

**Le Moyne College**  
**Student Policy on Sexual Harassment &/or Sexual Misconduct**

**I. Introduction**

As an institution of higher education with a longstanding Jesuit and Catholic tradition, Le Moyne College recognizes its obligation to promote an environment and collective attitude that encourages students, faculty, staff and administrators to serve others, participate in the life of the College, and act as responsible members of the community. This includes behavior in the realm of human sexuality. Acts of sexual harassment and sexual misconduct including sexual assault undermine the dignity of individuals and the principles of equality and respect for others and are serious violations of our community standards. These acts do not just harm the individual; they harm the College community as a whole. Le Moyne College does not condone or tolerate any conduct that would constitute sexual harassment or sexual misconduct.

Student Policy on Sexual Harassment &/or Sexual Misconduct policy which is part of Community Standards & Conduct Procedures aims to ensure that all members of the Le Moyne community can learn, live and work free from being subjected to inappropriate sexual behavior and sexual violence. All students are encouraged to read this policy and develop a clear understanding of what is and is not acceptable sexual behavior.

This policy will outline clear procedures for reporting all categories of sexual harassment and sexual misconduct allegations that occur between students, student organizations, between student and student organization, and any member of the College community may file charges against a student for violations of the Community Standards.

Le Moyne College has a host of security, psychological, medical, administrative and disciplinary services that are immediately available to students reporting sexual harassment and/or sexual misconduct. Through these policies and procedures Le Moyne College looks to achieve several goals:

- A campus climate which encourages prompt reporting of sexual harassment and/or misconduct
- To provide prompt professional and support services to the victims of sexual harassment and/or misconduct in an effort to reduce the victim's trauma.
- To provide a comprehensive system that informs victims of the rights and services available to them.
- To cultivate a campus community where instances of sexual harassment and sexual misconduct are avoided through ongoing education, training and mutual respect for each other.

This policy protects the rights of both the accused and alleged victim. The accused student generally shall be free from sanction, pending the conclusion of a case. However, where the nature of the case indicates that there is a credible danger to the immediate well-being of any member of the College community, appropriate interim measures (temporary suspension from

the College and its residence halls) may be taken by the Vice President for Student Development or designee.

## II. Use of Policy

### A. Complaints Against Students

This policy applies in those instances when a student alleges that he or she has been subject to sexual harassment or misconduct by another student. This policy also applies where a prospective student or other visitor to the campus (e.g., a guest of another student, an alumnus or alumna, or a member of a visiting team) complains of a Le Moyne student's behavior.

If a student is a victim of sexual misconduct or harassment by someone other than another student, then this policy does not apply, and the student should do the following:

#### 1. Complaints Against Faculty or Staff

If a student wishes to bring forward a complaint of sexual misconduct or sexual harassment against a faculty or staff member, the policy that applies in those situations is the Faculty and Staff Policy on Sexual Harassment and Nonconsensual Sexual Activity. The student should follow the procedures outlined in that policy.

#### 2. Complaints Against Visitors or Non-Community Members

If a student wishes to bring forward a complaint of sexual misconduct or sexual harassment against a visitor or non-community member (e.g., an alumnus or alumna, a prospective student, a guest of a student, a member of another College's team, a local resident), the complaint should be made to Campus Security at x 315-445-4444. Campus Security will investigate complaints, and the College will determine the appropriate action to be taken, which may include contacting local law enforcement.

### B. On Campus and Off-Campus Behavior

This policy applies to conduct that occurs on any part of Le Moyne's campus or property. It also applies when students travel off-campus as part of a College's activity, team, organization or event. Additionally, Le Moyne has the discretion to discipline student behavior that occurs off-campus, and/or during a time when the College is not in session. In making these determinations, the Division of Student Development considers whether the behavior impacts the campus environment (as would be the case, for example, if one student sexually assaults another student in an off-campus apartment or overseas during a semester abroad, or if a student sends another student lewd and threatening sexual emails while at home during the semester break). In understanding this aspect of Le Moyne's expectations for student behavior, it may be helpful to think of student status as "portable" and therefore operative even when students are not on Le Moyne's campus or property.

### C. Timeframe for Making a Complaint

While there is no time limit for bringing forward a complaint, the passage of time may make an incident difficult or even impossible to investigate fairly or fully and to adjudicate. Therefore, students are encouraged to make a complaint as soon as possible after the incident has occurred. Although not an ideal situation given the passage of time, a former student may make a complaint against a current student. However, the reverse is not true: the complaint of a current

student against a former student is not subject to adjudication pursuant to this policy. Nevertheless, Le Moyne's officials will help the complaining student to report the allegations to the appropriate off-campus authorities.

### III. **Definitions of Sexual Harassment & Sexual Misconduct**

The New York State Penal Law defines a number of violent and non-consensual acts as crimes. For purposes of this policy the term "Sexual Misconduct" includes: sexual harassment, Level I, II & III sexual misconduct and sexual exploitation as outlined in the definitions below.

Le Moyne College has defined several categories of sexual misconduct below, for which student sanctions can apply. Sexual misconduct of any nature is a serious violation of our student code of conduct and Le Moyne reserves the right to impose any sanctions outlined in the Community Standards and Conduct Procedures, including suspension and dismissal from the College. Also, students have the right to contact law enforcement for sexual misconduct at any level defined below. If Level I sexual misconduct has been alleged, the College will contact appropriate law enforcement agency.

#### **A. Sexual Harassment**

Federal and state laws prohibit sexual harassment. These laws include Title IX of the Education Amendments of 1972 and the New York State Human Rights Law. This policy prohibits conduct that would violate these laws. However, as a supportive and collegial community, Le Moyne also prohibits student behavior that sexually demeans or humiliates other community members as described below, even if the conduct does not violate the law.

Stalking can be a form a sexual harassment when the person stalked is made to feel sexually uncomfortable or vulnerable as a result of the activity. Stalking refers to a person's deliberate and repeated following, observing, contacting or communicating with another person when the other has not consented to the activity. Stalking includes, but is not limited to, repeatedly engaging in contact, face-to-face communication, telephone calls or messages, text messages, emails, letters, the giving of unwanted gifts, threatening or obscene gestures, surveillance, following, trespassing or vandalism.

Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct that relates to the gender or sexual identity of an individual when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of a student's employment or academic advancement;
- (2) submission to or rejection of such conduct by an individual is used as the basis for decisions affecting an student's employment or academic standing;
- (3) such conduct is so severe or pervasive as to have the effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working, educational, or social environment.

No forms of sexual harassment will be tolerated. This includes mobile and internet driven sexual harassment, commonly delivered through the electronic environment. This includes, but is not limited to: emails, text messages, personal blogs and social networking sites, such as message boards, tweets, status updates and chat rooms.

### **B. Sexual Misconduct**

Sexual misconduct is also a form of sexual harassment prohibited by Title IX. Any sexual activity without mutual consent is prohibited. Violations of this policy shall include but not be limited to the following:

#### **Level I Sexual Misconduct**

Level I Sexual Misconduct offenses are considered the most serious by Le Moyne College and include any sexual penetration, regardless of how slight, with any type of body part or object, or sexual intercourse by a man or woman upon a man or woman without consent. Sexual penetration includes, but is not limited to, vaginal or anal penetration by a penis, finger, tongue or object, as well as oral copulation by mouth to genital contact or genital to mouth contact. Additionally, any other type of sexual misconduct outlined in this policy which involves any level of violence will be considered a Level I sexual misconduct.

#### **Level II Sexual Misconduct**

Level II Sexual Misconduct offenses are any intentional sexual touching, however slight, with any object by a man or woman upon a man or woman without consent. Sexual touching includes any bodily contact with the genitals, breasts, groin, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

#### **Level III Sexual Exploitation**

Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own benefit or to benefit someone other than the individual being exploited, and that behavior does not otherwise constitute a violation of sexual harassment or a level I or II sexual misconduct as defined above. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (without consent or exceeding the bounds of consent watching another undress, use the bathroom or engage in sexual acts)
- Non-consensual video, photography or audio taping of sexual activity
- Exceeding the boundaries of consent – without consent of all involved allowing others to watch consensual sexual activity by such means as hiding in a closet, webcam, etc
- Knowing engaging in sexual activity with another while knowingly being infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of the infection
- Prostitution or promoting prostitution
- Administering to another person without their knowledge or consent alcohol or drugs (to include “date rape” drugs) for the purpose or with the effect of having sexual contact or attempting sexual contact with that person
- Hazing as outlined in the Community Standards and Conduct Procedures handbook, which involves any type of sexual overtones

#### IV. **Consent**

What is consent? Consent is permission. It is clear, given knowingly and voluntarily, either by actions or by words by someone capable of giving it. *It must be explicit and not implied.* It is the responsibility of all parties involved to make certain the other has consented to sexual activity. Consent to some sexual activity (i.e. kissing, fondling) cannot be presumed consent for other sexual activity (i.e. intercourse). A past relationship or prior consenting sexual activity does not constitute consent for future sexual activity.

Incapacitated persons cannot give consent. One is incapacitated as a result of alcohol or drugs (voluntary or involuntary) or who is unconscious, unaware of his or her surroundings or is disorientated so as to not understand what is happening, or otherwise physically helpless, is incapable of giving consent. A student who engages in sexual activity with another whom the student knows or should reasonably know is unable to give consent because of the use of drugs, alcohol, or other substances is in violation of this policy.

Consent may be withdrawn by an individual at any time during sexual activity. This withdrawal of consent may be through words, actions or a combination of both, that he or she no longer wants the activity to continue. When this occurs the other participant must cease immediately.

In New York State, a minor (meaning a person under the age of 17 years) cannot consent to sexual activity. This means that sexual contact with a person less than 17 years old is a crime as well as a violation of this policy even if the minor wanted to engage in the sexual act.

#### V. **Reporting Procedures**

Le Moyne College strongly encourages victims and/or witnesses of sexual harassment and/or sexual misconduct to report these incidents. Threats of retaliation or other attempts to prevent the reporting of sexual harassment and/or sexual misconduct is itself prohibited and will result in disciplinary action and/or sanctions. Le Moyne College will promptly, impartially and thoroughly investigate all claims of sexual harassment and/or sexual misconduct, prevent future incidents and to remediate the effects of the misconduct. Students can contact Resident Assistant (R.A.) for help to file a report the incident and/or get medical treatment. Please note that the RA is a resource to help students. The RA cannot be an anonymous report of a sexual harassment and/or sexual misconduct incident.

If you are in immediate danger, you need to get to a safe place and dial 911 or campus security at 315-445-4444. If you are in need of medical attention dial 911 or call campus security at 315-445-4444.

Incidents of sexual harassment and/or sexual misconduct should be reported to **one** of the following:

- Campus Security at 315-445-4444
- Campus Life and Leadership at 315-445-4520
- Student Development at 315-445-4525
- Deputy Title IX Coordinator - Barbara Karper, Assistant Vice President of Student Development, 315-445-4525
- Title IX Coordinator: Jack Matson, Associate Vice President of Human Resources, 315-445-4155

Students needing confidential medical and counseling services may contact the office of Health Services at 315-445-4440  
Counseling Services at 315-445-4195

These two offices are part of the Department of Wellness Center for Health and Counseling at 315-445-4195. The Department of Wellness Center for Health and Counseling can help students *report incidents of sexual harassment and/or sexual misconduct* to Campus Security, Campus Life and Leadership and/or Student Development. **Students need to clearly tell a member of the Department of Wellness Center for Health and Counseling that they would like to facilitate such a report.**

#### Anonymous reporting

A student who wishes his/her report to remain anonymous may do so by reporting the sexual harassment and/or sexual misconduct directly to the Wellness Center for Health and Counseling. By making the report to the Wellness Center for Health and Counseling, the student will be able to receive any necessary medical and psychological services. The Wellness Center for Health and Counseling will only complete an “Anonymous Sexual Misconduct Report,” which will not identify the victim.

An “Anonymous Sexual Misconduct Report” completed by the Wellness Center for Health and Counseling does not constitute a security incident report, a Campus Life and Leadership report or a police report. This form is strictly for Jeanne Clery Act disclosure purposes and will not initiate an investigation. The victim will not be contacted by anyone outside of the Wellness Center for Health and Counseling unless the victim so desires.

#### Incident Report

A student may file an official incident report regarding a sexual harassment and/or misconduct 24 hours a day, 7 days a week with Campus Security located in the basement of Nelligan Hall, at 315-445-4444. The report could include the victim’s name, as well as the suspect(s) if known. A preliminary investigation will be conducted by Campus Security, which may include notifying the local law enforcement agency. The Campus Security report will be forwarded to the

Assistant Dean for Student Development and the Title IX Coordinator, who will follow the procedures outlined in this policy.

If after filing an incident report with campus security, the victim does not wish for the investigation to continue, the College will give due consideration to the victim's request. However, it may be necessary for the College to pursue the investigation notwithstanding the student's wishes and take action when there is a risk to the safety of the campus community or when otherwise legally obligated to do so.

### Criminal Report

A student who has been sexually assaulted is encouraged to contact local law enforcement directly by dialing 911 or with the assistance of Campus Security at 315-445-4444. Filing an official police report is different than filing an incident report with Le Moyne College Campus Security. When a student files a sexual assault report with local law enforcement a criminal investigation is initiated and that investigation is often transferred to either the Syracuse Police Department or Onondaga County Sheriff's Office Abused Persons Unit for further investigation. Based on the criminal investigation a determination will be made if the case will be prosecuted.

A criminal investigation into allegations of sexual misconduct does not end the College's duty to investigate and resolve complaints promptly and equitably. After the police have completed their initial evidence gathering phase of their investigation in appropriate cases, Le Moyne College may want to proceed with its own fact finding investigation and procedures under this policy. Le Moyne College does not have to wait for the completion of any civil or criminal case before proceeding with campus conduct procedures.

## VI. Confidentiality

Le Moyne understands that a student who has been the victim of sexual misconduct and/or sexual harassment may wish to talk about the incident with the assurance that the discussion will be confidential. There are several support resources that students may utilize on a confidential basis. These include Wellness Center for Health and Counseling and member of the Jesuit priest community. Students are encouraged to consult these sources for confidential emotional support. Because these services are confidential, a discussion with any of these sources does not result in a complaint being filed with the College or result in action being taken by the College to respond to the incident. A student who wants emotional support only should contact the confidential counseling resources listed above. A student wishing to have an incident investigated, mediated or adjudicated must make a complaint in accordance with the procedures described below.

The College endeavors to respect and follow the wishes of an individual who brings forward a

sexual misconduct and/or sexual harassment concern. However, students should understand that Le Moyne may have ethical and legal obligations to investigate, attempt to resolve or adjudicate incidents of sexual misconduct and/or sexual harassment that come to its attention. Therefore, depending on the circumstances, it may not be possible for a conversation with Campus Security personnel, the Division of Student Development, or other administrators to be kept in confidence always or, said another way, for these individuals simply to listen without taking action.

## VII. **Student Conduct Process**

Through the Division of Student Development, Le Moyne College may initiate disciplinary proceedings when an incident report is filed by a student alleging Sexual Harassment and/or Sexual Misconduct. In most cases, both the victim and the accused will meet separately with a member of the Division of Student Development and will be provided information pertaining to the rights students have when going through the student conduct process will be handled discreetly as possible.

### **Sexual Harassment and Sexual Misconduct Board (SHM Board)**

A Sexual Harassment and Sexual Misconduct Board (SHM Board) is responsible for adjudicating Sexual Harassment and Sexual Misconduct cases. The SHM Board is a six-member body consisting of 5 voting members from the faculty, staff and/or administration and one non-voting Chair (Assistant Dean for Student Development or a designee). SHM Board members are specifically designated and undergo appropriate training to assist in the processing of formal complaints by students against students alleging sexual harassment and/or sexual misconduct.

The Le Moyne student conduct system is not meant to model criminal or civic judicial proceedings. Information for a finding is based on a standard of the preponderance of evidence (“more likely than not” to have occurred). The information does not have to be in the form of physical evidence nor does the violation have to be witnessed. Circumstantial information can be sufficient in some instances for the College to determine that a violation was “more likely than not” to have occurred. The decisional authority takes into consideration whether the spirit or intent of the policy was violated.

### **A. Hearing Procedures**

The following is a general description of the formal hearing board process. The process may vary as appropriate for specific hearings.

The accused student shall receive written notification which may include electronic mail from the Division of Student Development at least 48 hours before any hearing. The notice will indicate the charges against the student.

If a student cannot attend the hearing the College has the right to conduct the hearing without the student present.

Students may only bring a faculty/staff member or an administrator as an Advisor to the hearing. Advisors may furnish advice only and may not question witnesses or other individuals involved in the proceedings.

The hearing will be presided over and administered by the Chair, who will determine the order and method of proceeding concluding any procedural matters not explicitly dictated by this policy. The Chair will exercise control to prevent needless consumption of time, disruption, harassment, intimidation, or other conduct not conducive to the review, who will read the charges during the hearing and who may exclude from the hearing any person who engages in such conduct.

The hearing generally will be closed to anyone other than the accused student and the complainant, their respective permitted advisors, and (during their testimony) any witnesses, but the Chair may in his or her discretion permit others to attend if he or she deems that their presence may be helpful to the review and determination of the charges or that there are other compelling reasons for their presence. Parents, family, legal counsel, and any non-Le Moyne community member will not be permitted to attend the hearing.

The complainant and the accused student may each request the presence of witnesses at the hearing. Such requests must be submitted to the Chair in writing at least 24 hours before the hearing and must describe the requested witnesses' expected testimony. All questions posed to non-board members from the complainant and/or student charged must be asked through the chairperson.

The Chair may refuse to call a requested witness or otherwise limit their testimony if the Chair determines that the expected testimony is not sufficiently relevant to the charges, would be duplicative of other testimony, or would otherwise not be significantly helpful to the review and determination of the charges. The Chair may also call additional witnesses on his or her own initiative.

The complainant and the student charged shall be allowed to make opening and closing statements.

The board deliberates in closed session and determines if the student is responsible for the alleged violation(s). A simple majority of the voting board members is sufficient for determining a student's responsibility for violations.

If a student is found responsible, the board shall receive the record of any previous student conduct violations and sanctions and any other information relevant to recommending sanctions. The board members then deliberate and decide on the appropriate sanction.

The Chair in a timely manner will inform the complainant and the student charged of the decision. The decision of the board is effective immediately following the hearing and shall be substantiated in writing.

A recording of the proceedings may be made at formal hearings.

SHM Board members are required to maintain confidentiality as to student conduct records, the deliberations, and votes taken.

## **B. Potential Sanctions**

In assessing a disciplinary penalty, the seriousness of the sexual harassment incident will be evaluated. Although relatively minor incidents usually result in lesser forms of disciplinary action, Le Moyne reserves the right to impose any level of discipline, up to and including suspension or expulsion, for any violation of the Community Standards, Sexual Harassment and/or Sexual Misconduct policy or any other College policy, based on the facts and circumstances of the particular case.

## **VIII. Appeals Process**

A formal hearing appeals board (SHM Appeals Board) will respond to appeals from students who have had disciplinary sanctions placed upon them by a SHM Board or from complainants whom may not be satisfied with the outcome from the original board. A SHM Appeals Board includes a four-member body consisting of 3 voting members from Le Moyne's faculty, staff and/or administration and the Chair is the Vice President for Student Development. The SHM Appeals Board members are chosen by the Vice President for Student Development. The SHM Appeal Board members are not the same members who serve on the original SHM Board.

### **Appeals Board Hearing Procedures**

Appeals to the SHM Appeals Board must be in writing and submitted to the Vice President for Student Development within five business days of the date of the SHM Board findings letter. The appeal will be limited to a review of the record of the hearing and supporting documents for one or more of the following purposes:

- To determine whether the hearing was conducted fairly in light of the charges and information presented. And in conformity with prescribed procedures, giving the complaining party a reasonable opportunity to prepare and to present information that the community standards was violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures will not be a basis for sustaining an appeal unless significant prejudice results.
- To determine whether the sanction(s) imposed, if any, were appropriate for the violation of the student conduct code which the student was found to have committed.
- To consider new information or other relevant facts not brought out in the original hearing, sufficient to alter the decision, because such information and/or facts were not known or available to the person appealing at the time of the original hearing. Failure to participate in the hearing may not be used as a basis for filing an appeal under this section.

The following is a general description of the SHM Appeals Board process. The process may vary as appropriate for specific hearings.

The SHM Appeals Board shall review the appeal and the written documentation from the original hearing. If they desire, they may also review the recording of the hearing, ask questions

of the complainant/student(s) charged, ask questions of the SHM chair and/or request additional information. The Vice President in conjunction with the SHM Appeal Board may affirm, reverse, or modify the decision regarding the violation and/or sanctions imposed.

A recording of the proceedings may be made at an SHM Appeals Board hearing.

It is expected that the SHM Appeals Board will normally meet to review and make a decision on the appeal within seven working days of the receipt of the appeal and the final decision is not subject to review.

The student who appealed the disciplinary sanction and the complainant whom may not be satisfied with the outcome from the original board will be notified in writing the outcome of the appeal process.

SHM Appeals Board Hearings are not open to the public, other members of the College community, parents, family members, friends, or legal counsel. The Chair shall have final authority regarding individual access to SHM Appeals Board hearing.

SHM Appeals Board members are required to maintain confidentiality as to student conduct records, the deliberations, and votes taken.

### **Statement of Students Rights**

#### **A. Student Who Reports Sexual Harassment and/or Sexual Misconduct**

- To be treated with respect by College officials;
- To take advantage of campus support services such as the Counseling Center: (315) 445 – 4195, Health Services:– 4440, Student Development: - 4525, Title IX Coordinator:– 4155, or Campus Ministry: – 4110;
- To have reports of sexual harassment and sexual misconduct responded to in accordance with College policy;
- To have a trained advisor present during the Sexual Harassment and/or Sexual Misconduct Board proceedings;
- To have irrelevant prior sexual history disallowed from the Sexual Harassment and Sexual Misconduct Board hearing;
- To not be charged with minor misconduct that is ancillary to the sexual harassment and/or sexual misconduct incident;
- To receive notification of options for and available assistance in changing academic and living situations after an alleged incident;
- To be free from retaliation;
- To be informed of the names of all witnesses who will be called to the hearing prior to the hearing;
- To be informed in writing of the outcome of any formal disciplinary hearing;
- To have the right to a hearing by means other than having to face the accused student;

- To have access and use off-campus resources
  - § Vera House Phone #: (315) 468 - 3260
  - § City of Syracuse Police Department Dial: 911 or (315) 442-5111
  - § Town of DeWitt Police Department Dial: 911 or (315) 425-2333
  - § Onondaga County Sheriff's Office Dial: 911 or (315) 425- 2111
  - § St. Joseph's Hospital Emergency Room (315) 448-5101
  - § University Hospital Emergency Room (315) 464-5611
  - § Crouse Irving Hospital Emergency Room (315) 470-7411.

**B. Student Accused of Sexual Harassment and/or Sexual Misconduct**

- To be treated with respect by College officials;
- To take advantage of campus support services such as the Counseling Center: (315) 445 – 4195, Health Services:– 4440, Student Development: - 4525, Title IX Coordinator:– 4155, or Campus Ministry: – 4110;
- To have reports of sexual harassment and sexual misconduct responded to in accordance with College policy;
- To have an advisor present during the Sexual Harassment and/or Sexual Misconduct Board proceedings;
- To have irrelevant prior sexual history disallowed from the Sexual Harassment and Sexual Misconduct Board hearing;
- To be free from retaliation;
- To be considered not responsible until proven responsible;
- To be offered a trained advisor from the faculty, staff or administration to be present during a formal student conduct hearing;
- To be informed of the names of all witnesses who will be called to the hearing prior to the hearing;
- To be informed in writing of the outcome of any formal disciplinary hearing.