

SEXUAL MISCONDUCT POLICY

It is the policy of Lander University to prohibit discrimination on the basis of age, color, disability, gender, sexual orientation, gender identity, national origin, race, pregnancy, religion, sex, veteran's status and genetic information in regard to the administration of all campus programs, services and activities, including intercollegiate athletics, and the admission of students, employment actions, or other sponsored activities and programs including obligations of Title IX.

Lander University is committed to creating a safe, respectful and non-threatening environment for members of the university community, guests, and visitors.

It is expected that all individuals on campus, and associated with the Lander community, treat each other with respect and professionalism and conduct ourselves in a manner that does not infringe upon the rights of others. The university will not tolerate gender-based misconduct.

Everyone shares in the individual personal responsibility and legal obligation to protect our campus community from any form of illegal discrimination.

This policy has been developed to reaffirm those principles and to provide recourse for those affected individuals whose rights have been violated.

All individuals are expected and required to report any concerns immediately to a Title IX coordinator. When an allegation of misconduct is brought to an appropriate administrator's attention, and an individual is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated, remedy its effects, and to enforce discipline when needed.

Be advised that sexual harassment, including sexual violence, is a form of discrimination, and is illegal.

No employee or student, either in the workplace or in the academic environment, should be subject to unwelcome verbal or physical conduct that is sexual in nature. Sexual harassment does not refer to occasional compliments of a socially acceptable nature. It refers to behavior of a sexual nature that is not welcome, that is personally offensive, and that interferes with performance.

Policy Applicability and Dissemination

All students, faculty, staff, contractors, board members, guests and any other individual(s) are subject to this policy.

Students — The vice president for Student Affairs shall ensure this policy is distributed to all new students and is responsible for conducting ongoing training, as needed, to all students.

Employees — The director of Human Resources shall ensure this policy is distributed to all new employees and is responsible for conducting ongoing training, as needed, to all employees.

Athletic staff and students — The director of Athletics shall ensure this policy is distributed to all athletic staff and students and is responsible for conducting training as needed.

Annual training — The Title IX coordinator or its designee shall provide this policy on the website, provide dissemination, and responsible for general oversight of Title IX Compliance.

Prompt Attention

Complaints of discrimination or sexual harassment are taken seriously and will be dealt with promptly, thoroughly, impartially and equitably.

Where discrimination is found to have occurred, the institution or unit where it occurred will act to stop the discrimination or sexual harassment, to prevent its recurrence, to remedy its effects, if any, and to discipline those responsible.

Confidentiality and Reporting

Lander University understands that confidentiality is important. However, confidentiality cannot be guaranteed. The administrators, faculty or staff responsible for implementing this policy will respect the privacy of individuals reporting, or accused of, discrimination or sexual misconduct and will maintain confidentiality to the extent reasonably possible.

Examples of situations where confidentiality cannot be maintained include, but are not limited to, necessary disclosures during an investigation, circumstances where Lander University is required by law to disclose information (such as in response to legal process), or when an individual is in harm's way.

Depending on individual's role at the university, there are differing reporting responsibilities and abilities to maintain confidentiality, based upon laws and policies.

Reporting Responsibilities – Three Groups

Individuals with COMPLETE confidentiality

There are certain positions that possess legal privilege as granted by the state, and are not required to share private, personally identifiable information, **unless there is cause for fear for your safety, or the safety of others.**

These individuals who can be accessed through the university Wellness Center, include the following professional positions:

- a. On-campus licensed mental health counselors;
- b. On-campus health service providers or registered nurses;
- c. Off-campus rape crisis resources.

This privilege exists only within the context of counseling and health service sessions. These resources will provide anyone impacted by sexual assault and/or harassment with a safe and confidential environment in which to discuss concerns and to become aware of possible procedures or outcomes for recourse. Individuals who seek assistance from these confidential resources shall be advised that their discussions in these settings are not considered reports of sexual assault or harassment.

Campus counselors are available to help you free of charge, and can be seen on an emergency basis. In addition, you may speak to members of the clergy on and off campus, who will also keep information confidential. A victim may seek assistance from these university officials without initiating a formal process beyond the victim's control, or a process that violates her/his privacy.

2. Individuals with FULL legal reporting requirements

The university considers ALL OTHER EMPLOYEES, including resident assistants, to be "responsible employees." Responsible employees hold a legal obligation to FULLY and IMMEDIATELY report any allegations, observations or violations in entirety including names. Notice to you is the official notice to the institution.

You have the right to expect that incidents of sexual misconduct will be taken seriously by the institution, when formally reported. Additionally, you have the right to expect that such incidents will be investigated and properly resolved through administrative procedures.

In consideration of formal reporting, only individuals who need to know will be informed and information will be shared, only as necessary, with investigators, witnesses, and the accused individual.

Failure to take the above action and properly report, prevent the occurrence, or stop known discrimination or harassment, may be grounds for disciplinary action, up to and including, termination or expulsion.

3. Supervisors, managers and administrators' responsibilities

Every supervisor and manager has the responsibility to take reasonable steps intended to prevent acts of discrimination or sexual harassment, which include, but are not limited to:

- a. Monitoring the work and school environment for signs that discrimination or harassment may be occurring;
- b. Refraining from participation in, or encouragement of, actions that could be perceived as discrimination or harassment (verbal or otherwise);
- c. Stopping any observed acts that may be considered discrimination or harassment, and taking appropriate steps to intervene, whether or not the involved individuals are within his/her line of supervision; and
- d. Taking immediate action to minimize or eliminate the work and/or school contact between the two individuals where there has been a complaint of sexual harassment, pending investigation.

If any employee receives a complaint of alleged discrimination or sexual harassment, or personally observes or becomes aware of conduct that may constitute discrimination or sexual harassment, the employee is required to immediately and fully report the situation to a Title IX coordinator.

Failure to take the above action and properly report, prevent the occurrence, or stop known discrimination or harassment, may be grounds for disciplinary action, up to and including, termination or expulsion.

Relationship to Freedom of Expression

Lander University is committed to the principles of free inquiry and free expression. Vigorous discussion and debate are fundamental rights and this policy is not intended to stifle teaching methods or freedom of expression. Discrimination or sexual harassment, however, is neither a legally protected expression nor the proper exercise of academic freedom. It compromises the integrity of our institution, the tradition of intellectual freedom and the trust placed in our institution by the campus community.

Complaint and Investigation Procedure

This section provides the complaint and investigation procedure for complaints of discrimination or sexual harassment, including sexual violence. Complaints against a student may be referred to the student disciplinary process.

The president has designated the following administrators as Title IX coordinators and therefore, are able to receive complaints.

Go to the Title IX complaint form or e-mail to titleIX@lander.edu

Lander University's Title IX Staff:

Jeannie McCallum	Randy Bouknight
Title IX Coordinator	Title IX Deputy Coordinator
Office of Human Resources	for Students
511 Willson Street	Grier Student Center GC 345
864-388-8053	864-388-8293
jmccallum@lander.edu	rbouknight@lander.edu

Cheryl Bell
Title IX Deputy Coordinator
for Athletic Programs
Horne Arena
864-388-8530
cbell@lander.edu

The president has designated the Title IX coordinator as the primary investigating officer for general oversight. All Title IX complaints received by deputy coordinators are required to be communicated promptly to the Title IX coordinator.

Filing a Complaint

The Title IX complaint form is on Lander's website; or you may e-mail to titleIX@lander.edu. To access this form, go to <http://www.lander.edu/Business-Administration/Human-Resources/titleix/titleix-complaint-form>

Employees

1. A student who believes that he/she has been subjected to discrimination or sexual harassment by anyone may elect, and is encouraged to do so, to promptly tell the person that the conduct is unwelcome and ask them to stop. However, this is not a requirement if you believe it may become confrontational. An employee is not required to do this before filing a complaint. You reserve the right to file a complaint at any time. Any person who receives such a request to stop any inappropriate and unwelcome behavior or conduct, must immediately comply with the request and refrain from retaliation against the student.
2. The student may file a discrimination or sexual harassment complaint with one of the coordinators. Regarding student employees, a supervisor/manager has a responsibility to report any misconduct observed or reported, even if the individuals involved do not report directly to you, the supervisor.

Students

1. A student who believes that he/she has been subjected to discrimination or sexual harassment by anyone may elect, and is encouraged to do so, to promptly tell the person that the conduct is unwelcome and ask them to stop. However, this is not a requirement if you believe it may become confrontational. A student is not required to do this before filing a complaint. You reserve the right to file a complaint at any time. Any person who receives such a request to stop any inappropriate and unwelcome behavior or conduct, must immediately comply with the request and refrain from retaliation against the student.
2. The student may file a discrimination or sexual harassment complaint with one of the coordinators. Regarding student employees, a supervisor/manager has a responsibility to report any misconduct observed or reported, even if the individuals involved do not report directly to you, the supervisor.

Non-Employees and Non-Students

Individuals who are neither Lander employees nor Lander students, and who believe they have been subjected to discrimination or sexual harassment by a Lander employee during the employee's work hours or by a Lander student on campus or at a Lander-sponsored event, may utilize any of the complaint processes set forth above in this section.

Victim's Rights

You may access the following link for victim's rights: <http://www.lander.edu/docs/default-source/human-resources-documents/statement-of-the-rights-of-the-alleged-victim.pdf?sfvrsn=0>

The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to Lander University administrators;

The right to be treated with respect by university officials;

The right of both accuser and accused to have the same opportunity to have others present (in support or advisory roles) during a campus disciplinary hearing;

The right not to be discouraged by university officials from reporting an assault to both on-campus and off-campus authorities;

The right to be informed of the outcome and sanction of any disciplinary hearing involving sexual assault, usually within 24 hours of the end of the conduct hearing;

The right to be informed by university officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire;

The right to be notified of available counseling, mental health or student services for victims of sexual assault, both on campus and in the community;

The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available (no formal complaint, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:

- a. Change of an on-campus student's housing to a different on-campus location;
- b. Assistance from university support staff in completing the relocation;
- c. Arranging to dissolve a housing contract and pro-rating a refund;
- d. Exam (paper, assignment) rescheduling;
- e. Taking an incomplete in a class;
- f. Transferring class sections;
- g. Temporary withdrawal;
- h. Alternative course completion options.

The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;

The right ***not*** to have any complaint of sexual assault mediated (as opposed to adjudicated);

The right to make a victim-impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;

The right to a campus no contact order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining student or others;

The right to have complaints of sexual misconduct responded to quickly and with sensitivity by campus law enforcement.

The right to appeal the [finding and] sanction of the conduct body, in accordance with the standards for appeal established by the

institution;

The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;

The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed);

The right to preservation of privacy, to the extent possible and allowed by law;

The right to a hearing closed to the public;

The right to petition that any member of the conduct body be removed on the basis of demonstrated bias;

The right to bring a victim advocate or adviser to all phases of the investigation and campus conduct proceeding;

The right to give testimony in a campus hearing by means other than being in the same room with the accused student;

The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;

The right to be fully informed of campus conduct rules and procedures as well as the nature and extent of all alleged violations contained within the complaint;

The right to have the university compel the presence of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, directly or indirectly, of witnesses (including the accused student), and the right to challenge documentary evidence.

The right to be present for all testimony given and evidence presented before the conduct body;

The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct training;

The right to a conduct panel comprised of representatives of both genders;

The right to have university policies and procedures followed without material deviation;

The right to be informed in advance of any public release of information regarding the complaint;

The right not to have released to the public any personally identifiable information about the complainant, without his or her consent.

Accused Students' Rights

The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to university administrators against the accused student;

The right to be treated with respect by university officials;

The right to be informed of and have access to campus resources for medical, counseling, and advisory services;

The right to be fully informed of the nature, rules and procedures of the campus conduct process and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions;

The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation;

The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;

The right to make an impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;

The right to appeal the [finding and] sanction of the conduct body, in accordance with the standards for appeal established by the institution;

The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;

The right to be informed of the names of all witnesses who will be called to give testimony, within 48 hours of the hearing, except in cases where a witness' identity will not be revealed to the accused student for compelling safety reasons (this does not include the name of the alleged victim/complainant, which will always be revealed);

The right to a hearing closed to the public;

The right to petition that any member of the conduct body be removed on the basis of bias;

The right to have the university compel the presence of student, faculty and staff witnesses, and the opportunity to ask questions, directly or indirectly, of witnesses, and the right to challenge documentary evidence.

The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct adjudication training;

The right to have university policies and procedures followed without material deviation;

The right to have an adviser or advocate accompanying and assisting in the campus hearing process. This adviser can be anyone, [optional: including an attorney (provided at the accused student's own cost)], but the adviser may not take part directly in the hearing itself, though they may communicate with the accused student as necessary;

The right to a fundamentally fair hearing, as defined in these procedures;

The right to a campus conduct outcome based solely on evidence presented during the conduct process. Such evidence shall be credible, relevant, based in fact, and without prejudice;

The right to written notice of the outcome and sanction of the hearing;

The right to a conduct panel comprised of representatives of both genders;

The right to be informed in advance, when possible, of any public release of information regarding the complaint.

Investigation and Resolution

1. Upon receipt of a complaint, Lander University will conduct the investigation, based on established guidelines, in a prompt, thorough, impartial and equitable manner.

*The person subject to the complaint, shall be provided information as to the nature of the complaint.

2. While not required, both the victim and the accused shall have the equal opportunity to choose an independent adviser present for assistance, support and advice. The independent adviser may be brought into the process at any time at the request of the alleged victim or perpetrator.

3. In connection with any such disciplinary hearings/actions, the person filing the complaint and the person who is the subject of the complaint, have equal rights to be interviewed, identify witnesses, and provide and receive documentation and witness lists pertaining to the complaint, and if any appeal is provided, to appeal the decision. Students may appeal grievances as stated and outlined in the guidelines of the handbook.
4. In most cases, a prompt, thorough, impartial, and equitable investigation should be completed within 45 calendar days of receipt of the complaint.
5. The standard for evaluating complaints shall be a preponderance of the evidence.
6. At the completion of the investigation, appropriate determinations will be made regarding the resolution of the matter, and depending on the circumstances, both parties may be informed concurrently of the resolution. If warranted, disciplinary action, up to and including, involuntary termination or expulsion will be taken. Any such disciplinary action shall be taken, as applicable, in accordance with the Title IX Policy - Gender-Based Misconduct Policy and other applicable policies as defined, but not limited to, the faculty, staff, athletic or student handbooks. Please refer to <http://www.lander.edu/Business-Administration/Human-Resources/titleix/titleix-gbmp>. In the event actions are taken against an individual, such matters generally remain confidential under those sections, except that final decisions following hearings or appeals of professional employees are subject to public records. Student matters generally remain confidential under FERPA.
7. When discriminatory conduct or sexual harassment involves a crime of violence or a non-forcible sex offense, FERPA permits the institution to disclose to the alleged victim the final results (limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed) of a disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed. With respect to an institutional disciplinary proceeding alleging a sex offense, the Clery Act requires that the accuser and the accused must be informed of the outcome.
8. In the event a student is found to have engaged in sexual harassment of another student, the institution shall disclose to the student who was harassed, information about the sanction imposed on the student who was found to have engaged in harassment, when the sanction directly relates to the harassed student.

Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from disciplinary probation to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

Any student found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely receive a recommended sanction of suspension or expulsion.*

Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from disciplinary probation warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

The conduct body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers, nor any appeals body or officer, will deviate from the range of recommended sanctions unless compelling justification exists to do so.

Retaliation

Retaliation against an individual who in good faith complains of alleged discrimination, sexual harassment or provides information during an investigation, is against the law, will not be tolerated, and may be grounds for discipline up to and including termination or expulsion. Intentionally providing false information is also grounds for discipline, up to and including, possible termination or expulsion.

"Retaliation" may include, but is not limited to, conduct as the denial of adequate personnel to perform duties; frequent replacement of members of the staff; frequent and undesirable changes in the location of an office; the refusal to assign meaningful work; unwarranted disciplinary action; unfair work performance evaluations; or a reduction in pay.

An employee who believes that he or she has been subjected to retaliation may file a retaliation complaint with one of the Title IX coordinators.

A student who believes that he or she has been subjected to retaliation may contact one of the Title IX coordinators or e-mail at titleIX@lander.edu.

Complaints of retaliation under Title IX are required to be promptly communicated to the primary Title IX coordinator.

False Reports

Because discrimination and sexual harassment frequently involve interactions between persons that are not witnessed by others, reports of discrimination or sexual harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or "proof" should not discourage individuals from reporting discrimination or sexual harassment under this policy.

However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth may be subject to disciplinary action under the applicable disciplinary procedures, up to and including, termination or expulsion. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

Federal Statistical Reporting Obligations

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (Clery Act.) All personally identifiable information is kept confidential, but statistical information must be communicated to campus law enforcement regarding the type of incident and the general location of the incident (whether on or off campus,) for publication in the annual campus security report. No specific address information will be specified.

This report helps to provide the community with a clear picture of the extent, and nature, of campus crime. Mandated federal reporters include: student/conduct affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisers to student organizations and any other official with significant responsibility for student/campus activities. Information shared includes: the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

Federal Timely Warning Reporting Obligations

Victims of sexual misconduct should also be aware that Lander University is required to issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The university will make every effort to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

PHYSICAL SEXUAL MISCONDUCT

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you do not. Consent cannot be presumed for any form of sexual activity. Furthermore, silence, without actions demonstrating permission, cannot be considered consent.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex. When alcohol or other drugs are being used, a person will be considered as unable to give valid consent, if they cannot fully comprehend the details of a sexual interaction (who, what, when, where, why, or how) due to incapacitation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and “Yes” may not always mean “Yes.” Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “No.”

CONSENSUAL RELATIONSHIPS

Sexual harassment and/or the assignment, or suggestion, of rewards and punishments on the basis of sex or sexuality, have no place in the work of the university and are prohibited.

For the protection of our university community, no employee shall enter into a sexual or romantic relationship (consensual or otherwise) with a student, staff member, or faculty member, when the work of one is directly evaluated or supervised by the other. In cases where there is a pre-existing sexual or romantic relationship, effective steps — including initial disclosure by the direct evaluators or supervisors to their unit heads — must be taken to ensure unbiased evaluation or supervision of the student, staff member, or other faculty member.

If complaints occur and are substantiated, employees will be subject to disciplinary action, up to and including, termination or nonrenewal. All complaints will be adjudicated with due process for all parties in accordance with university policies, federal, state and local laws.

Complainants are protected from retaliatory acts and are not to be discouraged from reporting in good faith any concerns regarding sexual harassment or favoritism. However, malicious or frivolous claims of harassment or favoritism are prohibited, and, if substantiated, will result in disciplinary action against the complainant. Disciplinary actions may include termination, nonrenewal, probation, suspension, expulsion, or other appropriate action.

Students serving as teaching assistants and resident assistants are also professionally responsible for students, and therefore fall under this policy. Students found in violation of this policy will be subject to sanctions as outlined herein, and if appropriate, sanctions within the Student Conduct Policy.

SEXUAL VIOLENCE — RISK REDUCTION TIPS

Risk reduction tips can often take a victim-blaming tone, even unintentionally, with no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions. These suggestions may nevertheless help you to reduce your risk experiencing a non-consensual sexual act. Below are suggestions to avoid committing a non-consensual sexual act are also offered:

If you have limits, make them known as early as possible.

Tell a sexual aggressor “NO” clearly and firmly.

Try to remove yourself from the physical presence of a sexual aggressor.

Find someone nearby and ask for help.

Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views an intoxicated or a high person as a sexual opportunity.

Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. The following are suggestions which may help you to reduce your risk for being accused of sexual misconduct:

1. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
2. Understand and respect personal boundaries.
3. **DON'T MAKE ASSUMPTIONS** about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity, then you **DO NOT** have consent.
4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
5. Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
6. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size.
7. Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
8. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

In campus hearings, legal terms like "guilt," "innocence" and "burdens of proof" are not applicable, but the university never assumes a student is in violation of university policy. Campus hearings are conducted to take into account the totality of evidence available, from all relevant sources.

The university reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students' rights and personal safety. Such measures include, but are not limited to, modification of living arrangements, interim suspension from campus pending a hearing, and reporting the matter to the local police. Not all forms of sexual misconduct will be deemed as equally serious offenses and the university reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. The university will consider the concerns and rights of both the complainant and the person accused of sexual misconduct.

Sexual misconduct offenses include, but are not limited to

Sexual harassment;

Non-consensual sexual contact (or attempts to commit same);

Non-consensual sexual intercourse (or attempts to commit same);

Sexual exploitation.

SEXUAL HARASSMENT

Sexual harassment is unwelcome, gender-based verbal or physical conduct that is sufficiently severe, persistent or pervasive and unreasonably interferes with, denies or limits someone's ability to, participate in, or benefit from, the university's educational program and/or activities. Sexual harassment is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Examples include:

An attempt to coerce an unwilling person into a sexual relationship;

To repeatedly subject a person to egregious, unwelcome sexual attention;

To punish a refusal to comply with a sexual based request;

To condition a benefit on submitting to sexual advances;

Sexual violence;

Intimate partner violence;

Stalking; and

Gender-based bullying.

Even one incident, if it is sufficiently serious, may constitute sexual harassment. One incident, however, does not usually constitute sexual harassment.

NON-CONSENSUAL SEXUAL CONTACT

Non-consensual sexual contact is any intentional sexual touching, however slight, with any object, by a man or a woman, upon a man or a woman that is without consent and/or by force.

Sexual contact includes intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

NON-CONSENSUAL SEXUAL INTERCOURSE

Non-consensual sexual intercourse is any sexual intercourse, however slight, with any object by a man or woman, upon a man or a woman that is without consent and/or by force.

Intercourse includes vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

SEXUAL EXPLOITATION

Sexual exploitation occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

Invasion of sexual privacy;

Prostituting another student;

Non-consensual video or audio-taping of sexual activity;

Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);

Engaging in voyeurism;

Knowingly transmitting an STI or HIV to another student;

Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals; and

Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

OTHER MISCONDUCT OFFENSES

(Will fall under Title IX when Gender-Based)

Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;

Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;

Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;

Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy, p. 74.)

Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment).

Violence between those in an intimate relationship to each other;

Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.

ADDITIONAL APPLICABLE DEFINITIONS

Consent: Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.

Previous relationships or prior consent cannot imply consent to future sexual acts.

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

In order to give effective consent, one must be of legal age.

Sexual activity with someone who one should know to be — or based on the circumstances should reasonably have known to be — mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy. Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing 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, sleep, involuntary physical restraint, or from the taking of rape drugs.

Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at <http://www.911rape.org/>. Use of alcohol or other drugs will never function as a defense to a violation of this policy.

*The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

For reference to the pertinent state statutes on sex offenses, please go to <http://www.scstatehouse.gov/code/t16c003.php>

FREQUENTLY ASKED QUESTIONS AND ANSWERS

Here are some of the most commonly asked questions regarding the university's sexual misconduct policy and pertinent procedures.

Does information about a complaint remain private?

The privacy of all parties to a complaint of sexual misconduct must be respected, except as it interferes with the university's obligation to fully investigate allegations of sexual misconduct.

When privacy is not strictly kept, information will only be shared on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the complainant, or the accused student, may lead to conduct action by the university.

In all complaints of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement in regards to the nature of the violation and the action taken, without using the name(s) or identifiable information of the alleged victim. Certain university administrators are informed of the outcome within the bounds of student privacy. If there is a report of an act of alleged sexual misconduct to a conduct officer of the university and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police. Nonetheless, the institution is legally required to notify law enforcement authorities. The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

Will my parents be told?

No, unless you are under age, in which case we are legally required to share this information with your parents. Whether you are the complainant or the accused student, the university's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic issues, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student or in a life-threatening situation, or if an accused student has signed the permission form at registration which allows such communication.

Will the accused know my identity?

Yes, if you file a formal complaint. Sexual misconduct is a serious offense and the accused has the right to know the identity of the complainant/alleged victim. If there is a hearing, the university does provide options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider, or using separate hearing rooms.

Do I have to name the perpetrator?

Yes, if you want formal disciplinary action to be taken against the alleged perpetrator. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete confidentiality policy above to better understand the university's legal obligations, depending on what information you share with different university officials. Victims should be aware that choosing not to identify the perpetrator may limit the institution's ability to respond comprehensively.

What do I do if I am accused of sexual misconduct?

DO NOT contact the alleged victim. You may immediately want to contact someone in the campus community who can act as your adviser. Students may contact the Student Conduct office and employees may contact the Office of Human Resources, which can explain the university's procedures for addressing sexual misconduct complaints. You may also want to talk to a confidential counselor at the Wellness Center or seek other community assistance. (see #7 in reference to legal representation)

Will I (as a victim) have to pay for counseling/or medical care?

Not typically, if the institution provides these services already. If a victim is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc. In this state, victims may be ineligible for state-based assistance if they were engaged in any illegal activity during the assault or if they fail to cooperate with criminal prosecution.

What about legal advice?

Victims of criminal sexual assault need not retain a private attorney to pursue prosecution because representation will be handled by the Solicitor's (Prosecutor's) office. You may want to retain an attorney if you are the accused student or are considering civil action. The accused student may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding.

What about changing residence hall rooms?

As a student, if you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you want the accused student to move, and believe that you have been the victim of sexual misconduct, you must be willing to pursue a formal or informal university complaint. No contact orders can be imposed and room changes for the accused student can usually be arranged quickly. Other accommodations available to you might include:

- a. Assistance from university support staff in completing the relocation;

- b. Arranging to dissolve a housing contract and prorating a refund;
- c. Assistance with or rescheduling an academic assignment (paper, exams, etc.);
- d. Taking an incomplete in a class;
- e. Assistance with transferring class sections;
- f. Temporary withdrawal;
- g. Assistance with alternative course completion options;
- h. Other accommodations for safety as necessary.

What should I do about preserving evidence of a sexual assault?

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to the hospital emergency room, before washing yourself or your clothing. The sexual assault nurse examiner (a specially trained nurse) at the hospital is usually on call 24 hours a day, seven days a week (call the emergency room if you first want to speak to the nurse; ER will refer you.) A victim advocate or a counselor from the institution can accompany you to hospital, and law enforcement can provide transportation. If a victim goes to the hospital, local police will be called, but she/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate he or she to any specific course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide to initiate action at a later date.

For the victim: The hospital staff will collect evidence, check for injuries, address pregnancy concerns, and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container, such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and they can accompany you through the exam, at your request. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?

No. The severity of the infraction will determine the nature of the university's response, but whenever possible the university will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern and the university does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

Will the use of drugs or alcohol affect the outcome of a student's sexual misconduct conduct complaint?

The use of alcohol and/or drugs by either party will not diminish the accused student's responsibility. On the other hand, alcohol and/or drug use is likely to affect the complainant's memory and, therefore, may affect the outcome of the complaint. A person bringing a complaint of sexual misconduct must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove his/her complaint. If the complainant does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the accused without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by an accused student.

12. Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?

Prior use of drugs and/or alcohol will not be a factor unless this use is considered to be relevant to the present complaint.

13. What should I do if I am uncertain about what happened?

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's Student Conduct office. The institution provides advisers who can help you to define and clarify the event(s), and advise you of your options.

LAWS PERTAINING TO CRIMINAL SEXUAL CONDUCT AND ASSAULT

16-3-652. Criminal sexual conduct in the first degree

A person is guilty of criminal sexual conduct in the first degree if the assailant engages in sexual battery with the victim and if any one or more of the following circumstances is proven:

The assailant uses aggravated force to accomplish sexual battery.

The victim submits to sexual battery by the assailant under circumstances where the victim is also the victim of forcible confinement, kidnapping, robbery extortion, burglary, housebreaking or any other similar offense or act.

16-3-653. Criminal sexual conduct in the second degree

A person is guilty of criminal sexual conduct in the second degree if the assailant uses aggravated coercion to accomplish sexual battery.

16-3-654. Criminal sexual conduct in the third degree

A person is guilty of criminal sexual conduct in the third degree if the assailant engages in sexual battery with the victim and if any one or more of the following circumstances is proven:

- a. The assailant uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.
- b. The assailant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless, and aggravated force or aggravated coercion was not used to accomplish sexual battery.

Each degree of criminal sexual conduct is a felony and is punishable at the discretion of the court by imprisonment for not more than 30 years.

Sexual Assault Policy

Lander University will impose sanctions on individuals who commit sexual assault. In cases involving a student, a temporary (immediate) suspension may be imposed, which means the accused cannot attend classes until an administrative hearing is held. In other cases, the accused may be permitted to attend classes pending a final recommendation from the vice president for Student Affairs. Among other sanctions that may be imposed are the following: admonition, censure, probation and the restriction of privileges, suspension, expulsion and eviction from university housing.

Reporting a Sexual Assault

If you are raped, memorize as much detail as possible about the attacker. Call the Lander University Police Department at 8-911 immediately. This does not obligate you to file charges or testify in court. If you prefer not to call University Police but you want to make it known that a rape occurred, you may contact any of the following: vice president for Student Affairs, director of

Housing, Health Services or Counseling Services. Do not bathe, douche, change clothes or rinse your mouth. These actions may destroy evidence. Even if you choose not to become involved with police, you should seek medical assistance at Health Services, Self Regional Healthcare, Montgomery Family Health Center or Express Medical Care.

University Police Procedures

When you notify University Police that a rape has occurred, the following will occur:

A uniformed officer will come to your location to help you obtain emergency medical treatment, ensure your safety and obtain a description of the suspect. He or she will ask you for the location and the time of the assault, a description of the assailant and a description of your inquiries.

The officer and/or investigator will be assigned to the case. All members of the University Police Department have been trained in the investigation of sexual offenses and the crime's impact on the victim. These officers will approach each case in a sensitive manner.

University Police will request a medical examination to ensure that you have suffered no physical injury and so that a medical report can be completed for use in a court proceeding if charges are pressed. You will be examined by a trained sexual assault specialist.

You will be interviewed. (You may specify the gender of the officer.) If you have asked a friend or counselor for support, he or she can be with you at this time.

With your consent, a report of the incident will be sent to the vice president for Student Affairs. If the suspect is a Lander student, disciplinary action may be initiated.

When you report a rape, you are not making a commitment to file charges or to testify in court. By reporting the matter to University Police, you can be assured of immediate physical protection and transportation to a medical facility.

Victim Assistance Pledge

The Lander University Police Department makes the following pledge to anyone who feels he or she is a victim of sexual assault on campus.

We will meet with you privately, at a place of your choice, to take a complaint report.

Our officers will not prejudge you, and you will not be blamed.

We will treat you with courtesy, sensitivity, dignity and professionalism.

We will assist you in privately contacting counseling, safety, advising and other available resources.

We will fully investigate your case and help you achieve the best possible outcome.

We will continue to be available to you, to answer your questions, to explain the process and be a listening ear if you need one.

We will consider your case seriously.

Changing Living and Academic Situation

If a Lander University student who is a survivor of a sexual assault or relationship violence requests a change in his/her living arrangements or academic schedule, the office of the vice president for Student Affairs will make changes to a student's living or academic arrangement, as long as those changes are reasonable and available.

Victim Notification

Lander University Police Department will, upon written request, disclose to the alleged victim of any crime of violence, or a non-forcible sex offense, the report on the results of any disciplinary proceeding conducted by such institution against a student who is the alleged perpetrator of such crime or offense with respect to such crime or offense. If the alleged victim of such crime or offense is deceased as a result of such crime or offense, the next of kin of such victim shall be treated as the alleged victim.