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Le Moyne College

Manual on Sexual Harassment & Nonconsensual Sexual Activity

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Le Moyne College Manual on Sexual Harassment and Nonconsensual Sexual Activity

I. GENERAL POLICY STATEMENT

A. POLICY STATEMENT

As an institution of higher education with a long standing Jesuit tradition, Le Moyne College recognizes its obligation to promote an environment and collective attitude which encourage students, faculty, staff, and administrators to serve others, participate in the life of the College, and act as responsible members of the community. Sexual harassment and nonconsensual sexual activity undermine the dignity of individuals and the principles of equality and respect for others. Only in an environment free from sexual harassment and nonconsensual sexual activity can education, the process by which men and women develop intellectually, socially and morally, take place.

Le Moyne College is committed to fostering the development of a teaching, learning, living, working, and research environment free from sexual harassment and nonconsensual sexual activity. In compliance with, and support of, Title VII of the Civil Rights Act of 1964, Title IX, various state laws, and regulations of the Equal Employment Opportunity Commission and the Office for Civil Rights, Le Moyne College recognizes its responsibility to establish a campus milieu that is as free as possible from sexual harassment and nonconsensual sexual activity.

Le Moyne College will not condone or tolerate any verbal or physical conduct that would constitute sexual harassment or nonconsensual sexual activity as defined in this policy. Any student, faculty, staff, or administrator who engages in such conduct will be subject to disciplinary action in accordance with the guidelines stated in this policy.

Sexual harassment or nonconsensual sexual activity by visitors to the campus, by non-College personnel in programs sponsored or supported by the College, or by independent contractors, vendors and others who do business with the College or on College premises will also not be tolerated. The College will take appropriate action against violators.

B. SCOPE OF POLICY

This policy defines criteria and procedures for responding to queries and complaints regarding sexual harassment or nonconsensual sexual activity, and applies to *all* members of the College community. Under this policy, the College and individuals, including former employees and students, can file complaints on behalf of themselves. This policy covers activity that has taken place either on the Le Moyne campus or at College-sponsored events or programs off-campus. The criteria and grievance procedures outlined below may also apply to off-campus situations where there is no nexus or relationship with the College but where one member's behavior interferes with another's well-being and full participation as a member of the College community.

A sexual harassment complaint must normally be filed no later than two years beyond the date in which the most recent alleged incident occurred. A nonconsensual sexual activity complaint must normally be filed no later than three years beyond the date in which the most recent alleged incident occurred. For those cases involving extenuating circumstances deemed sufficient to warrant further investigation, however, the College reserves the right

to process cases beyond the deadlines. The authority to extend the deadline in any particular case rests with the President.

C. RELATIONSHIP TO OTHER POLICIES

This policy supersedes all other College policies relating to sexual harassment and nonconsensual sexual activity. These policies include: (1) the Sexual Harassment/Misconduct Policy by Students published in the 1994-1995 Student Handbook, (2) the Le Moyne College Policy on Faculty/Student Sexual Harassment approved by the Board of Trustees in December 1992, and (3) the Policy on Sexual Harassment published in the Le Moyne College Equal Employment Opportunity and Affirmative Action Policies Handbook.

In addition, those sections of the Student Handbook, Personnel Policy Manual, Policy Manual for Administrators, and the EEOC/AA Policies Handbook that cover grievance and dismissal procedures are superseded by this policy in cases involving allegations of sexual harassment or nonconsensual sexual activity. The sections of the Faculty Handbook that cover grievance and dismissal procedures are likewise superseded by this policy except in those cases where the faculty member's defense involves an appeal to academic freedom. In such cases, the grievance procedures outlined in this policy shall be initiated first, and if a Sexual Harassment/Nonconsensual Sexual Activity Appeals Board recommends disciplinary action, the faculty member may then elect to invoke the provisions of Regulation F3 in the Faculty Handbook.

Should this policy, in unusual cases, conflict with, or overlap, policies in another area, the President will resolve the jurisdictional issues.

II. DEFINITIONS

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 person'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 individual'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. ¹**

EXAMPLES OF SEXUAL HARASSMENT

A determination as to whether conduct meets one or more of the three conditions listed above will be based on a review of the totality of circumstances. The following examples of conduct that would violate this policy are not intended to be all inclusive.

¹ In order to cover students, as well as employees, this policy adopts an adapted version of the definition of sexual harassment developed by the EEOC.

- Direct or implied threats or suggestions that submission to or rejection of sexual advances will determine and/or affect working conditions, work status, promotion, tenure, grades, letters of recommendation, etc.
- Continued unwelcome sexual flirtations, advances, or propositions;
- Subtle pressure for sexual activity including inappropriate or offensive sexual advances;
- Repeated staring or ogling;
- Unnecessary patting or constant brushing against the body;
- Verbal abuse of sexual nature;
- Sexual innuendos or sexually explicit statements, comments, questions, jokes or anecdotes;
- Gender or homophobic harassment: persistently intimidating, hostile, derogatory, contemptuous, demeaning or trivializing remarks directed at one sex, or sexual orientation;
- Verbal or physical harassment of a person on the basis of sexual orientation;
- Spreading false statements of a sexual nature.

NONCONSENSUAL SEXUAL ACTIVITY

ANY sexual activity without mutual consent is prohibited. Violations of this policy shall include but not be limited to the following:

(1) Any form of nonconsensual sexual intercourse committed by physical force, coercion, threat, or intimidation, actual or implied, by a person(s) known or unknown to the victim (which generally correlates with what the New York Penal Code defines as a rape in the first degree, a felony offense);

(2) Any actual or attempted nonconsensual sexual activity, by a person(s) known or unknown to the victim, including but not limited to:

- a. Sexual intercourse or touching without consent, committed without physical force, coercion, threat, or intimidation (which correlates with the New York Penal Code definition of "sexual misconduct," a misdemeanor offense);**
- b. Public exhibitionism;**
- c. Sexual language of a threatening nature;**

(3) Sexual activity involving a person unable to consent due to unconsciousness, mental incapacity, or physical helplessness resulting from alcohol or drug consumption regardless of whether the consumption was with the victim's consent.

III. CONSENSUAL RELATIONSHIPS

Romantic and/or sexual relationships that might be acceptable in other circumstances always pose inherent risks that they will result in sexual harassment or nonconsensual sexual activity when they occur between members of the College community where a significant power or status differential between the parties exists. Voluntary consent by a student or a subordinate in a dating relationship, even if present, is always suspect, given the fundamentally asymmetrical nature of status and power.

The potential for abuse of power or sexual exploitation is particularly strong when a College employee engages in a romantic and/or sexual relationship with a student he or she is teaching, advising, and/or evaluating. The relationship puts the student in a vulnerable position and creates a problematic learning environment for other students who become aware of the relationship. In general, professionalism is threatened by any relationship where one party has professional responsibility for the other: such relationships place, or seem to place, the person with the power or status advantage in a position to favor or advance the other party's interests at the expense of others and implicitly make, or seem to make, obtaining benefits contingent on amorous or sexual favors.

Professionalism within the College demands that those with authority not abuse, nor seem to abuse, the power with which they are entrusted. This policy thus *prohibits* College personnel from pursuing romantic and/or sexual relationships with students they teach, advise, or evaluate.

For all other types of dating relationships involving a significant power or status differential, including those occurring outside the instructional context, Le Moyne College has adopted the policy that such relationships are *ill-advised* and that, even in a seemingly consensual relationship, there are very limited after-the-fact defenses against charges of sexual harassment or nonconsensual sexual activity. In most cases, the individual with the power or status advantage in the relationship will bear the burden of accountability. Where a conflict of interest exists, or may exist, professionalism requires, at a minimum, that appropriate arrangements be made for objective decision-making. The person with the power or status advantage in the relationship almost always bears the responsibility for reducing the potential for coercion and favoritism.

IV. ADMINISTRATORS OF THE POLICY

The administrators of this policy are briefly described below, and in more detail in Appendix I of this manual.

A. SEXUAL HARASSMENT/NONCONSENSUAL SEXUAL ACTIVITY OFFICERS (SHO's)

The oversight responsibility for the policy and procedures primarily rests with two Sexual Harassment/Nonconsensual Sexual Activity Officers ("SHO's"). These officers are appointed by the President for staggered, two-year, renewable terms of service and, as SHO's, report directly to the President. One SHO will come from the ranks of the faculty, and the other from the ranks of non-academic personnel. Whenever possible, the President will appoint a gender-balanced team. These officers will coordinate educational programs for the College community, train all relevant personnel, and administer the procedures described in the manual. Normally, the SHO's do not have a direct role in mediating, investigating, or judging cases. Instead, their role is to protect the integrity and fairness of the procedures.

B. THE BOARD

The Sexual Harassment/Nonconsensual Sexual Activity Grievance Board will consist of twenty members of the Le Moyne College community appointed by the President to staggered terms of two years. In general, the composition of the Board should reflect the diversity of the College community. The role of the Board members is: (1) to provide information and confidential advising, (2) to act as mediators, (3) to participate as members of Review Panels, and (4) to participate as members of Appeal Boards.

C. REVIEW OFFICERS

A College Review Officer shall have the responsibilities of: (1) implementing interim measures based on the preliminary facts in a case, (2) appointing Investigating Teams, (3) appointing Review Panels from members of the Board, (4) determining appropriate sanctions and remedies based on Review Panel findings and recommendations, and (5) approving mediated settlements that occur after formal procedures have been initiated. In most cases, the person designated the Review Officer shall be the most senior administrator who directly reports to the President in the accused chain of command. For example, for students the Review Officer is the Vice President for Student Life; for faculty the Review Officer is the Academic Vice President; and for staff in Campus Services, the Review Officer is the Vice President for Campus Services.

D. INVESTIGATING TEAM

In cases where a formal written grievance has been filed, an Investigating Team will be appointed by the appropriate Review Officer. This team will normally consist of the Director of Campus Safety and Security, and two Vice Presidential Review Officers under whose jurisdiction the accused does not fall. However, an additional, fourth person--to come from the ranks of the Board--will be appointed, if needed for gender diversity. In addition a SHO will be appointed as a non-voting member of the Investigating Team with responsibilities for monitoring compliance and providing guidance under the policy.

V. PROCEDURES

Le Moyne College's procedures for handling allegations of sexual harassment and nonconsensual sexual activity are briefly described below, in more detail in Appendix II, and in schematic form in Appendix IX. Members of the Board are trained to provide clarification about these procedures to any member of the College community seeking assistance. When charges of sexual harassment or nonconsensual sexual activity are brought in the judicial system, Board members are also available to provide procedural advice and/or personal support to the complainant and the accused throughout any proceedings related to the case.

A. INFORMATION

(See Appendix II, A, for details.)

Any member of the Le Moyne community may talk with any member of the Board about sexual harassment and nonconsensual sexual activity. Information about options available to address allegations of sexual harassment or nonconsensual sexual activity and their possible outcomes may also be discussed.

B. INFORMAL MEDIATION

(See Appendix II, B, for details.)

Informal mediation is an option complainants may take if they would like help in addressing their complaint without pursuing formal action. At the complainant's request, a Board member who engages in informal mediation will try to facilitate a satisfactory resolution of

the complaint. If informal mediation is unsuccessful, complainants retain the option of initiating formal grievance procedures.

C. FORMAL GRIEVANCE HEARING

(See Appendix II, C, for details.)

Individuals who believe that they are the victim of sexual harassment or nonconsensual sexual activity may choose to lodge a formal complaint with the SHO's. When a formal written complaint is filed, an Investigating Team will be appointed by a College Review Officer to gather evidence and prepare a recommendation as to whether there is "reasonable cause" to believe a violation of the policy occurred. If there is reasonable cause, a five-member Review Panel will be appointed by the Review Officer to conduct a hearing and prepare a written report of their findings and recommendations. The findings of the Review Panel will be based on "a preponderance of evidence." After reviewing the Panel's findings and recommendations for corrective action, if any, the Review Officer will take formal action.

D. APPEAL PROCEDURES

(See Appendix II, D, for details.)

After a Review Panel has made its judgment and a College Review Officer has taken formal action, the complainant or the accused may appeal the decision. Appeals must be submitted in writing to the SHO's and must be based on questions of improper procedure, new evidence uncovered after the hearing, excessively harsh sanctions, or inadequate remedial relief. The President will appoint a five-member Appeals Board to determine whether the case should be re-examined, and if there is reasonable cause for this, the Appeals Board will conduct a hearing and prepare a written report of their findings and recommendations. After reviewing the Appeals Board's findings and recommendations for action, if any, the President shall take final formal action.

E. INSTITUTION-INITIATED PROCEEDINGS

(See Appendix II, E for details.)

Normally, individuals are responsible for filing complaints on behalf of themselves. However, in cases which are particularly egregious, the College may need to bring formal charges on its own behalf. In such cases, if the alleged victim(s) is willing to testify, the College may initiate formal grievance procedures. The decision to undertake institution-initiated proceedings lies with the President, who will appoint a senior administrator as the formal complainant.

F. MEDIATED SETTLEMENTS

At any stage during formal grievance procedures, either one of the parties may contact the SHO's to indicate his or her interest in reaching a mediated settlement. The SHO's will contact the other party, and if similar interest is evinced, will consult with both parties to find a mutually satisfactory mediator to work towards a settlement. Mediation will be concurrent with formal grievance proceedings unless the Review Officer suspends formal action, at the written request of both parties. Normally, formal proceedings may be

suspended only one time, for ten working days. Any mediated agreement must be approved by the Review Officer and recorded with the SHO's.

VI. RIGHTS OF THE COMPLAINANT AND THE ACCUSED

Both parties have rights to fundamental standards of fairness within any campus judicial proceedings, to an expeditious review of the complaint, to consultation with a Board member for procedural guidance, and to support from a member of the College community during any judicial hearing. In addition, both parties have the rights to present witnesses on their behalf, to hear and respond to the testimony of the other party and of witnesses, and to obtain independent legal counsel at his or her own expense. Independent legal counsel will not be permitted to be present during formal campus judicial hearings, and may only be present at mediation sessions with the unanimous consent of all parties. For a complete listing of each party's rights, see Appendix III.

VII. DISCIPLINARY SANCTIONS AND CORRECTIVE ACTION

The College is committed to rectifying the consequences of sexual harassment and nonconsensual sexual activity. When warranted, remedies such as tuition refunds, paid counseling, compensation for wages and job-related losses, reinstatement, and promotion may be part of the formal action taken by the College.

Sanctions will also be imposed on violators of the policy. Students who are found guilty of sexual harassment or nonconsensual sexual activity will be subject to one or more of the disciplinary sanctions adopted by the College Judicial System. (See the Le Moyne College Student Handbook.) Possible sanctions for college employees who violate this policy include, but are not limited to, the following: a letter of reprimand to be placed in the employee's file, an apology to the victim, loss of choice assignments, loss of travel dollars, mandatory counseling at the employee's expense, change of job assignment, immediate or deferred suspension without pay, demotion, and dismissal.

VIII. RETALIATION AND DISCRETION

Retaliation against persons who initiate complaints or support action against sexual harassment or nonconsensual sexual activity is strictly forbidden. Retaliation includes any adverse action which would reasonably tend to dissuade such individuals from coming forward, including but not limited to any form of intimidation, reprisal, or harassment.

Allegations of retaliation shall be promptly investigated. A thorough investigation using the procedures stated in this policy will be conducted, preferably by the hearing bodies already familiar with the case. Any individual who retaliates against any person who reports, or is thought to have reported, alleged sexual harassment or nonconsensual sexual activity, or who retaliates against any person who testifies, assists, or participates in an investigation or hearing relating to a sexual harassment or nonconsensual sexual activity charge will be subject to severe disciplinary action. Such retaliation shall be considered a serious violation of this policy and shall be independent of whether the alleged sexual harassment or nonconsensual sexual activity is substantiated. Encouraging others to retaliate is also a violation of this policy. Evidence of retaliation will be admissible in an ongoing investigation or hearing relating to a sexual harassment or nonconsensual sexual activity charge.

The complainant and the accused in a sexual harassment or nonconsensual sexual activity case are strongly encouraged not to discuss the complaint with other people except as required by the need for advice and support, and to the extent necessary for the complainant, the accused or their advisors to pursue or defend complaints. Discretion on the part of all concerned should be exercised. Public discussion of sexual harassment complaints beyond what is necessary and appropriate can be a form of retaliation.

IX. ACADEMIC FREEDOM

Le Moyne College supports and protects the principle of academic freedom. All members of the Le Moyne community have a right to use the academic forum provided by the College to discuss controversial subjects and express unpopular or unfamiliar ideas. However, under the shield of academic freedom, members of the community do not have the right to sexually harass others. Nor may any member of the community implicitly or explicitly use the threat of filing a sexual harassment complaint as a mechanism for the advancement of certain ideas and the silencing of others. For an elaboration of protected and unprotected expressive behavior in instructional settings, see Appendix V.

X. FRAUDULENT CHARGES

This policy shall not be used to bring fraudulent charges against a member(s) of the College community. As an institution of higher learning, Le Moyne College is dedicated to the discovery and advancement of truth. Filing fraudulent charges of sexual harassment or nonconsensual sexual activity violates this fundamental commitment. Charges of sexual harassment or nonconsensual sexual activity are very serious allegations that will be expeditiously investigated. If an Administrator of the Policy comes to believe that a person has deliberately or maliciously filed false charges, a thorough investigation using the procedures stated in this policy will be conducted, preferably by the hearing bodies already familiar with the case. Any individual found guilty of filing fraudulent charges will be subject to severe disciplinary action.

XI. CONFIDENTIALITY AND RECORD-KEEPING

A. CONFIDENTIALITY

Persons looking for general information about sexual harassment or nonconsensual sexual activity, or seeking avenues of redress, may be concerned about the confidentiality of the information they are sharing. Similarly, a person whose behavior is in question may have concerns about how case information is handled. The College is eager to create a safe environment in which individuals are not afraid to discuss concerns and make complaints. In some circumstances, however, the College may be legally and ethically obligated to take some action once it is informed that sexual harassment or nonconsensual sexual activity may be occurring. While the confidentiality of the information received, the privacy of the individuals involved, and the wishes of the complainant regarding action by the College cannot be guaranteed, they will be protected to as great a degree as is legally and ethically possible. The expressed wishes of a complainant regarding confidentiality will be considered in the context of the College's legal and ethical obligations to act upon the complaint and the right of the accused party to obtain information.

To protect the integrity of the policy and procedures, all Administrators of the Policy will be required to sign a confidentiality contract. (See Appendix VI.) In essence, this contract is an agreement that all information relating to a case will be handled in confidence. Should it be

necessary to share information, the person that generated the information will be informed, and the information will be handled with discretion, on a strict need-to-know basis.

B. REPORTING REQUIREMENTS

College administrators, supervisors, faculty, and members of the Board have the responsibility of helping to prevent sexual harassment, nonconsensual sexual activity and retaliation by reporting (1) suspected incidents of harassment involving employees or students and (2) suspected incidents of retaliation in the form of adverse decisions or actions taken against complainants or other individuals who participate in these procedures. Only counselors, clergy, and medical personnel when they would find themselves in breach of their professions' code of ethics are exempt from this responsibility.

If a Board member, administrator, supervisor, or faculty member receives a complaint of sexual harassment or nonconsensual sexual activity or obtains credible information indicating a probable violation of this policy, he or she should promptly report the matter to the SHO's, even if the alleged problem is not within their area of oversight. If the alleged victim does not give permission to have his or her identity revealed, the report should consist simply of a brief description of the alleged offense, the alleged victim's gender and status (student, faculty, staff, or administrator), and the alleged offender's name, gender, and status. No grievance procedures that would involve the alleged victim will ever be initiated by the College without his or her consent and cooperation.

Questions that arise about reporting responsibilities may be discussed with the SHO's.

C. RECORD-KEEPING

The record-keeping procedures outlined here are designed to protect the confidentiality of individuals to the maximum degree consistent with protection of the Le Moyne College community against future sexual harassment or nonconsensual sexual activity. Records of information inquiries, complaints and responses filed, audio recordings, settlements reached, and dispositions of contested cases will be maintained in a locked file by the SHO's, who are the only officers of the College that will have access to the file. Unless putting a report in an offender's personnel or academic file is part of the disposition of a case, mediated settlement, or informal resolution, no other Administrator of the Policy shall keep written records concerning a case. All records pertaining to an individual accused or suspected of sexual harassment or nonconsensual sexual activity shall be kept on file by the SHO's until five years have elapsed from the time of the last complaint or report.

When a report or complaint is received, the SHO's will check the file to determine whether a complaint has previously been recorded against the same individual, but not acted upon. If so, the Officers may attempt to contact the earlier complainant(s) and any witnesses named in order to suggest the possibility of joint action or participation as a witness. Such persons have the right to decline to participate. The SHO's shall also use this file to determine whether previous settlements have been reached involving the person complained against; if so, the relevant hearing body shall be informed if it is contemplating disciplinary action against the individual.

D. AUDIO RECORDINGS

An audio recording shall be made by the College of all Review Panel and Appeals Board hearings. Access to the audio recording of a Review Panel or Appeals Board hearing will be given to the complainant and/or accused at their request.

E. REFERENCE LETTERS AND STATEMENTS

When a person who has violated, or who is alleged to have violated, this policy, seeks employment elsewhere, responses to written or verbal requests for reference information must be coordinated with the SHO's, the appropriate Review Officer, and College counsel. In such circumstances, some subtle legal and ethical obligations rest on all College personnel.

XII. REPORTS TO THE COMMUNITY

A. IMMEDIATE NOTICE

In the case of an incident that poses a threat to the campus community, the Office of Safety and Security shall immediately inform the community via The Dolphin, flyers around campus, and/or communications through Student Life personnel.

B. ANNUAL REPORTS

In a report due September 1 of each year, the SHO's will publish information that will assist the Le Moyne community in educating itself about the incidence of sexual harassment and nonconsensual sexual activity at Le Moyne. This will include a listing and brief description (in a form that protects anonymity) of all communications about sexual harassment and nonconsensual sexual activity received by the SHO's; the intervention that occurred, if any; and the outcome reached.

For an illustration of the format of the SHO's annual report, see Appendix VII.

XIII. INFORMATIONAL AND EDUCATIONAL PROGRAMS

The specification of prohibitions, cautions, and remedial action in this policy should be read in light of the College's basic commitment to preventing sexual harassment and nonconsensual sexual activity through education and the dissemination of information. Education is critical not only to enhance efforts to create a campus environment as free as possible of sexual harassment and nonconsensual sexual activity, but more generally to facilitate communication and understanding among men and women and reduce stereotypical attitudes and behavior that detract from the College's educational mission.

An abbreviated version of this manual shall be given to all current members of the College community and to all who join the community in the future. The policy shall be included in student, faculty, and employee handbooks. Copies of the policy shall also be made available at appropriate campus offices. User-friendly brochures that define sexual harassment and nonconsensual sexual activity and that contain information about how to get help shall be posted in prominent places. A listing of campus and community resources is included in Appendix VIII.

Besides disseminating relevant information, Le Moyne College shall provide general training programs about sexual harassment and nonconsensual sexual activity for the entire community on an on-going basis. In addition, the institution shall:

- Provide training for administrators, supervisors, and faculty, with emphasis on their responsibilities and how they should handle complaints and to whom to report complaints.
- Provide specific training for those most likely to be contacted by individuals with inquiries or complaints about sexual harassment or nonconsensual sexual activity. The people to receive such training would include counselors, health center personnel, campus ministers, security officers, resident assistants, and student life personnel.
- Provide workshops to train students to be peer educators.
- Provide special training for the Administrators of the Policy.
- Provide training and materials to inform faculty about what constitutes peer harassment in the classroom, what their legal responsibilities are when it occurs, and techniques for intervening when incidents take place.
- Provide targeted programming, including mandatory workshops for first-year students on nonconsensual sexual activity and peer harassment.

XIV. REVIEW OF POLICY

At any time the SHO's, the Board, the Review Officers, or other members of the Le Moyne College community may recommend modifications of the policy to the President. Normally, every three years the President shall charge a committee to review the policy and procedures in depth, and report its findings and recommendations. The President, in consultation with the Board of Trustees, shall have final decision-making authority on the policy and procedures.

APPENDIX I

ADMINISTRATORS OF THE POLICY

Reference: Manual, Section IV

A. SEXUAL HARASSMENT/NONCONSENSUAL SEXUAL ACTIVITY OFFICERS (SHO's)

Two Sexual Harassment/Nonconsensual Sexual Activity Officers ("SHO's") are appointed by the President for staggered, two-year, renewable terms of service and, as SHO's, report directly to the President. One SHO will come from the ranks of the faculty, the other from the ranks of non-academic personnel. Whenever possible, the President will appoint a gender-balanced team. The President will solicit nominations for the position of co-SHO from all parts of the College community and will consult with the Vice Presidents for Academic Affairs, Campus Services, and Student Life in making an appointment. All members of the Le Moyne community may nominate individuals for the position provided the nominees are willing to serve if appointed. Self-nominations are also welcome.

The SHO's are responsible for implementing this policy. These officers will coordinate educational programs for the College community; will train all relevant personnel; will administer the procedures described here; will monitor case resolutions; will maintain accurate, secure records; will publish informative statistics and reports on the incidence and resolution of sexual harassment/nonconsensual sexual activity cases at Le Moyne College; and will meet on a regular basis with the Sexual Harassment/Nonconsensual Sexual Activity Grievance Board.

B. THE BOARD

The Sexual Harassment/Nonconsensual Sexual Activity Grievance Board will be composed of twenty members of the Le Moyne community appointed by the President to staggered terms of two years. The President will solicit nominations annually from all parts of the College community, and will consult with the Vice Presidents in making appointments. All members of the community may nominate individuals for Board membership provided the nominees are willing to serve if appointed. Self-nominations are also welcome. The President shall select the Board members for their sensitivity to the issues and their approachability by various campus populations. The President will appoint at least four members from each of the following groups: students, faculty, staff, and administrators. Three members of the Board will be tenured faculty, with at least two at the level of full professor. Since the majority of sexual harassment and nonconsensual sexual activity incidents are directed toward women, the President shall attempt to appoint women to at least half of the Board positions. In general, the composition of the Board should reflect the diversity of the Le Moyne community.

Members of the Board will be trained to receive inquiries and complaints about sexual harassment and nonconsensual sexual activity, provide confidential advising, act as mediators, and handle formal complaints. Training will sensitize Board members to the needs and concerns of all parties involved and will provide current information on applicable rules, regulations, laws and procedures, as well as techniques for careful scrutiny of allegations of sexual harassment or nonconsensual sexual activity. The SHO's will schedule the training sessions within the first month of classes in the fall semester. These will be organized in consultation with appropriate offices, such as Affirmative Action, Safety and Security, Human Resources, and Counseling.

C. REVIEW OFFICERS

In cases where a formal grievance has been filed, notice of the complaint will be sent by the SHO to the Review Officer under whose jurisdiction the accused falls. The Review Officer determines whether any interim measures should be taken while the case is being resolved and appoints a Sexual Harassment/Nonconsensual Sexual Activity Investigating Team. If formal review is approved by the Investigating Team, the Review Officer convenes a Sexual Harassment/Nonconsensual Sexual Activity Review Panel and is the party to whom the Panel's finding and recommended sanctions, if any, are submitted. In most cases, the person designated the Review Officer shall be the most senior administrator who directly reports to the President in the accused chain of command.

D. INVESTIGATING TEAM

In cases where a formal grievance has been filed, an Investigating Team will be appointed by the Review Officer to conduct a preliminary investigation. This team will normally consist of the Director of Campus Safety and Security, and two Vice Presidential Review Officers under whose jurisdiction the accused does not fall. However, an additional fourth person--to come from the ranks of the Board--will be appointed, if needed for gender diversity. In cases where the accused is at or above the Vice Presidential level, however, the Investigating Team will consist of the Director of Campus Safety and Security, and two representatives of the Board of Trustees. In addition a SHO will be appointed as a non-voting member of the Investigating Team with responsibilities for monitoring compliance and providing guidance under the policy.

E. REVIEW PANEL

In cases involving formal grievances, if the Investigating Team finds that the complaint potentially involves an incident of sexual harassment or nonconsensual sexual activity, the case will be heard by a Review Panel, which is responsible for making a guilty/not guilty finding and, if appropriate, recommending sanctions and remedies to the Review Officer under whose jurisdiction the accused falls.

In cases where the accused is a member of the student body, faculty, staff, or administration below the Vice Presidential level, the Review Panel will be composed of five Board members picked by the Review Officer. A Board member who has had any involvement with the case or who has a potential conflict of interest is automatically disqualified. At least one member of the Review Panel must occupy the same status as the complainant, and one member must occupy the same status as the accused.

In cases where the accused is an administrator at or above the Vice Presidential level, the Review Officer will appoint five individuals to serve on the Review Panel; two members shall come from the Sexual Harassment/Nonconsensual Sexual Activity Grievance Board and three members from the Board of Trustees. No member shall have had any previous involvement with the case or have a potential conflict of interest.

F. APPEALS BOARD

Both the complainant and the accused have the option of appealing a Review Panel's finding. Appeals must be based on questions of improper procedure, new evidence uncovered after the Review Panel hearing, excessively harsh sanctions, or inadequate remedial relief. If either party files an appeal, the Review Officer will appoint an Appeals Board, whose finding is final.

In cases where the accused is a member of the student body, faculty, staff, or administration below the Vice Presidential level, the Appeals Board will be appointed by the President and will consist of five Board members who have had no previous involvement with the case. At least one member of the Appeals Board must occupy the same status as the complainant, and one member must occupy the same status as the accused. In the event that there are not enough eligible Board members to serve on the Appeals Board, the Review Officer may choose a person(s) who has (have) completed an immediately previous term or terms of service on the Sexual Harassment/Nonconsensual Sexual Activity Grievance Board.

In cases where the accused is an administrator at or above the Vice Presidential level, the Chair of the Board of Trustees will appoint five individuals who have had no previous involvement with the case to serve on the Appeals Board; two members shall come from the Sexual Harassment/Nonconsensual Sexual Activity Grievance Board and three members from the Board of Trustees.

G. LEGAL COUNSEL

An attorney who is responsible to the Board of Trustees shall be made available by the College to advise the SHO's, Chair of a Review Panel or Appeals Board, and/or Review Officers.

APPENDIX II

PROCEDURES

Reference: Manual, Section V

A. INFORMATION

The Sexual Harassment/Nonconsensual Sexual Activity Grievance Board (the "Board") stands ready to respond to inquiries and complaints about sexual harassment and nonconsensual sexual activity. A member of the Le Moyne community may talk with any member of the Board about sexual harassment or nonconsensual sexual activity. In addition to providing referrals for counseling and medical care, information about the Policy's definitions of sexual harassment and nonconsensual sexual activity can be discussed, as well as options available to address allegations of sexual harassment or nonconsensual sexual activity and their possible outcomes. Board members are available to acquaint victims with remedies that are external to the College, as well as internal.

A person who feels that he or she has been the victim of sexual harassment or nonconsensual sexual activity has the right under this policy to choose whether or not to pursue a formal sexual harassment complaint or mediation. As advocates of the policy, it is the duty of a Board member to provide information about avenues of redress under this policy, not pressure an individual into taking or avoiding any particular courses of action.

Individuals are encouraged to bring complaints forward in a timely manner, as it becomes more difficult to establish the facts of the case as time goes by.

B. INFORMAL MEDIATION

A person who feels that he or she is the victim of sexual harassment or nonconsensual sexual activity may choose to file an informal complaint with a Board member in an attempt to reach a satisfactory resolution without pursuing formal campus judicial procedures and/or criminal proceedings, which tend to be more adversarial in nature. The primary purpose of informal mediation is to stop the offending behavior. Specific actions or remedies other than the cessation of offensive behavior, however, may be included in an informal resolution. Informal mediation is particularly appropriate in cases where the accused may be unaware that his or her behavior has caused offense that can be construed as a violation of this policy. Procedures for filing an informal complaint are as follows:

1. The complainant has the right to pick any Board member as his or her mediator provided this person agrees to take on the case. A Board member will decline if there is a potential conflict of interest or other special circumstances.
2. Although it is standard protocol and operating procedure for a grievance involving two employees to be brought to the immediate supervisor, in the case of sexual harassment or nonconsensual sexual activity it is not required.
3. When an individual files an informal complaint with a Board member, the Board member will notify the Sexual Harassment/Nonconsensual Sexual Activity Officers (the "SHO's") who will promptly arrange a meeting with the accused and apprise him or her of the complaint. (See "Notice of Complaint," Appendix IV.)

4. The identity of the complainant will not be revealed to the person against whom the complaint is made without the written consent of the complainant. The complainant should be aware that successful mediation is often more difficult if he or she does not give the Board member permission to reveal his or her identity to the accused.

5. The Board member to whom the complaint is brought will attempt to resolve the matter informally to the satisfaction of all concerned within a reasonable time, normally within fifteen business days after the initial interview with the aggrieved party. Mediation at the informal level will be sought in a non-legalistic, non-threatening manner. No member of the Le Moyne community, other than the Board member to whom the complaint was brought, will be involved as a mediator without the written permission of both the complainant and the accused. Proceeding only with the input of the complainant, the Board member will suggest various remediation options to the complainant. Examples of such options may include, but are not limited to, the following:

a. The Board member, or a representative of the College, facilitating a dialogue between the complainant and alleged offender, which may be either direct or indirect, and which has the purpose of discussing and resolving the perceived offending behavior to the satisfaction of both parties.

b. The Board member assisting the complainant with the development of a letter to the alleged offender outlining details of the perceived offending behavior and its impact on the complainant's life, and asserting that the complainant would like the behavior to stop.

c. The Board member attempting to facilitate a solution and written statement of agreement, acceptable to both the complainant and the alleged offender.

6. If the matter is not resolved at the informal level, the complainant may choose to pursue formal grievance procedures.

7. A written summary of the complaint, actions taken, and their outcome will be prepared by the Board member who served as mediator and submitted to the SHO's. Information contained in the report will be protected in the manner described in Section XI ("Confidentiality and Record keeping"). Where the conduct which is the subject of the complaint would appear to violate this policy, the SHO shall provide the alleged offender with a written warning that conduct of this nature, if the allegations were true, would violate the policy and subject him or her to disciplinary action up to and including discharge.

C. FORMAL GRIEVANCE HEARING

To file a formal complaint, an individual need not have undertaken informal mediation. Before filing a formal complaint, however, a person who feels that he or she is a victim of sexual harassment or nonconsensual sexual activity is required to be briefed by a Board member of his or her choosing about the College's definitions of sexual harassment and nonconsensual sexual activity, the procedures for hearing a formal complaint, and the rights of the complainant and the accused. The complainant may ask a Board member to help him or her prepare the written report that is needed to initiate formal grievance procedures. If a person chooses to file a formal complaint, the following procedures will be observed:

1. Filing of Complaint and Conduct of Preliminary Investigation

a. The request to initiate formal grievance procedures must be submitted in writing to the SHO's. The complainant shall submit a written statement describing the time, place, and nature of the alleged incident(s), identifying the alleged offender(s), and listing the names of people he or she believes can provide corroborating evidence.

b. The SHO's will notify the accused by certified mail of the complaint and shall identify the person who has brought the complaint. The notice should: (i) include copies of this policy and the complainant's written statement; (ii) notify the accused that if he or she fails to participate at any stage of the grievance process, the Administrators of the Policy will assume a denial of the charges and will proceed with the review of the complaint; (iii) remind the accused that no retaliatory action may be taken against the complainant, witnesses for the complainant, or any other persons involved in processing the case; (iv) contain the recommendation that the accused meet with a Board member of his or her choosing to discuss the procedures for hearing the complaint and the rights of the complainant and the accused; and (v) notify the accused that he or she has five working days upon receipt of the complaint to submit to the SHO's a signed written response to the charges made by the complainant and a list of people he or she believes can provide corroborating evidence.

c. A copy of the accused response will be sent by the SHO's to the complainant as soon as it is received.

d. Notice of the complaint, including the written statements of the complainant and accused, will be sent by the SHO's to the Review Officer under whose jurisdiction the accused falls (see Appendix I, section C). Depending upon the circumstances, the Review Officer may take action to relocate, reassign, or suspend the accused (with pay, if relevant) pending the outcome of the formal proceedings.

e. The Review Officer will promptly appoint a Sexual Harassment/Assault Investigating Team as per the policy's guidelines (see Appendix I, section D). The purpose of the Preliminary Investigation will be to determine if there is enough evidence to proceed to formal action, not to come to any conclusion about what actually occurred. Possible outcomes of the investigation are (i) a judgment that the allegations are unfounded or that the allegations, even if true, do not constitute sexual harassment or nonconsensual sexual activity; (ii) a judgment that there is a reasonable probability that the offense occurred as alleged and that the accused committed the offense; or (iii) a mediated settlement.

f. In order not to preclude support staff from serving as the complainant's or the accused advisor at the Preliminary Hearing (or at later hearings if the case proceeds to formal action) a member of the staff who is asked to be an advisor may file a request with the SHO's for organizational release time to attend the hearing. Such requests will be forwarded by the SHO's to the staff person's immediate supervisor, who will make reasonable efforts to secure the necessary release time.

g. The Preliminary Investigation will be conducted in private. The Investigating Team shall review the written statements of the complainant and the accused, separately interview the complainant, the accused, and other persons believed to have pertinent information, and obtain any other evidence relevant to the incident. A determination of "reasonable cause" shall be made on the basis of evidence or other information

produced in the investigation. Questions about the complainant's sexual history that have no bearing upon the accused guilt or innocence are not allowed.

h. The decision whether the case may proceed to formal action will be made by majority vote and is not subject to appeal. A split decision will count as an affirmative judgment.

i. A written report of the outcome of the Preliminary Investigation will be prepared by the Investigating Team and sent to the SHO's, who will forward copies to the complainant, the accused, and the Review Officer.

j. Except under special circumstances (e.g., a college holiday or vacation) the Investigating Team shall complete its investigation within ten working days from the time it received the complaint from the Review Officer.

2. Procedures for Taking Formal Action

a. Upon a positive decision by the Investigating Team that the case may proceed to formal action, the Review Officer will appoint a Sexual Harassment/Nonconsensual Sexual Activity Review Panel as per the policy's guidelines (see Appendix I, section E).

b. Except under special circumstances, the SHO's will schedule the Review Panel hearing to take place between five and ten working days after they receive the Investigating Team's report.

c. The SHO's will schedule an organizational meeting with the Review Panel so that the Panel may elect a chair and one of the SHO's may distribute copies of the written record compiled thus far.

d. The purpose of a Review Panel hearing shall be to determine whether the accused has violated this policy as alleged by the complainant, and if a violation is found, to make recommendations for action to the Review Officer. Contemporaneous charges relating to the case (e.g., perjury or retaliation) shall also be considered. A determination shall be made on the basis of evidence or other information presented at the hearing. Questions about the complainant's sexual history that have no bearing upon the accused guilt or innocence are not allowed. Formal rules of evidence will not apply; the Chair will rule on all matters of procedure and admissibility of evidence.

e. Possible outcomes of the Review Panel hearing are (i) a judgment that the allegations are partly or wholly substantiated and recommended remedies and/or sanctions; (ii) a judgment that the allegations are not substantiated in whole or in part; or (iii) a mediated settlement.

f. The complainant and the accused each have the responsibility of giving the SHO's written notice of the witnesses they would like to have testify on their behalf. Each party's list of witnesses must be submitted at least 72 hours in advance of the Review Panel hearing and will be made available by the SHO's to the other party.

g. The standard of proof that the Review Panel will use to make a finding is that of "a preponderance of credible evidence"--that is, what a reasonable person would conclude were more likely than not the facts.

h. If the accused cannot attend a hearing due to some emergency, it is his or her responsibility to contact one of the SHO's prior to the hearing. Failure to contact a SHO will result in the hearing being conducted in the person's absence.

i. One of the SHO's will be present during the Review Panel's hearing as a non-voting participant who is responsible for observing the proceedings and providing information about the policy if necessary.

j. The Review Panel hearing will be conducted in private. Each party will have an opportunity to present evidence in his or her behalf, to call witnesses, and to request that the Chair direct certain questions to the other party or other party's witnesses. The Chair may also call witnesses if he or she believes their testimony will help the Panel make a proper determination. The complainant and the accused, along with their advisors, may be present during the presentation of all testimony, but third-party witnesses shall be present at the hearing only when they are giving testimony. Witnesses must remain available, however, for the duration of the hearing unless excused by the Chair.

k. At the opening of the hearing, the Chair shall introduce all participants, and admonish them that they are expected to be truthful in all their testimony. No one may speak at the hearing unless recognized by the Chair, who shall have full authority over the proceedings.

l. The Chair shall introduce the formal statement of the charges and ask the complainant and the accused for any opening statement or information not contained in their written statements. Both parties must offer at the hearing all information known or available to them which they desire to be considered. After both sides have presented their version of the facts, each side has the right to produce witnesses in an order to be determined by the Chair.

m. The Chair and members of the Review Panel may question all present at the hearing at any point during the hearing, or may have any participant recalled for questioning. Questions asked by the accused of the complainant or of any third-party witnesses called by the Chair or the complainant must be submitted in writing to and asked by the Chair, if the Chair determines that the questions are relevant and appropriate for the hearing. The same procedure will be observed for questions asked by the complainant of the accused or of witnesses called by the Chair or the accused.

n. At the conclusion of the hearing, the Chair shall offer both the complainant and the accused an opportunity to make a closing statement.

o. Following the closing statements, the Chair shall adjourn the hearing, and everyone except members of the Panel shall be dismissed from the hearing room. Deliberations by the Panel are strictly confidential.

p. If the Review Panel arrives at a guilty finding, it will recall the SHO before deciding what disciplinary action or remedies to recommend. The SHO will inform the Review Panel of precedents, possible sanctions or remedies, and the accused prior violations of the Sexual Harassment/Nonconsensual Sexual Activity Policy, if any.

q. All decisions of the Review Panel shall be made by majority vote.

r. Within three working days of the conclusion of a Panel hearing, the Chair will submit a written report to the SHO's and the Review Officer outlining the Panel's findings, supporting rationale, and recommendations for disciplinary action, if appropriate.

s. If, after reviewing the recommendations and considering the full disciplinary record of the accused, the Review Officer accepts the Panel's recommendations, he or she shall promptly take formal action. The complainant, accused, SHO's, and members of the Review Panel shall be notified in writing of the action taken.

t. If the Review Officer does not accept the Panel's recommendations, he or she shall inform the Panel and SHO's in writing of the reasons for his or her disagreement. Within ten working days, the SHO's shall call the Review Officer and Review Panel to a meeting in an effort to resolve differences. The final decision at this stage rests with the Review Officer. Following the meeting, the Review Officer shall take formal action and notify the complainant, accused, SHO's, and members of the Review Panel of the action taken.

D. APPEALS PROCEDURE

1. After a Review Panel has made its judgment and the Review Officer has taken formal action, the complainant or the accused may appeal the finding and/or disciplinary sanctions. Appeals must be submitted in writing to the SHO's within six working days of the original decision.

2. Appeals must be based on questions of improper procedure, new evidence uncovered after the hearing, excessively harsh sanctions, or inadequate remedial relief.

3. Notice of the appeal(s) will be sent by the SHO's to the Review Officer and the other involved party. This party shall be given six working days to submit a written response. The SHO shall then send copies of the appeal(s), the response(s), and the entire written record to the President (or Chair of the Board of Trustees if the accused is an administrator at or above the Vice Presidential level. See Appendix I, Section F.)

4. The President will appoint a Sexual Harassment/Nonconsensual Sexual Activity Appeals Board as per the policy guidelines (see Appendix I, Section F).

5. Except under special circumstances, the SHO's will schedule the Appeals Board hearing to take place between five and ten working days from the time they receive the appeal.

6. The SHO's will schedule an organizational meeting with the Appeals Board so that the Appeals Board may elect a chair and one of the SHO's may distribute copies of the written record compiled thus far.

7. The purpose of an Appeals Board hearing shall be to determine whether further process is due, and if so, to re-examine the case according to whether it (the Appeals Board) rules that the case should be heard de novo or limited to those points contained in the appeal. The Appeals Board may alter the Review Panel's finding and/or make alternative recommendations for action to the President. The Appeals Board's decision as to whether the case warrants further review is final. If the Appeals Board decides the case should be re-examined, its decision as to how to process the appeal (de novo or based on those points contained in the appeal) and its finding are final. The Chair may consult with the College's legal counsel as needed (see Appendix I, G) and shall have full authority over the proceedings.

8. As with the Review Panel hearing, the Appeals Board hearing will be conducted in private, one of the SHO's will be present, the Appeals Board shall use "a preponderance of evidence" standard of proof, the Appeals Board's decision shall be made by majority vote, and its deliberations shall be strictly confidential.

9. Within three working days of the conclusion of an Appeals Board hearing, the Chair will submit a written report to the SHO's and the President outlining the Appeals Board's findings, supporting rationale, and recommendations for disciplinary action, if any. After reviewing the recommendation and considering the full disciplinary record of the accused, the President shall promptly take formal action, which is final. The complainant, accused, Review Officer, SHO's, and **members of the Review Board and Appeals Board shall be notified in writing of the action taken.**

E. INSTITUTION-INITIATED PROCEEDINGS

Individuals who believe they have been victimized by sexual harassment or nonconsensual sexual activity are normally responsible for filing complaints on behalf of themselves. However, the College may bring formal charges on its own behalf in cases which are particularly egregious either because of the severity of the factual allegations by the alleged victim(s) or because of the frequency of allegations against the alleged offender. In such cases, if the alleged victim(s) are willing to testify as witnesses, the College may initiate formal grievance procedures.

The decision to undertake institution-initiated proceedings lies with the President. As the officers who maintain the sexual harassment/nonconsensual sexual activity records, the SHO's are responsible for apprising the President of information indicating the possibility of an egregious violation of this policy. If the President decides formal grievance procedures should be invoked, he will designate one of the SHO's or a senior administrator (but not the Review Officer of the accused) as complainant. The non-involved SHO or SHO's will then begin processing the complaint in accordance with the procedures described above. As with individual-initiated complaints, the accused may seek a mediated settlement with the President's designate at any stage during the grievance proceedings. The agreement must be approved by the President and recorded with the SHO's.

F. MEDIATED SETTLEMENTS

At any stage during formal grievance procedures, either one of the parties may contact the SHO's to indicate his or her interest in reaching a mediated settlement. The SHO's will contact the other party, and if similar interest is evinced, will consult with both parties to find a mutually satisfactory mediator to work towards a settlement. Mediation will be concurrent with formal grievance proceedings unless the Review Officer suspends formal

action, at the written request of both parties. Normally, formal proceedings may be suspended only one time, for ten working days. Any mediated agreement must be approved by the Review Officer and recorded with the SHO's. Where the conduct which is the subject of the complaint would appear to violate this policy, the Review Officer shall provide the alleged offender with a written warning that conduct of this nature, if the allegations were true, would violate the policy and subject him or her to disciplinary action up to and including discharge.

G. TIME LIMITATIONS

In order to ensure a prompt and effective response to complaints, SHO's should endeavor to enforce the time limits stated at various stages of the procedures absent special circumstances (e.g., college holiday or vacation). In the event the complainant or the accused fails to meet any time limit imposed by these procedures without obtaining an extension of time from the SHO, the case will proceed on the basis of the information available.

APPENDIX III

RIGHTS OF THE COMPLAINANT AND THE ACCUSED

Reference: Manual, Section VI

A. BOTH PARTIES

The complainant and the accused shall each have the rights:

1. To fundamental standards of fairness within any campus judicial proceedings.
2. To consult with a member of the Sexual Harassment/Nonconsensual Sexual Activity Grievance Board for procedural guidance and/or personal support.
3. To be accompanied by a Board member or other member of the Le Moyne Community for support and assistance throughout every phase of the judicial process.
4. To obtain independent legal counsel at their own expense. Independent legal counsel will not be permitted to be present during formal campus judicial hearings, and may only be present at mediation sessions with the unanimous consent of all parties.
5. To an expeditious review of the complaint and hearing.
6. To petition the Review Officer and/or President to disqualify a Board member(s) from the case review for adequate cause.
7. To present witnesses on his or her behalf as outlined in the policy.
9. To hear and respond to the testimony of the other party and of witnesses during a Review Panel or Appeals Board hearing.
10. To be informed of the outcome of any case review hearing.

B. THE COMPLAINANT

The complainant shall have the following additional rights:

1. To protection from intimidation and harassment after the alleged incident has been reported.
2. To request that the Review Officer place limitations on the contact the accused may have with the complainant while the complaint is being reviewed. These limitations include, but are not limited to, a separation of working, living, and academic arrangements of the complainant and the accused.
3. To be provided with information pertaining to criminal and campus judicial processes and to choose what courses of action to pursue.
4. To withdraw from campus judicial proceedings at any time.

5. To make a victim-impact statement at the closing of a formal hearing.

C. THE ACCUSED

The accused shall have the following additional rights:

1. To be considered innocent until judged responsible in the case review process.
2. To remain silent or not participate at any stage of the process, recognizing that the College will assume a denial of the charges and will proceed with the review of the complaint.
3. To waive the case review process by admitting responsibility. If the accused elects to waive his or her right to a hearing, the hearing board will meet to receive the complainant's victim-impact statement (if he or she wishes to give one) and to determine appropriate sanctions and remedies to recommend to the Review Officer.

APPENDIX IV

NOTICE OF COMPLAINT

Reference: Appendix II, Section B.3.

What I am about to read will only take a couple of minutes. I would ask you to listen carefully until I have completed this statement. There will be time for questions and comments at the end. A copy of this document will be provided to you.

A member of the Le Moyne community has indicated that your behavior may involve sexual harassment and/or nonconsensual sexual activity (cross out the inapplicable charge). Specifically, it is asserted that _____ (insert the actual charge). This is a serious allegation. The allegation will be handled in accordance with the College's Manual on Sexual Harassment and Nonconsensual Sexual Activity. You will be considered innocent unless and until adjudged responsible in the case review process.

_____ (insert name of Board member) is a member of the Sexual Harassment/Nonconsensual Sexual Activity Grievance Board who has been asked by the complainant to contact you in an effort to resolve the issue informally. Past experience indicates that *informal mediation is often the most effective mechanism* for the involved parties to resolve the complaint. You are strongly encouraged to consider attempting informal resolution.

The informal and formal grievance procedures that govern complaints about sexual harassment and nonconsensual sexual activity are described in the Le Moyne College Manual on Sexual Harassment and Nonconsensual Sexual Activity. A copy will be provided to you. You are encouraged to meet with a Board member of your choosing (other than the Board member named above) to receive procedural guidance and discuss particulars of the policy. You may ask a Board member or other member of the Le Moyne community to provide you with support and advice throughout the process. You also have the right to remain silent. In many cases a person will be best served by candidly discussing the allegation. However, you should note that in some cases, it is in one's best interests to remain silent. If you are uncertain, you should probably discuss the issue with your chosen advisor.

In the interest of fairness, Le Moyne places certain obligations on all the parties involved in such cases. First, all statements are expected to be *truthful*. Second, *retaliation* by anyone is unacceptable. Third, information is expected to be handled with *discretion*; extensive public discussion of the case can be a form of retaliation. Fourth, while admittedly difficult, *civility* toward the other party and those handling the case is expected.

In conclusion, a few words of explanation about the role of the Sexual Harassment/Nonconsensual Sexual Activity Officers ("SHO's"): the role of the SHO's is, among other things, to ensure--in a neutral, non-judgmental manner--that the grievance procedures defined in Le Moyne's manual on sexual harassment and nonconsensual sexual activity are followed in each case. Accordingly, except under special circumstances, the SHO's do not directly participate in the mediation or evaluation of any case.

	<u>YES</u>	<u>NO</u>
Do you understand the nature of the allegation?	<input type="checkbox"/>	<input type="checkbox"/>
Do you want some help in picking a knowledgeable advisor to assist you?	<input type="checkbox"/>	<input type="checkbox"/>
Do you wish to make a written statement at this time?	<input type="checkbox"/>	<input type="checkbox"/>

Your signature

Date

SHO's signature

Date

SHO's signature

Date

APPENDIX V

EXPRESSIVE BEHAVIOR IN INSTRUCTIONAL SETTINGS

Reference: Manual, Section IX

Discipline of faculty because of expressive behavior in an instructional setting shall be governed by the following definitions and rules:

A. DEFINITIONS

1. An **Instructional Setting** is a situation in which a member of the faculty is communicating with student(s) concerning matters the faculty is responsible for teaching to the student(s). These situations include, but are not limited to, communication in a classroom, in a laboratory, during a field trip, and in a faculty office.
2. **Expressive Behavior** is conduct in an instructional setting through which a faculty member seeks to communicate with students. It includes, but is not limited to, the use of visual materials, oral or written statements, and assignments of visual, recorded, or written materials.

B. PROTECTED EXPRESSIVE BEHAVIOR

1. Expressive Behavior Related to Subject Matter

- a. A faculty member's selection of instructional materials shall not be a basis for discipline unless an appropriate hearing or review finds that the faculty member's claim that the materials are germane to the subject of the course is clearly unreasonable.
- b. If a faculty member claims that expressive behavior constituted an opinion or statement germane to the subject matter of the course in which the behavior occurred, the behavior shall not be a basis for disciplinary action unless an appropriate hearing or review finds that the faculty member's claim is clearly unreasonable. Expressive behavior that falls within the prohibition of subsection C.2 below shall not be considered an opinion or statement germane to the subject matter of the course.

2. Expressive Behavior Related to Teaching Techniques

A faculty member's selection of teaching techniques shall not be a basis for discipline unless an appropriate hearing or review finds clearly unreasonable the faculty member's claim that the objective cannot be accomplished as effectively by techniques less likely to cause harm of the kind described in C.1.(b) below. If a technique falls within the prohibition of C.2 below, the faculty member's claim shall be found to be clearly unreasonable.

C. UNPROTECTED EXPRESSIVE BEHAVIOR SUBJECT TO DISCIPLINE

1. A faculty member's expressive behavior in an instructional setting may be the basis for discipline if any claims that the behavior is protected under **section B** have been rejected, and

a. The behavior is commonly considered by persons of a particular gender or sexual orientation to be demeaning to members of that group, and

b. The conduct either (i) unreasonably interferes with the academic work of a student(s) in the course; or (ii) unreasonably makes the instructional setting hostile, intimidating, or demeaning to members of the targeted group.

2. In addition, a faculty member is subject to discipline if, in addressing a student(s) in an instructional setting, he or she repeatedly uses epithets, comments, or gestures that explicitly demean gender or sexual orientation, and if

a. The epithets, comments or gestures are commonly considered by members of the targeted group to be disparaging to members of that group, and

b. Repetition of such conduct either (i) unreasonably interferes with the learning or other academic performance of the student(s) to whom the faculty or academic staff member referred, or (ii) unreasonably makes the instructional setting hostile, intimidating, or demeaning to members of the targeted group.

APPENDIX VI

CONFIDENTIALITY CONTRACT

Reference: Manual, Section XI.A.

Cases which involve allegations of sexual harassment and non-consensual sexual activity can generate damaging levels of salacious gossip. In virtually every case, public discussion can have a significant negative impact. Both parties, regardless of their role in the precipitating incident(s), are generally injured by careless public discussion.

Accordingly, to protect the parties and the integrity of the policy and procedures, all Administrators of the Policy shall be required to sign a confidentiality contract. In essence, this contract is an agreement that all information relating to a case will be handled in confidence. Should it be necessary to share information, the person that generated the information will be informed, and the information will be handled with discretion, on a strict need-to-know basis.

Directly involved are all Administrators of the Policy. These include Review Officers, Investigating Team members, Board members, and the SHO's. Also involved are the advisors in a case, namely, those individuals who are picked by the complainant and the accused to provide support and assistance throughout every phase of the judicial process.

Allegations that a person has violated the confidentiality contract shall be handled through the normal administrative channels dealing with unprofessional conduct. Anyone who violates the confidentiality contract will be dismissed from his or her position as an Administrator of the Policy and may also be subject to the full range of disciplinary sanctions (e.g., informal verbal reprimand, formal written reprimand, probation, suspension, or dismissal).

I, _____, understand the requirements of the confidentiality contract and agree to abide by its terms. All case information will be handled in confidence. Should it be necessary to share information, the person that generated the information will be informed, and the information will be handled with discretion, on a strict need-to-know basis.

Further, I understand that there can be severe sanctions for violating this confidentiality contract.

Signature

Date

Capacity of Signatory

Signature of Witness

Date

Capacity of Witness

APPENDIX VII

SEXUAL HARASSMENT/NONCONSENSUAL SEXUAL ACTIVITY OFFICERS' ANNUAL REPORT

Reference: Manual, Section XII.B.

The information provided below was reported to Le Moyne College Security, Syracuse City Police, and/or the SHO's during the academic year of 19xx-19xx.

SAMPLE REPORT

Alleged Policy Violation	2 forcible sex offenses 1 nonforcible sex offense 2 sexual harassment
Gender of Alleged Victim	6 females 2 males
Status of Alleged Victim	7 undergraduates 1 staff
Gender of Alleged Offender	5 males 2 females
Status of Alleged Offender	2 undergraduates 1 unknown 1 non-Le Moyne 1 administrator 1 faculty 1 staff
Relationship of Alleged Offender to Alleged Victim	5 acquaintance 1 stranger
Location of Alleged Violation	1 campus housing 1 on-campus grounds 3 campus buildings 1 off-campus; bar
Alcohol/Drug-Related	2 yes 3 no 1 unknown
Outcomes	1 Ind-I FCP: suspension 1 Inst-I FCP: expulsion; DA pending 1 Ind-I FCP: unsubstantiated 1 IM: unresolved; Inst-I FCP: voluntary resignation 1 DA: pending 1 No intervention

KEY: For Sample Report Above

SHOs = Sexual Harassment/Nonconsensual Sexual Activity Officers

Ind-I = Individual-Initiated

Inst-I = Institution-Initiated

FCP = Formal Campus Procedures

IM = Informal Mediation

DA = District Attorney

HRC = Human Rights Commission

APPENDIX VIII

CAMPUS AND COMMUNITY RESOURCES

Reference: Manual, Section XIII

A. SEXUAL HARASSMENT/NONCONSENSUAL SEXUAL ACTIVITY GRIEVANCE BOARD (The "Board")

Members of the Board are available to respond to inquiries and complaints about sexual harassment and nonconsensual sexual activity. Individuals may talk with any member of the Board about sexual harassment or nonconsensual sexual activity. In addition to providing referrals for counseling and medical care, information about the Policy's definitions of sexual harassment and nonconsensual sexual activity can be discussed, as well as options available to address allegations of sexual harassment or nonconsensual sexual activity and their possible outcomes. Board members are available to acquaint victims with remedies that are external to the College, as well as internal.

B. LE MOYNE COLLEGE OFFICE OF COUNSELING SERVICES (Campus Telephone Extension: x4195)

Counselors from the Le Moyne College Counseling Center are trained to counsel those who experience the trauma typical for victims of sexual harassment and nonconsensual sexual activity. Counselors can also provide help to individuals who are accused of sexual harassment or nonconsensual sexual activity, and they are knowledgeable about the options and support services available to victims and alleged offenders both on and off campus. Individuals who seek help at the Counseling Center can be assured of privacy and confidentiality within the Counselor's professional rules of confidentiality.

C. LE MOYNE COLLEGE OFFICE OF SAFETY AND SECURITY (Campus Telephone Extension: x4444)

Officers are available to respond to an incident in progress or to report an incident following its occurrence. If a victim wishes to explore and/or pursue adjudication through the campus procedures outlined in this manual, the Director of Campus Safety and Security will assist him or her in contacting appropriate personnel. The Director is also available to provide information about reporting procedures for criminal prosecution through local law enforcement agencies.

D. RAPE CRISIS CENTER: 422-7273

423 West Onondaga Street, Syracuse, New York

The Rape Crisis Center of Syracuse, Inc. is a not-for-profit agency whose mission is to alleviate the trauma suffered by survivors of sexual violence and to promote a better understanding of this social problem. The Rape Crisis Center provides comprehensive professional services to individuals and families of all ages who have suffered the trauma of rape or sexual abuse. These services include, but are not limited to:

- ❖ A 24 hour hotline and crisis service (422-7273)
- ❖ Individual, family and group counseling

- ❖ Medical and legal advocacy
- ❖ Information and referral

E. Contact Telephone Counseling Service: Hotline: 425-1500

CONTACT is a 24 hour telephone counseling and crisis intervention hotline. Through its telephone counseling lines, CONTACT helps people of all ages use their inner resources to resolve issues which affect their mental, emotional and/or physical well being.

CONTACT's mission is to help people "talk it out."
