People and Culture Officer and
Deputy General Counsel**

Colleen Sullivan

Director of Human Resources



**All Campus Meeting
August 14, 2023**

Why Is It Important?

- To help maintain a respectful work environment
- To comply with the law
- To comply with the company's policies against harassment and discrimination
- To promote better teamwork
- To prevent negative impact morale, productivity, turnover and recruitment
- To create a more inclusive environment

Discrimination Generally

Different treatment in the terms or conditions of employment on the basis of:

Race/Color

Sex (sexual orientation)

Pregnancy

National Origin/Citizenship

Military or Veteran Status

Religion

Age (40 and above)

Disability

Genetic Information



Equal Employment Opportunity Policy

- Lourdes is an Equal Employment Opportunity employer. In order to provide equal employment and advancement opportunities to all individuals, employment decisions will be based on merit, qualifications, and abilities.
- It is the policy of Lourdes to recruit, hire, promote and evaluate all personnel without regard to race, color, religion, sex, sexual orientation/affectional preference, gender identity status, marital status, national origin, age, physical or mental disability, alienage or citizenship status, genetic information, military or uniformed status, or any other protected category.
- Lourdes reasonably accommodates the known disabilities of qualified applicants and employees unless such accommodation would pose an undue hardship.
- Job applicants and present employees are evaluated solely on ability, experience and the requirements of the job position. This policy governs all aspects of employment, including hiring, promotion, job assignment, compensation, discipline, access to benefits, training, termination as well as other aspects of employment.

Non-Discrimination Policy

- Prohibits employment discrimination against any person at the workplace.
- Applies to all types of employment actions: hiring, promotions, training, and all other aspects of employment.
- **Bottom line:** All employees are expected to treat everyone with respect. Incidents of discrimination **MUST** be reported to the Director of Human Resources or any supervisor/manager, **even if someone directs you not to do so.**
- Lourdes does not permit any type of discrimination or retaliation in the workplace. Period.

Diversity Statement

- Recognizing that the diverse expressions within the human family enrich the learning and life of our community, Lourdes University, as a Catholic institution, is committed to nurturing an atmosphere that engages students, faculty, and staff in a dynamic exploration of a broad spectrum of ideas and cultures that leads to a multidimensional understanding of the world.
- Lourdes University fosters an intellectual community enriched by the full range and depth of human experience where diverse voices and viewpoints are represented. Lourdes University reflects its Franciscan values of community, learning, reverence, and service through initiatives that include professional, pedagogical, and student development, as well as community events, which actively promote and support a diverse population.

Diversity, Equity, and Inclusion

- We embrace and encourage our employees' differences in race, color, national origin, gender, sexual orientation, age, religion, disability, identity, veteran status, genetic identity or expression, language, veteran status, socio-economic status, citizenship and other protected categories, and characteristics that make our employees unique.
- Employees who believe they have been subjected to behavior that conflicts with the company's diversity policy and initiatives should seek assistance from a supervisor/manager or the Director of HR.
- For more information on diversity efforts on campus, contact

Tonya Colbert
Coordinator of Diversity/Multicultural Student
Services.

Diversity & Inclusion

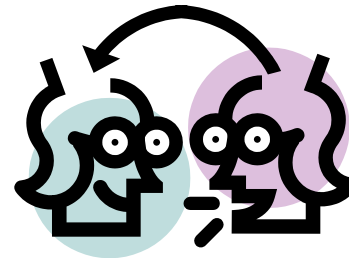
- Diversity focuses on the makeup of the organization—demographics such as gender, race/ethnicity, sexual orientation, age, disability, just to name a few.
- Inclusion is the deliberate act of welcoming diversity and creating an environment where all different kinds of people can thrive and succeed.

Diversity is **what you have**.

Inclusion is **what you do**.

Ways to Achieve a Functional Diverse Workforce

- Respect others' opinions.
- Acknowledge cultural/ generational differences and historical injustices without becoming defensive.
- Be open to learning about other cultures and ideas.
- Give others the benefit of the doubt in a dispute.
- Seek first to understand others' point of views; then to be understood.
- Don't stereotype.
- Don't judge others by your own cultural standards.
- Don't assume your culture's way is the only way.
- Don't talk down to anyone; communicate effectively.



How Can Employees Promote Diversity

- Practice positive, constructive work habits in the workplace; work cooperatively towards a common goal.
- Live up to the social contract; contribute to your fullest potential; strive for excellence.
- Recognize and respect others and their individuality.
- Think before you speak and be sensitive to others.
- Talk about your differences and ask tactful questions about how people want to be treated.
- Eliminate stereotypes and generalizations.
- Include others from outside your cultural group in conversations, breaks, and meals.

What is harassment?

- Harassment is a form of discrimination.
- Harassment is unwelcome, unwanted, offensive conduct related to or based on a protected characteristic.
- Two types of sexual harassment:
 - **Quid Pro Quo**: Enduring the offensive conduct becomes a condition of continued employment.
 - Example: Supervisor may offer or hint at a promotion if employee engages in his/her sexual demands.
 - Example: Demanding sexual favors in exchange for remaining employed
 - **Hostile work environment**: The conduct is so severe or pervasive that a reasonable person would find that it is creating a hostile work environment that renders the work atmosphere intimidating, hostile, abusive or offensive.

What are the legal elements of a sexual harassment claim?

- Employee was subjected to **unwelcome** harassment;
- Harassment was **based upon gender**;
- Harassment was “**sufficiently severe or pervasive**” to alter a term, condition or privilege of employment.

Reasonable Person Standard

- Would any reasonable person be offended by the behavior?
- Ask: Would the type of behavior be objectionable to a reasonable person? Would the behavior be objectionable to a stranger? Would the behavior be objectionable to a person in this room?
- Question: What happens if you observe an interaction where employees communicating are not offended, but someone else to whom the conversation is not directed could be offended?

Intent vs. Impact

- Intent is not relevant in determining whether or not a behavior is harassment.
- Impact of the behavior on the work environment is all that matters.
- The statement “I didn’t mean anything by it” is not a defense to harassing behavior.
- Reminder: Conversations can be overheard by other co-workers.

Harassment can occur in many ways

Three ways:

Verbal Harassment: the words we speak, derogatory comments, slurs, offensive jokes.

Physical Harassment: physical gestures, movements, inappropriate touching, invading person space, assault.

Visual Harassment: emails, photos, videos, posters, cartoons, drawings, text messages, leering.

Special note on e-harassment:

- 10% use IM at work for inappropriate behavior.
- 27% of claims involve e-harassment.
- 26% of employers have terminated employees for e-harassment.

Reminders...

- A harasser can be a co-worker OR anyone else that visits the facility to engage in work-related business.
 - Example: Vendors, clients, contractors, etc.
 - Carries the same weight as employee-to-employee harassment.
 - All harassment MUST be reported.
- Harassment can occur both at work and at work-related events.
 - Example: Work party or business trip

All harassment MUST be reported to a supervisor/manager or the Director of HR.

Specific Types of Harassment: Sexual

- Harassment targeted at a particular gender.
- Types of potentially offending behaviors:
 - Sexual innuendos (i.e. comments about a person's body or sharing dreams/fantasies)
 - Pressure for dates
 - Unwelcome touching, caressing
 - Sexist and insulting comments, texts or emails
 - Showing or discussing offensive or pornographic material from a magazine, computer, or cell phone/tablet
 - Obscene phone calls
 - Jokes that include offensive references about a particular gender
 - Demands for sexual favors
- **Reminder this applies to sexual orientation and transgender status.

What is NOT sexual harassment?

- A single incident (unless sufficiently severe; i.e., sexual assault)
- Welcomeness
- Requests for social interaction (unless repeated and unwelcome).
- Normal, pleasant, friendly or even mildly flirtatious interactions, as long as no reasonable person (woman) is offended.

Pop Quiz: Hypothetical

Mark frequently asks his co-worker Kelly questions such as what she and her boyfriend did over weekend, whether they are thinking of getting married or living together, and whether she is also dating other men. Kelly engages in friendly conversation each time and responds to his questions. She doesn't appear to be bothered by the discussion. However, as time passes, Kelly becomes more bothered about Mark's intrusive questions and confides in her co-worker Veronica. Kelly does not tell Mark she is uncomfortable and continues to converse with him. Although Veronica knows Kelly is uncomfortable, she does not say anything until a few weeks later. Veronica eventually tells Mark he is being inappropriate. Kelly does not say anything. Mark angrily responds that he is just trying to boost morale by taking an interest in his co-workers' personal life.

What do you think about this encounter?

Special Note

- Avoid invading personal space,
- Avoid “custom” of friendly hugs
- Don’t assume someone is comfortable just because you have worked together for a long time
- Avoid kisses on the cheek
- Avoid pat on the back and personal touching

Results in people feeling uncomfortable. Could be unwelcomed

Keep in mind power dynamics!

Other ways to show warmth and affection that does not involve physical touch

What might have been acceptable 20 years ago, is no longer acceptable—even if it is not intended to be offensive or sexual in nature and even if culturally acceptable outside of work!

Type of Harassment: Racial

- Racial harassment is unwelcome behavior that happens because of someone's race, such as verbal visual, or physical conduct of a racial nature.
- Common types of racial harassment:
 - Ethnic slurs or jokes
 - Racial comments or offensive remarks about one's race
 - Offensive or derogatory comments
 - Racial or race-based drawings, videos, emails
 - Racially-charged symbols like Nazi swastikas, hangman's noose, etc.

Hypothetical

Kevin Stone, computer expert and IT Department “comedian,” regularly sends jokes by text to a list of co-workers. Some jokes are political, but others could be construed as racist and ethnically-derogatory. Luke is a new employee. He has adopted children that are African-American, but Kevin does not know this. Kevin likes Luke and adds Luke to his distribution list. Luke is surprised at the content of the “jokes.” Luke notices that other co-workers are on the distribution list.

What do you think about this scenario?

What action, if any, should Luke take?

Does it matter that Kevin sends the jokes on non-work time?

If we have laws to protect against discrimination, why do we still have claims?

- **Intentional bias**

- The intentional act of treating a group of individuals differently
 - i.e., Intentionally and knowingly excluding a candidate from the job pool because you just do not believe older individuals are capable of performing IT duties regardless of the candidates' qualifications.

- **Unconscious or Implicit bias**

- Unintended bias. Not done purposefully. There is no intentional thought process of exclusion, but exclusion occurs unintentionally.
- Research shows we are bombarded with 11 million pieces of information at any given time. But we can only handle 40.
- What do we do? Our brain creates shortcuts so we can make decisions quickly without our brain being overwhelmed.

A Final Note about Implicit or Unconscious Bias

- Be aware of **Workplace Cliques**
 - They can ostracize other employees; they often contain bullies; they are often segregated by race/sex/age, etc.; and they can lead to gossip or rumor-spreading.
- **The Rumor Mill**
 - Every workplace has one, but they can be damaging to morale.
 - Gossip may lead to harassment claims if targeting people of certain race/sex/age, etc.
 - Even if the gossip is sharing truthful information (which it usually is not), the impact can be severe.

Type of Harassment: Age

- Harassment based on someone's age.
- Age discrimination involves treating someone less favorably or differently because of his or her age.
- Common examples of age discrimination:
 - Offensive or derogatory remarks about a person's age.
 - Actions taken because of someone's age.
(Ex: Referencing employee's age in a performance evaluation, asking someone how old they are in an interview, or assigning a task to a younger employee simply because they are younger).

Type of Harassment: Disability

- Occurs when an employee is treated differently due to his or her known disability.
- Governed by Americans with Disabilities Act.
- ADA also includes other protections:
 - Must have legally defined disability that is known to the employer.
 - Employees must request reasonable accommodations. ADA requires employer to provide reasonable accommodations if they do not pose an undue hardship on the employer.
 - Employees must still have the necessary qualifications to perform the essential functions of their jobs.

Lourdes' Policy on Reporting Complaints

- Immediately report the matter to an immediate supervisor or manager, Human Resources or any member of management
- Encourage but don't require reports be in writing
- Encourage prompt reporting of complaints so that a prompt response and appropriate action may be taken
- Retaliation is prohibited
- Prompt investigation will be initiated in as confidential a manner as possible
- Appropriate disciplinary action, up to and including termination if harassment is found

Retaliation is Unlawful

- It is also unlawful to retaliate against any employee who reports or opposes unlawful discrimination or harassment or who assists in an investigation of a discrimination or harassment complaint.
- Lourdes prohibits retaliation against anyone who participates in a harassment claim.
- Unlawful retaliation can be grounds for discipline up to and including termination.
- Examples of retaliation:
 - Engage in verbal or physical abuse;
 - Increase scrutiny;
 - spread false rumors; or
 - make the person's work more difficult

Workplace “Don’t”s

- Don’t ignore harassing behavior. To the extent possible, inform the harasser that the behavior is unwelcome.
- Don’t laugh off harassing behavior. While laughing it off seems easiest, this leads the offender to believe that the behavior is welcome.
- Don’t engage in bantering or other behavior that indicates you are a willing participant.
- Don’t engage in behavior that might be considered equally inappropriate or offensive by others.
- Don’t exclude others based on race, sex, or other protected characteristics.

Workplace “Do”s

- Do tell the offender immediately (whether in person or in writing) that his/her behavior is inappropriate, offensive, and unwelcome, if at all possible.
- Do counsel your friends when you observe them engaging in inappropriate or offensive behavior.
- Report all potentially harassing situations to human resources. Human Resources personnel can help you understand if behavior violates Lourdes’ policies or the law.
- If you are a supervisor or manager who learns of harassment or discrimination, notify the Director of Human Resources immediately.
- Do report any retaliation that you may experience or witness after a complaint has been filed or an investigation concluded.
- Do still hold people accountable for their poor performance and unacceptable behavior – even if they have submitted a complaint of discrimination, as long as the behavior is well documented and unrelated to the harassment alleged.

Guiding Principles

- **Avoid racial, cultural and other identity references.**
 - Example: “Have you met Dan? He’s Hispanic too. You two would get along.”
 - Alternative: “Have you met Dan? He’s new to the team.”
 - Example: “You people” or “Your People”.
 - Example: “You speak English so well.”
 - Example: “Where are you actually from?”
- **Avoid commentary on someone’s physical appearance. It has nothing to do with work!**
 - Example: “Your look great today. Your legs really stand out in that skirt”.
 - Example: “You’d be so pretty if you would smile more.”
 - Example: “Let’s have the old man show us how we should do that. He has the most experience.”
 - Examples: “She’s pretty much the office mom of the group.”
 - Example: “I really like your Afro. Is that your natural hair?”
- **Avoid political conversations. Be respectful of religious beliefs**
- **Avoid being “too set in ways” or “I’ve been here forever so you can’t tell me what to do”**
- **Avoid overly personal conversations. If someone wants you to know something personal, they will let you know!**

Appropriate v. Inappropriate Compliments

- ALWAYS FOCUS ON WORK RELATED PERFORMANCE
 - “Great job with that project”
 - “Good work over there”
 - “Keep up the amazing work”
 - “I loved what you said about the proposals”
 - “You have great ideas”
 - “Nice suggestions about the redesign”

Appropriate v. Inappropriate Compliments Cont'd

- Would you feel comfortable making the same comment to your boss?
- Would you feel comfortable saying it in front of others?
- Are your comments too frequent or given to only a specific coworker, gender, or race?
- Would you make the comment to someone else?
 - “You are really articulate”
- Any compliment you wouldn't feel comfortable saying to a male employee should not be made to a female employee
 - Great work!, Excellent report! Wonderful presentation.... This style of compliment is fine - anything to do with the job that is not gender specific is acceptable **vs.**
 - “Your legs look great in that outfit Bruce” = “Ah... Thanks... I think... - You're freaking me out a bit Steve...”
- Avoid backhanded compliments.
 - “You did great on that project.....or someone who is new”

Title IX Training for Faculty and Staff

Mechelle Zarou

**SOSF Chief People and Culture Officer and
Deputy General Counsel**

Nina Wright

Title IX Coordinator



**All Campus Meeting
August 14, 2023**

Title IX of the Education Amendments Act of 1972

“No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

Title IX of the Education Amendments of 1972 Implementing Regulations at:

20 U.S.C. §1681 & 34 C.F.R Part 106

Title IX of the Education Amendments Act of 1972

- Enacted in 1972.
- Prohibits sex discrimination in educational institutions, public and private, that receive federal funds.
- Administered by the U.S. Office for Civil Rights (“OCR”).

Title IX Overview

OCR issues guidance:

- April 4, 2011 - *Dear Colleague Letter*-Sexual Misconduct (rescinded by Trump administration in 2017)
- June 25, 2013 - *Dear Colleague Letter*-Pregnant and Parenting Students
- April 24, 2013 - Dear Colleague Letter – Retaliation
- July 12, 2022 – Proposed Regulations on Title IX finally released (expected to be finalized in October 2023)

Who Is Protected?

- Male and Female
- Students, Faculty, and Staff
- Applicants for Admission
- Straight/LGBTQ
- Sex-Stereotyping
- Pregnant and Parenting Students
- Denying or Limiting Ability to Participate in or Benefit from Educational Program

Title IX and Athletics

- A. Participation (equal opportunities to participate)
- B. Athletic Financial Assistance (i.e., Scholarships allocated in proportion to number of male/female students participating)
- C. Other Program Areas
(Treatment of Athletes)

Prohibited Sexual Misconduct

Sexual Harassment

- Unwelcome Conduct of a Sexual Nature
- Quid Pro Quo
- Hostile Environment

Sexual Violence

- Sexual Assault and Rape
- Sexual Coercion
- Domestic/Dating Violence

Prohibited Sexual Misconduct

Gender-Based Harassment

- Unwelcome Conduct of a Nonsexual Nature Based on Actual/Perceived Sex
- Based on Gender Identity, Expression, Nonconformity with Gender Stereotypes

Stalking

- Engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to:
 - Fear for their safety or the safety of others; or
 - Suffer substantial emotional distress.

Sexual Exploitation

- Nonconsensual Photos/Videos/Audio/Electronic Broadcasting
- Voyeurism
- Exposure
- Date Rape Drugs (GHB)

Prohibited Retaliation

- Retaliation is prohibited against any employee who complained about unlawful harassment or discrimination or assisted in an investigation of a complaint.
- Retaliatory actions include, without limitation, threats, adverse employment actions, punishments, whispering about someone, making threatening gestures, ostracizing someone, and physical or verbal attacks.

Sexual Assault By the Numbers

How common?

- A 2000 study found that **20-25%** of college women are survivors of a completed or attempted rape during the course of their college careers.

Reporting of Assaults:

- **Less than 5%** of completed or attempted rapes of college students are reported to either campus authorities or law enforcement.

When do most assaults occur?

- Most incidents occur after 6:00 p.m., with 52% occurring after 12:00 a.m.
- Majority occur from August – October.
- Vast majority of these incidents took place in living quarters.

Sexual Assault By the Numbers

Demographics of accused (since 2011 DCL):

- 99% male, 15% athletes, 10% fraternity members

Nature of Allegations:

- **33% incapacitation**, 29% physical force, 18% failed consent, 13% sexual coercion, 7% drug-facilitated (United Educators Report)

Lourdes' Policy

<https://www.lourdes.edu/campus-life/public-safety/title-ix-sexual-misconduct-policy/>

- Reporting and Response Procedures
- Medical Resources, Counseling Resources, Pastoral Resources
- Define “Responsible Employees” required to timely report (i.e., Mandatory Reporters)
- Reporting to University
- Reporting to Law Enforcement
- Administrative Investigation
- Administrative Hearing

Essential Compliance Elements

- Once a *Responsible Employee* has either actual or constructive notice of sexual harassment or sexual misconduct, Lourdes must take action.
- Who is considered a *Responsible Employee*?

Responsible Employees

- A ***responsible employee*** includes any employee who:
 - Has the authority to take action to redress the harassment,
 - Has the duty to report harassment or other types of misconduct to appropriate officials, OR
 - Is someone a student could reasonably believe has this authority or responsibility.
- Under Lourdes' policy ***all employees of the University***, except for those identified as confidential resources in this Policy, are responsible employees who are required to report allegations of Prohibited Conduct to the Title IX Coordinator. This currently includes Sr. Barb Vano and Campus Ministry staff.

Confidential Sources

- Counselors at the Sophia Center are confidential resources who are not permitted to report incidents of sexual misconduct.
- The nurse, or any nurse practitioner or other college health office staff member are confidential resources.

Reporting

Title IX Coordinator –

Nina Wright

419-517-8413

nwright@lourdes.edu

24-Hour Emergency Numbers

Emergency

- Call **911**
- Campus Security: **419-574-3861**
- **R.A. Duty Phone:** 419-517-7497
- **R.D. Duty Phone:** 419-517-7498
- **Sylvania Police:** Non-emergency 419-885-8902
- **Sylvania Fire:** Non-emergency 419-882-0022
- **Sophia Center:** 419-349-7563
- **YWCA Rape Crisis Center Hotline:** 419-241-7273

Role of Title IX Coordinator

Oversight of Title IX Compliance

- Investigation of complaints alleging sexual harassment and violence, review findings and proposed remedies, eliminate hostile environment and take appropriate steps to prevent recurrence
- Expert knowledge of University's Title IX grievance procedures
- Prompt, fair, and impartial resolution of complaints
- Coordinate collection and analysis of information from climate surveys

Independence (avoid conflicts of interest)

Visibility (identify in notice of nondiscrimination)

Cross-Campus and Community Collaboration

Increase Campus Awareness

University-Wide Training and Updating Policies

Investigation

- Options for complainant:
 - Criminal –students always have the option to file a police report
 - Institutional
 - Civil
- Title IX Coordinator will provide complainant with supportive measures and will put together an investigation team.
- Deputy General Counsel acts as a resource to the Title IX Coordinator.

Lourdes' Duty Under Title IX

- Lourdes ***MUST*** take immediate and appropriate steps to investigate what occurred.
- Lourdes ***MUST*** take prompt and effective action to
 - Stop the harassment
 - Remedy the effects
 - Prevent the recurrence

Scenario

On April 27th, Amy Craft, a first year student at Lourdes, sets up a time to meet with her History Professor, Casey Smith, for later that afternoon. Upon arriving for the appointment, Professor Smith can see that Amy is very upset and looks exhausted.

Professor Smith asks if everything is ok, and Amy asks if she can close the door. Professor Smith gets up, closes the door, sits back down and Amy blurts out:

Scenario

“I think I was raped last weekend in my dorm room by another student, a friend of a friend named Todd.”

What should Professor Smith do next?

How to Respond:

- Provide comfort and support.
- Do NOT go into investigation mode at this point. That is not your job and not helpful/necessary. Take the student at his or her word.
- Direct the student to Sophia Center for counseling or YWCA for crisis counseling.
- Encourage parental involvement for support, or another trusted adult.
- Write down everything the student told you after the student departs. Emails are great to document date/time.
- **Notify Nina Wright, Title IX Coordinator as soon as possible.**