

# LENOIR-RHYNE UNIVERSITY

---

## POLICY

**TITLE:** SEX/GENDER-BASED DISCRIMINATION AND MISCONDUCT POLICY

**CAMPUSES:** HICKORY, COLUMBIA AND ASHEVILLE

**DIVISION/DEPARTMENT:** UNIVERSITY-WIDE

**INDIVIDUALS AFFECTED:** ALL LENOIR-RHYNE FACULTY, STAFF AND STUDENTS

**POLICY UPDATED:** SEPTEMBER 1, 2018

### **PHILOSOPHY & PURPOSE**

Lenoir-Rhyne University (“LRU” or “University”) is committed to creating and maintaining a safe and healthy environment where all members of the community--students, faculty, staff, and guests--are treated with respect and dignity at all times. The University wishes to make explicit its abhorrence of language, behavior, and attitudes that intimidate or demean members of the University community. This Policy (the “Policy”) concerns Sex/Gender-Based Discrimination and Sexual Misconduct (collectively referred to as “Sex/Gender-Based Misconduct”). Such conduct by of any type by any member of the University community (which includes, without limitation, faculty, staff, students, and their guests) is strictly prohibited.

The University encourages those who experience or observe forms of Sex/Gender-Based Misconduct to bring such incidents to the attention of the Title IX Coordinator, a Deputy Title IX Coordinator, or a University employee. Allegations of Sex/Gender-Based Misconduct against any member of the University community will be addressed pursuant to the procedures established in this Policy.

The University uses the preponderance of the evidence (also known as “more likely than not”) as a standard for proof of whether a violation occurred. In campus resolution proceedings, legal terms like “guilt,” “innocence,” and “burdens of proof” are not applicable, but the University never assumes a responding party is in violation of university policy. Campus resolution proceedings are conducted to take into account the totality of all evidence available, from all relevant resources.

The University's Sex/Gender-Based Misconduct policies are not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matter protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of the course.

Consistent with its commitment to addressing sex/gender-based discrimination, the University complies with Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities, Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits sex discrimination in employment, and Section 304 of the Violence Against Women Reauthorization Act of 2013 (also known as the Campus Sexual Violence Elimination Act (SaVE Act)). Inquiries concerning the application of Title IX, Title VII, or the Campus SaVE Act may be referred to the Title IX Coordinator. Inquiries concerning Title IX may also be directed to the U.S. Department of Education's Office for Civil Rights (See, *Lenoir-Rhyne University's Notice of Non-Discrimination and Equal Opportunity*).

## **DEFINITIONS**

1. **Complainant** – A member of the University community (including the University itself) that alleges a violation of this Policy.
2. **Day** – Unless otherwise specified, a day(s) refers to any day except Saturday, Sunday, or a day when the University is closed for a Holiday.
3. **Investigation Report** – A report developed by the Title IX Coordinator, a Deputy Title IX Coordinator, or other appointed investigator that has conducted an investigation of an alleged violation of this Policy.
4. **Respondent**– A member of the University community that has been alleged to have violated this Policy.
5. **Responsible Employee** – A University employee that has the duty to report incidents of Sex/Gender-Based Misconduct to the Title IX Coordinator or a Title IX Deputy Coordinator. Responsible Employees include all LRU employees with the exception of those with the designation of Confidential Resource (University Pastors, Counselors, and all employees of the Counseling and Health Center). Responsible employees include some student employees including, but not limited to, Graduate Assistants, Resident Assistants, Academic Tutors, and Course Assistants.
6. **Sex/Gender-Based Misconduct** – A broad term encompassing a range of behavior including, Sexual Harassment, Sexual Exploitation, Stalking, Non-Consensual Sexual Contact or Intercourse (collectively referred to as “Sexual Assault”), Intimate Partner Violence, Sex & Gender Discrimination, and Retaliation.

7. Sex/Gender-Based Misconduct Response Team (SMRT) – SMRT is a team that that is delegated certain responsibilities as stated in this Policy. The members of SMRT include the Title IX Coordinator (or Deputy Coordinator designee), Assistant Provost and Dean of Student Life, Director of Security Services, Director of Human Resources, Assistant Provost and Dean of Graduate and Adult Programs, and Sr. Vice President for Administration and Finance.
8. Sex/Gender-Based Misconduct Review Board (SMRB) – SMRB is a Board that is delegated certain responsibilities as stated in this Policy, including to hear Sex/Gender-Based Misconduct grievances referred to it.
9. Student – For the purpose of this Policy, a Student is any person who has been accepted for admission or who is currently or was previously enrolled in the University pursuing an undergraduate or graduate degree, a certificate, or any other program at the University that requires enrollment.
10. Standard of Proof – The standard by which it is determined whether or not a violation of this Policy has occurred. For the purpose of this Policy, the Standard of Proof required is a preponderance of evidence (i.e., the evidence demonstrates that it is more likely than not that a violation has occurred).
11. Title IX Coordinator – The designated University official with ultimate oversight and responsibility for the University’s compliance with Title IX and the Campus SaVE Act. The Title IX Coordinator oversees and coordinates the University’s response to alleged violations of this Policy, and the identification and resolution of any pattern or systemic discrimination on the basis of sex or gender. The Title IX Coordinator may designate one or more Title IX Deputy Coordinators for the Asheville and Columbia campuses of LRU, who work under the direction and supervision of the Title IX Coordinator in their role as Deputies.
12. University-Affiliated Activity – An activity on- or off-campus that is initiated, authorized, or supervised by the University or by an officially-recognized organization of the University.
13. University Premises – Buildings or grounds owned, leased, operated, controlled, or supervised by the University.

## **JURISDICTION**

The University has jurisdiction over, and will respond to, allegations of Sex/Gender-Based Misconduct occurring on the University's Premises, at University Affiliated Activities, and/or where the Complainant and/or Respondent is a student, faculty, staff, or agent of the University. The University does not have jurisdiction over allegations between visitors or guests. The University has the right, but not the obligation, in its sole discretion to investigate conduct occurring off University Premises or at a non-University Affiliated Activity if the conduct occurred in the context of its educational program or had continuing effects on campus or in an off-campus program or activity.

The University also has the right, but not the obligation, in its sole discretion to investigate and adjudicate complaints where a party is no longer enrolled in or employed by Lenoir-Rhyne University. The University does not limit the timeframe for reporting a complaint of Sex/Gender-Based Misconduct. Complaints can be submitted at any time following an incident, although the University's ability to take action may be limited by the passage of time and the status of the Complainant and Respondent.

### **1) SCOPE OF POLICY**

This Sex/Gender-Based Misconduct Policy is intended to supersede and replace all other policies in force at the University that address the reporting and adjudication of allegations of Sex/Gender-Based Misconduct. Moreover, this Policy shall govern all conduct, circumstances, procedures and allegations that in any way involve Sex/Gender-Based Misconduct, and to the extent any provision of any other University policy or procedure would conflict with or be inconsistent with this policy, this Policy shall control.

### **2) SEX/GENDER-BASED MISCONDUCT OFFENSES**

This Policy prohibits acts of Sexual/Gender-Based Misconduct as identified below, and attempts to commit the same.

#### **a) Sex/Gender-Based Harassment**

Sexual harassment is a form of sex discrimination covered by Title IX and occurs in two forms: *Quid Pro Quo* Harassment and Hostile Environment Harassment.

##### **i) *Quid Pro Quo* Harassment**

This form of sex harassment relies heavily on a power or authority imbalance between those involved, such as between a supervisor and supervisee or a faculty member and a

student. *Quid pro quo* literally means “this for that” in Latin, implying a trade. *Quid pro quo* harassment is:

- Unwelcome sexual advances, or requests for sexual favors, and/or other verbal or physical conduct of a sexual nature;
- by a person having power or authority over another; and
- when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating, or evaluating, or providing a benefit to an individual’s education or employment development or performance.

**ii) Hostile Environment Harassment**

Sexual harassment that rises to the level of creating a hostile environment is called Hostile Environment Harassment, which is:

- Unwelcome sexual advances, or requests for sexual favors, and/or other verbal or physical conduct of a sexual or gender-based nature;
- that is severe, or persistent, or pervasive; and
- the conduct is both subjectively and objectively offensive such that it unreasonably interferes with, denies, or limits someone’s ability to participate in or benefit from the institution’s education or employment programs.

**b) Non-Consensual Sexual Contact and Non-Consensual Sexual Intercourse<sup>1</sup>**

**i) Non-Consensual Sexual Contact:**

- any intentional sexual touching;
- however slight;
- with any object (including body part);
- by a person upon another person; and
- that is without consent and/or by force.

Sexual Contact includes, without limitation, intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any other intentional bodily contact in a sexual manner.

**ii) Non-Consensual Sexual Intercourse:**

- any sexual intercourse;
- however slight;

---

<sup>1</sup> See Section 3) below for the Policy on Consent.

- with any object (including body part);
- by a person upon another person; and
- that is without consent and/or by force.

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

**c) Sexual Exploitation**

- non-consensual<sup>2</sup> or abusive conduct;
- that takes sexual advantage of another person; and
- for the respondent's own advantage or benefit OR to benefit/advantage anyone other than the individual being exploited; and

Sexual exploitation includes a broad range of behaviors including, but not limited to:

- non-consensual video or audio taping of a sexual activity;
- non-consensual photography of a sexual nature;
- allowing other individuals to observe an act of sex without the knowledge or consent of the other partner;
- voyeurism;
- prostitution of another person (gaining money, privilege or power from the sexual activity of another);
- knowingly transmitting a sexually transmitted infection (STI) and/or HIV to another person;
- exposing one's genitals in a non-consensual circumstance;
- inducing someone else to expose their genitals without consent.

**d) Stalking**

- non-consensual<sup>3</sup> sexual or gender-based conduct;
- directed at a specific person; and
- that would cause a reasonable person to feel fear for themselves or others or to suffer substantial emotional distress.

Stalking behaviors include, but are not limited to:

---

<sup>2</sup> See Section 3) below for the Policy on Consent.

<sup>3</sup> See Section 3) below for the Policy on Consent.

- someone repeatedly calling, including hang ups;
- following someone;
- sending unwanted gifts, letters, cards, or emails and/or electronic messages;
- damage to a residence, car or other property;
- monitoring phone calls, texts, social media, other online activities and/or computer use;
- threatening to hurt someone, or their family, friends or pets.

Often, behavior that constitutes stalking also violates a wide range of laws and University policies, but the conduct rises to the level of Sex/Gender-Based Misconduct when it is undertaken as a result of sex- or gender-based motivations.

e) **Intimate Partner Violence (“IPV”)<sup>4</sup>**

- any instance of violence or abuse, whether verbal, or physical, and/or psychological; and
- that occurs between those who are in or have been in an intimate relationship with each other.

f) **Sex and Gender Discrimination**

Sex and gender discrimination by any student, employee, or any other agent of the University is prohibited by federal law. Sex/gender-based discrimination is actions that deprive other members of the community of educational or employment access, benefits, or opportunities on the basis of sex or gender.

Sex and gender discrimination is:

- action on the basis of sex or gender (including, without limitation, gender identity, gender expression, and nonconformity with gender stereotypes);
- that deprives a member of the community of educational or employment access, or benefits, or opportunities.

Sex and gender discrimination is prohibited with regard to pregnancy and parenting, in recruitment and admissions, financial aid, educational programs and activities, hiring and

---

<sup>4</sup> Referred to in the Campus SaVE Act as Dating Violence and Domestic Violence.

employment policies, athletics, and student discipline. Complaints regarding sex-based or gender-based discrimination will be addressed under this Policy.<sup>1</sup>

**g) Retaliation**

Retaliation is a form of sex discrimination that is prohibited largely to promote reporting of, and cooperation with, investigations and policy resolutions involving sex/gender-based misconduct. Retaliation is:

- any adverse action, or intimidation, or threat, or coercion;
- taken against a person participating in a protected activity; and
- because that person was engaged in an activity protected by this Policy.

Retaliation in response to allegations of Sex/Gender-Based Misconduct will not be tolerated by the University, and the University will not only take steps to prevent such retaliation but also will take strong responsive action if it occurs, whether or not any Sex/Gender-Based Misconduct grievance proceedings are pending. If the Complainant, Respondent, or another faculty, staff, student, or agent of the University that participated in a Title IX investigation feels that they have been the subject of retaliation, they should contact the Title IX Coordinator or a Deputy Title IX Coordinator, identified in Section 4) below. Allegations of retaliation in response to an underlying Sex/Gender-Based Misconduct complaint will be handled through the same processes as set forth herein for Sex/Gender-Based Misconduct.

**3) CONSENT**

Sex/Gender-Based Misconduct can take many forms, but all forms of Sex/Gender-Based Misconduct result from behavior taken towards another person without the other person's consent. **Lenoir-Rhyne University defines consent as clear, knowing, and voluntary words or actions, freely and actively given, that indicate a willingness to participate in mutually agreed upon sexual activity or actions.** Consent is present when a reasonable person in the same situation as Complainant would consider that the words or actions of the party involved an expression of willing permission to do the same thing, in the same way, at the same time.

Consent must be ongoing, and consent to any one act does not constitute consent to any other act. Consent can be withdrawn at any time, even if previously given. It is the responsibility of the person who desires sexual activity to make sure they have consent from their partner.

---

<sup>5</sup> All complaints of sex/gender-based discrimination relating to LRU's athletics program will be investigated according to the procedures set forth herein, but will be adjudicated by LRU's Gender Equity Committee, not the SMRB. Additional protocols and procedures related to the adjudication of complaints involving athletics by the Gender Equity Committee will be enacted separately under the authorization of the Title IX Coordinator.

Consent cannot be obtained by any of the following means:

- a) Coercion, which is unreasonable pressure for sexual activity including, but not limited to, ignoring the verbal or physical objections of another person (e.g., a person repeatedly saying “no” or “stop” or pushing the other person away);
- b) Force, which is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, or intimidation (i.e., implied threats) and/or coercion that overcome resistance or produce consent;
- c) Causing another's incapacitation through the use of drugs or alcohol or other means resulting in mental or physical incapacitation; or
- d) Taking advantage of another person's incapacitation, state of intimidation, helplessness, or other inability to consent.

### **Incapacitation**

Incapacitation is any condition in which someone cannot make rational, reasonable decisions and therefore lacks the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual activity). A person may be unable to consent when they are mentally or physically incapacitated due to the influence of alcohol, drugs, or medication, and/or when they are asleep or involuntarily physically restrained.

A person is incapacitated and cannot consent to sexual activity if:

- a) The person is unconscious or otherwise unable to resist;
- b) The person is unaware that sexual activity is occurring; or
- c) The person does not have the legal capacity to consent.

A person's capacity to understand, appraise, and/or control their conduct should be analyzed based on surrounding factors including, but not limited to, hallucinations, blackouts, seizures, vomiting, slurred speech, disorientation, incoordination, falling, loss of memory, sleeping, and other relevant factors.

## **4) REPORTING ALLEGATIONS OF SEX/GENDER-BASED MISCONDUCT & CONFIDENTIAL RESOURCES**

### **a) Reporting to a Title IX Coordinator**

The Title IX Coordinator is responsible for overseeing and coordinating Lenoir-Rhyne University's compliance with Title IX and Campus SaVE Act, including the University's response to all allegations of Sex/Gender-Based Misconduct under this Policy. The Title IX Deputy Coordinators serve under the direction and supervision of the Title IX Coordinator and assist the Title IX Coordinator in complying with federal law and this Policy, assist in providing information and resources for Complainants and Respondents, and to train faculty,

staff, students, and contractors on their campus on their rights and obligations under this Policy. Title IX Deputy Coordinators will also assist the Title IX Coordinator with the investigation and adjudication of alleged violations of this Policy in the discretion of the Title IX Coordinator or where the Title IX Coordinator must be recused based on a conflict of interest or in the absence of the Title IX Coordinator.

- University Director of Compliance/Title IX Coordinator – Dawn Floyd  
Hickory, Cromer Center #206 (828) 328-7040; [Dawn.Floyd@lr.edu](mailto:Dawn.Floyd@lr.edu) or [TitleIXCoordinator@lr.edu](mailto:TitleIXCoordinator@lr.edu)
- Asheville Deputy Title IX Coordinator – Dr. Michael Dempsey  
2nd Floor Main Office (828) 407-4269; [Michael.Dempsey@lr.edu](mailto:Michael.Dempsey@lr.edu)
- Columbia Deputy Title IX Coordinator – Robyn Marren  
Yost Administration Bldg. (803) 461-3277; [Robyn.Marren@lr.edu](mailto:Robyn.Marren@lr.edu)

**b) Reporting to a Responsible Employee (sometimes referred to as a “mandated reporter”)**

All LRU faculty and staff are “Responsible Employees” for purposes of reporting all forms of Sex/Gender-Based Misconduct, including sexual assault, sexual harassment, intimate partner violence, stalking, sexual exploitation, sex or gender discrimination, and retaliation. Responsible employees include all faculty and staff (full-time, part-time, and adjuncts), and/or any other agent of the University.

**It is the Policy of Lenoir-Rhyne University that all Responsible Employees must share immediately with the Title IX Coordinator or a Deputy Coordinator (within 24 hours where possible), any information they learn regarding allegations of or facts suggesting any form of Sex/Gender-Based Misconduct (i.e., sexual harassment, sexual assault, sexual exploitation, intimate partner violence, stalking, sex or gender discrimination, and retaliation) involving a student or employee or other agents of the University. The only exception to this Policy is for those employees with the designation of Confidential Resource (discussed in Section 4) d) below).**

**c) Reporting Online & Anonymously**

You may also report an incident online by completing a Sex/Gender-Based Misconduct Grievance Form, which is available at [www.lr.edu/titleix](http://www.lr.edu/titleix). To use this Form to report an incident anonymously on the [Title IX Webpage](#), click on “Report an Incident” and leave the spaces blank that are seeking personally identifying information. The form will then be sent electronically directly to the Title IX Coordinator. The reporter should be aware that reporting an incident anonymously doesn’t ensure confidentiality, since the University is obligated to take certain actions in response to all complaints, including those reported anonymously.

**d) Reporting to a Confidential Resource & Getting Confidential Assistance**

Confidential Resources in the positions identified below will maintain the confidentiality of matters reported to them, except in cases of an immediate threat or danger to health or human safety, or the abuse of a minor. For purposes of reporting under the Clery Act, these individuals will submit anonymous statistical information to Campus Security, unless they believe it would be harmful to their client, patient or parishioner.

- Jenny Smith, Counselor, 828.328.7252, [Jenny.Smith@lr.edu](mailto:Jenny.Smith@lr.edu) (Hickory and Columbia) Cornerstone House & Beam Hall
- Jennifer Drum, Counselor, 828.328.7957, [Jennifer.Drum@lr.edu](mailto:Jennifer.Drum@lr.edu) (Hickory and Asheville) Cornerstone House & Beam Hall
- Michael Spivey, Counselor, 828.328.7298, [Michael.Spivey@lr.edu](mailto:Michael.Spivey@lr.edu) (Hickory) Cornerstone House
- Kellie Medley, (when acting as) Counselor, 803.461.3237; [Kellie.Medley@lr.edu](mailto:Kellie.Medley@lr.edu) (Columbia) Beam Hall #3C
- Jennifer Waugh, Student Health Provider, 828.328.7958 (Hickory) Cornerstone House
- Rev. Andrew Weisner, University Pastor, 828.781.1110, [Andrew.Weisner@lr.edu](mailto:Andrew.Weisner@lr.edu) (Hickory) Grace Chapel
- Rev. Dr. Mark Fitzsimmons, Columbia Pastor, 803.461.3222; [Mark.Fitzsimmons@lr.edu](mailto:Mark.Fitzsimmons@lr.edu)
- Rev. Dr. Bill Trexler, Asheville Pastor, 828.253.0043; [wbtrexler@gmail.com](mailto:wbtrexler@gmail.com)

If a faculty or staff member is contacted by an individual who wishes to maintain anonymity or confidentiality concerning any alleged Sex/Gender-Based Misconduct, the faculty or staff member must report the contact to the Title IX Coordinator or Deputy Title IX Coordinator. However, such faculty or staff member should also encourage the individual to seek confidential assistance through the resources above or another appropriate resource, such as community-based resources.

#### **e) Reporting to Campus Security or Local Law Enforcement**

Students, faculty, and staff may also report to Campus Security, local law enforcement, or call 911.

- Hickory Campus Security - During business hours call 828.328.7145; 24 hours a day call 828.328.7146 (mobile)
- Hickory Police Department – 828.328.5551
- Columbia campus Security – During business hours call 803.461.3268
- Columbia Police Department – 803.545.3500
- Asheville Police Department – 828.252.1110

The filing of a report does not obligate an alleged victim to pursue criminal charges if they do not want to pursue them, but it does make filing of charges easier if the alleged victim changes their mind at a later date. Some types of Sex/Gender-Based Misconduct, as set forth in this Policy, may also constitute a violation of criminal law.

Anyone who reports Sex/Gender-Based Misconduct will be notified by the Title IX Coordinator or a Deputy Coordinator of their right to (1) notify law enforcement authorities; (2) be assisted by campus authorities in notifying law enforcement authorities; and (3) decline to notify such authorities.

If a Complainant files a criminal complaint with local law enforcement, the University will comply with law enforcement, which may require the University to temporarily suspend the fact-finding aspect of a University sex/gender-based investigation while law enforcement gathers evidence. The University will promptly resume any such suspended investigation as soon as notified by law enforcement that it has completed its evidence-gathering process, and/or the University deems it necessary to proceed with its investigatory process. An individual desiring anonymity can seek the assistance of Campus Security, the Title IX Coordinator, or a Counselor, who may be able to help file a report with law enforcement that includes the details of the incident without revealing the alleged victim's identity.

## 5) **SELF-CARE & RESOURCES**

If you believe you have been the victim of sexual assault, in addition to using the resources above, it is recommended that you do the following if it does not interfere with your health, safety or well-being. Such actions will help ensure the preservation of evidence that may be useful in subsequent investigations:

- Go to a safe place
- Do not shower or bathe
- Do not urinate, if possible
- Do not eat, drink, smoke or brush your teeth if oral contact took place
- Take pictures of any and all injuries and other evidence
- Do not destroy or wash the clothes you were wearing. If you change, place your clothes in a paper bag
- Seek medical treatment immediately

Individuals who have been the victim of Sex/Gender-Based Misconduct should consider using all of the University's resources available to assist them in caring for themselves and understanding their rights and options. A full list of these resources can be found at [www.lr.edu/titleix](http://www.lr.edu/titleix), in the Resource Guide on Sex/Gender-Based Misconduct. A complete list of resources, counseling, health, and mental health services, as well as all other rights and

options available to the Complainant (including the option to pursue criminal charges), will be provided to the individual by the Title IX Coordinator or Title IX Deputy Coordinator.

**6) INTERIM MEASURES & ACCOMMODATIONS**

The University aims to assist those involved with alleged Sex/Gender-Based Misconduct in any way reasonably possible. Therefore, in connection with alleged Sex/Gender-Based Misconduct, a Complainant and Respondent may contact the Title IX Coordinator, a Deputy Coordinator, or the Assistant Provost and Dean of Student Life, to request reasonable assistance in the following forms of interim measures and accommodations:

- (1) an escort on-campus;
- (2) separating the Complainant and/or Respondent from classes;
- (3) work re-assignment, relocation, or leave of absence;
- (4) moving the Complainant and/or Respondent to a different residence hall;
- (5) counseling services;
- (6) access to on- or off-campus healthcare services;
- (7) academic support services, such as tutoring;
- (8) potentially re-taking or withdrawing from a class;
- (9) entering a “no contact” order; and/or
- (10) other reasonable requests for assistance.

The Title IX Coordinator and Assistant Provost and Dean of Student Life will work together to identify all accommodations and interim measures that are reasonable and should be taken promptly given the circumstances. These options may be requested at any time. Such requests will be reviewed by the Title IX Coordinator and the LRU Sex/Gender-Based Misconduct Response Team (SMRT) as needed on a case-by-case basis, and all reasonable requests will be granted. The interim measures will continue as long as reasonable and necessary.

**7) SEX/GENDER-BASED MISCONDUCT GRIEVANCE PROCEDURES**

The procedures below are the means by which all allegations of violations of this Policy asserted against any member of the University community will be investigated and resolved.

These procedures do not replace, nor are they intended to replicate, state and federal criminal, civil or other judicial systems that are available to persons who wish to file a criminal or civil complaint or take other action in such forums. Instead, these procedures are designed to address allegations of Sex/Gender-Based Misconduct and the impact such misconduct has on members of the University community. All members of the University community are bound by these procedures, as well as the resulting outcome of any proceedings hereunder.

All aspects of these procedures are designed to provide a prompt, equitable, fair and impartial investigation and resolution of grievances asserted against members of the University community. These procedures further ensure that LRU will take steps to prevent recurrence of any discriminatory and/or sexual misconduct and will correct its discriminatory effects, as needed. LRU seeks to provide regular updates to the Complainant and Respondent on the status of any investigation and/or resolution.

All University employees or agents of the University overseeing and/or executing this Policy have received mandatory training and, in carrying out their responsibilities, have no real or perceived conflicts of interest absent their request for recusal, which should be made to the Title IX Coordinator or Sr. Vice President and SMRB Administrative Assistant.

**a) Overview and Special Considerations**

1) **Overview of Process.** LRU's Sex/Gender-Based Misconduct Policy and Procedures follow a four-step process:

- (1) Initiation of grievance and preliminary inquiry by a Title IX Coordinator;
- (2) Neutral investigation;
- (3) Mutual resolution or adjudication by LRU's Sex/Gender-Based Misconduct Review Board;
- (4) Discretionary appeal to the University President.

2) **Confidentiality.** An individual asserting allegations of a violation of this Policy may request to remain anonymous and/or request that a grievance not be pursued against the Respondent. Upon such request, the University will take reasonable steps to investigate and respond to the incident consistent with the individual's request, but the University cannot ensure confidentiality or anonymity in every instance. Similarly, if a Complainant insists that his or her name or other identifiable information not be disclosed to the Respondent, the Complainant should be aware that the University's ability to respond may be limited.

In appropriate circumstances, LRU reserves the right to pursue the Sex/Gender-Based Misconduct grievance process without the cooperation or participation of the Complainant (for example, in situations where the alleged Respondent is believed to be a potential threat to the University community, See Section b) 1) below). In such cases, LRU's highest priority will be to maintain a safe and discrimination-free environment for all members of the University community, but it will take reasonable measures to maintain the Complainant's and Respondent's confidentiality where reasonably possible. Moreover, the University will not publish any personally

identifying information about the Complainant or Respondent, except as required by law.

Given the sensitive nature of all forms of Sex/Gender-Based Misconduct and, out of respect for everyone involved in the process, the University recommends that all information related to the allegations be kept confidential. However, the parties are not restricted from discussing and sharing information about the grievance with others that may support or assist them in presenting their complaint or responding to the complaint.

- 3) **Amnesty.** All members of the University community are encouraged to report incidents of Sex/Gender-Based Misconduct, even though their own use of alcohol or other drugs may have been a factor or may expose them to disciplinary action. Because of the seriousness of Sex/Gender-Based Misconduct, the University does not want any such circumstances to inhibit the reporting of Sex/Gender-Based Misconduct. In order to encourage reporting, the University under most circumstances will not charge Complainants, Respondents, or witnesses of Sex/Gender-Based Misconduct for violations of the University's drug or alcohol policies that may have occurred in conjunction with the reported incident of Sex/Gender-Based Misconduct. The Dean of Students may, in their discretion, and on a case-by-case basis, determine to pursue major, serious, and/or repeated alcohol or drug violations against those involved in an incident of Sex/Gender-Based Misconduct.
- 4) **Advisor.** Complainants and Respondents are entitled to have one advisor of their choosing present with them throughout the grievance process. The advisor may be legal counsel. Prior to the accompaniment or involvement by an advisor, the party must complete a FERPA consent form. An advisor may not attend a meeting, interview, hearing or other activity related to the grievance process in the absence of their advisee. A witness or potential witness to the complaint may not serve as an advisor in a hearing, and an advisor may not serve as a witness in the hearing.
- 5) **Preservation of Evidence.** Complainants, Respondents, and potential witnesses are encouraged to preserve any evidence that may be important to an investigation of allegations of Sex/Gender-Based Misconduct including, but not limited to, handwritten or electronic communications such as text messages, telephone messages and emails, videos and/or photographs of the incident. In the case of a sexual assault, the University encourages the Complainant to seek medical help within 72 hours of the sexual assault so that any physical evidence may be preserved for use at a later date should that be necessary.

- 6) **Additional Protocols & Procedures.** The Title IX Coordinator is authorized to enact additional protocols and procedures that include specific instructions for reporting and responding to allegations of Sex/Gender-Based Misconduct. The Title IX Coordinator has the right to appoint a designee that will have full authority to act in the role of the Title IX Coordinator within this Policy should that become necessary to avoid a conflict of interest or other situation where it would be inappropriate or impossible for the Coordinator to carry out their responsibilities.
- 7) **Reporting to Law Enforcement.** A Complainant who reports Sex/Gender-Based Misconduct will be notified by the Title IX Coordinator or a Deputy Coordinator of their right to (1) notify law enforcement authorities; (2) be assisted by campus authorities in notifying law enforcement authorities; and (3) decline to notify such authorities. A Complainant or victim is not required to file a criminal complaint and may choose to pursue only the University process under this Policy. The processing of a grievance pursuant to this Policy is independent of any criminal investigation. At the request of local law enforcement, the University may delay its process for a short time so as not to compromise law enforcement's process, but the University will not wait until the conclusion of a criminal investigation or criminal proceeding to investigate a report of Sex/Gender-Based Misconduct and, if needed, will take interim measures to protect the Complainant within the educational setting during the criminal process.
- 8) **False Allegations.** Deliberately false and/or malicious allegations made under this Policy, as opposed to allegations which, even if not found to be a violation of LRU's Policy and are made in good faith, are a serious offense which may be subject to appropriate disciplinary action. Any false allegations discovered during an investigation into a complaint will be referred to the appropriate University official.

**b) Grievance Procedures**

**1) Initiation of a Grievance & Preliminary Inquiry (days 1-10)<sup>2</sup>**

- a) The Complainant should initiate a grievance by reporting the alleged Sex/Gender-Based Misconduct to the Title IX Coordinator, or a Deputy Title IX Coordinator or Responsible Employee (who will then report to the Title IX Coordinator or a Deputy). Although there is no period of time within which a Sex/Gender-Based Misconduct grievance must be reported, the Complainant should report the

---

<sup>2</sup> For each major stage of the grievance procedures set forth herein, LRU has identified a general timeline for that stage based on a 60-day process (the process includes the SMRB hearing but not any appeals). This timeframe is subject to reasonable and sometimes unforeseen delays based on multiple factors during each stage of a grievance as set forth more specifically in Section b) 2) below.

incident as soon as reasonably possible after the incident giving rise to the grievance, as a failure to timely report an incident may impede the investigation of the allegations.

- b) Upon receipt of a grievance from a Complainant, the Title IX Coordinator will conduct a preliminary inquiry, including meeting with the Complainant and Respondent and seeking additional details about the alleged grievance. The Title IX Coordinator will also provide the Complainant information regarding LRU's policies and resources pertaining to Sex/Gender-Based Misconduct. Based on the preliminary inquiry into allegations of the Complainant, the Title IX Coordinator will make an initial determination of whether any violation of the Sex/Gender-Based Misconduct Policy may have occurred under any version of Complainant's allegations.
- c) The Title IX Coordinator will discuss with the Complainant whether the Complainant wishes to proceed further in the grievance process or requests confidentiality. If the Complainant does not wish to proceed with a grievance, and/or requests their name and/or allegations remain confidential, the University may still investigate the alleged incident to the extent possible and take reasonable actions in response to the Complainant's information. The Title IX Coordinator will inform the Complainant that the University's ability to respond may be limited under these circumstances.
- d) The Title IX Coordinator will weigh the Complainant's request(s) for confidentiality and/or wish not to proceed with the grievance process against the University's obligation to provide a safe, non-discriminatory environment for all students. Specifically, the Title IX Coordinator will consider the following factors:
  - i. The seriousness of the alleged Sex/Gender-Based Misconduct;
  - ii. Whether there have been other complaints of Sex/Gender-Based Misconduct against the same Respondent at the University or any other school, or any criminal charges, filed that, if true, would constitute Sex/Gender-Based Misconduct;
  - iii. Whether the Respondent threatened further Sex/Gender-Based Misconduct or violence against the Complainant or others;
  - iv. Whether the alleged Sex/Gender-Based Misconduct was committed by multiple Respondents;
  - v. Whether the alleged Sex/Gender-Based Misconduct involved use of a weapon;
  - vi. The age of the Complainant;

- vii. Whether the University possesses other means to obtain relevant evidence of the alleged Sex/Gender-Based Misconduct;
- viii. Whether the complaint reveals a pattern of conduct at a particular location or by a particular student or student group/organization;
- ix. The Respondent's right to receive information about the allegations.

The Title IX Coordinator, in his/her discretion, may consult with the members of SMRT in determining whether the University should proceed with an investigation despite the wishes of a Complainant to be anonymous and/or not to pursue a grievance against the Respondent. The University reserves the right to initiate an investigation and grievance without a formal report or participation by the Complainant. The Title IX Coordinator will inform the Complainant if the University cannot ensure confidentiality, and whether the University intends to pursue an investigation or grievance despite a Complainant's wishes otherwise. In an instance where the University must disclose a Complainant's identity to a Respondent, the Title IX Coordinator will inform the Complainant prior to making the disclosure.

- e) Even if the Complainant does not wish to proceed with a grievance because the Complainant requests confidentiality or requests that the complaint not be resolved, the University, specifically the Title IX Coordinator, reserves the authority to undertake an appropriate action, including meeting with Complainant, Respondent, and potential witnesses, interim and reasonable protective measures and accommodations to protect a Complainant, Respondent, or the University community, and other responses to ensure the University is maintaining a safe, discriminatory-free environment.
- f) If the Title IX Coordinator proceeds with an investigation, the Title IX Coordinator will complete a sex/gender-based misconduct grievance form and present it for signature by the Complainant. By signing the sex/gender-based misconduct grievance form, the Complainant attests to the truthfulness of the allegations therein, to the best of their knowledge. Regardless of whether Complainant signs the sex/gender-based misconduct grievance form, the Title IX Coordinator will provide a copy of the completed sex/gender-based misconduct grievance form to the Complainant and Respondent. Along with the grievance form, the Title IX Coordinator will also provide a notice of investigation to the Complainant and Respondent. This notice will include a brief description of the alleged conduct, the alleged Policy violations (type of Sex/Gender-Based Misconduct as defined herein), a copy of this Policy, a brief description of the

investigative process, information about available resources for both parties throughout the process, and a notice about avoiding retaliatory behavior.

**2) Formal Investigation (days 10-35)**

- a) If the Title IX Coordinator believes they have an actual or reasonably perceived conflict of interest with a particular grievance, the Title IX Coordinator should recuse themselves from the process and appoint one of the Deputy Title IX Coordinators to conduct the grievance process.
- b) After the sex/gender-based misconduct grievance form and notice of investigation is submitted to the Complainant and Respondent, the Title IX Coordinator shall conduct a prompt, thorough, neutral, impartial, and fact-based investigation of the allegations made by the Complainant. The Title IX Coordinator will make reasonable efforts to conduct the investigation within twenty-five (25) days, including preparation of the Investigation Report and review of such report by the parties. Some investigations may not reasonably be completed within twenty-five days due to many factors including, but not limited to, involvement of local law enforcement, the number of potential witnesses, the complexity of evidence and issues, the competing professional obligations of the Coordinator, University closures, failure of parties and witnesses to meet their obligations under this Policy, scheduling delays with witnesses and SMRB, and unforeseen circumstances such as illnesses, weather events, etc.
- c) At any meeting or interview as part of the investigation, Complainant and Respondent will be allowed to have one advisor of their choosing attend, which person may be legal counsel. Prior to accompaniment by an advisor, the Complainant and Respondent must complete a FERPA consent form, provided by the Title IX Coordinator. Such advisor may only counsel their advisee and may not speak at the hearing or present any evidence or argument on behalf of their advisee. A witness or potential witness to the grievance, as identified by the Title IX Coordinator may not serve as an advisor, and an advisor may not serve as a witness in the hearing.
- d) All information known to Complainant and Respondent to be relevant to the grievance must be brought to the attention of the Title IX Coordinator during an investigation. This includes the names of all potential witnesses and the existence of all potential evidence in whatever form.
- e) All interviews conducted by the Title IX Coordinator will be audio recorded by the Coordinator. Written notice will be provided to each interviewee that the

interview is being recorded. The Complainant and Respondent may request an electronic copy of their interview from the Title IX Coordinator.

- f) After completing the investigation, the Title IX Coordinator shall issue a written report of their findings to the Complainant and the Respondent (the “Investigation Report”). The Complainant and Respondent will have five (5) business days from the date they receive the Investigation Report to review the report and provide a written response and/or provide any additional information related to the allegations and grievance. In addition, the Title IX Coordinator will request to meet with the Complainant and Respondent independently to discuss the report, their responses, answer any questions, and discuss next steps in the process.
- g) Once the Title IX Coordinator has issued the Investigation Report to the Complainant and Respondent, the Title IX Coordinator will work with the University’s Senior Vice President (the SMRB’s administrative assistant) and President to appoint the Chairperson and other SMRB members that will adjudicate the grievance.
- g) The Title IX Coordinator will send the Investigation Report and all written responses to the Report from Complainant and Respondent to the Chairperson of the SMRB that will adjudicate the grievance.

### **3) Pre-Hearing Procedures (days 35-45)**

#### **a) Sex/Gender-Based Misconduct Review Board (SMRB)**

The SMRB is responsible for adjudicating all Sex/Gender-Based Misconduct grievances. The SMRB will be a five-member board composed of two faculty members, two staff members and one additional member of either the faculty or staff. A sixth person will be appointed to serve in the role of Chairperson and non-voting member of the SMRB. A five-member board, along with a non-voting Chairperson will be constituted by the random selection of five individuals and one Chairperson from a pool of trained faculty and staff for each new grievance hearing. The pool of SMRB members will be appointed by the President for staggered three-year terms. The Senior Vice President for Administration and Finance will serve the SMRB as a non-voting administrative assistant. All members of the SMRB pool shall receive specialized training to assist them with the sensitive issues that often accompany Sex/Gender-Based Misconduct. The University’s Title IX Coordinator, Deputy Title IX Coordinators, and members of SMRT shall not serve as members of the SMRB.

#### **b) Mutual Resolution and Pre-Hearing Procedures**

##### **1) Mutual Resolution**

- i. The Chairperson of the SMRB, in consultation with the Title IX Coordinator and the SMRB's administrative assistant, determines whether a mutual resolution may be appropriate in resolving the grievance based on the Investigation Report;
- ii. Grievances of sexual contact or sexual intercourse without consent are not appropriate violations for the mutual resolution process; therefore, these alleged violations should automatically proceed to the SMRB's hearing process;
- iii. If mutual resolution is deemed appropriate, the Chairperson will send a written notice to the Complainant and Respondent that he/she will be contacting them about a potential mutual resolution. If, at this time, either the Chairperson, Complainant, or Respondent have any conflict of interest with the others involved, they may request recusal from this process and a new Chairperson will be selected by the SMRB's administrative assistant in consultation with the President of the University;
- iv. The Chairperson will meet with the Respondent first to discuss the potential for a mutual resolution. The Chairperson will discuss with the Respondent whether they will agree to resolve the matter through a mutual resolution, where the Respondent accepts some responsibility for their actions and agrees to a specific set of sanctions recommended by the Chairperson. A Respondent who accepts a mutual resolution must accept responsibility for the violation(s) and the recommended sanction(s) imposed by the Chairperson, and waives his/her right to a hearing with the SMRB. If the Respondent does not want to resolve the grievance through a mutual resolution, then the grievance will be referred automatically to the SMRB for a hearing;
- v. The Chairperson will then offer the Complainant the option of resolving the grievance through a mutual resolution and, specifically, the recommended sanctions proposed by the Chairperson and accepted by the Respondent. If the Complainant agrees to the proposed mutual resolution, the Complainant waives their right to a hearing with the SMRB. If the Complainant does not want to resolve the grievance through a mutual resolution, then the grievance will be referred automatically to the SMRB for a hearing;
- vi. The Chairperson must determine that the acceptance of a mutual resolution is voluntary on the part of the Complainant and

- Respondent. The mutual resolution must be in writing and signed by the Respondent, the Complainant, and the Chairperson;
- vii. The Chairperson is prohibited from informing the five voting SMRB members of any specific information related to the Chairperson's attempt to resolve the matter by mutual resolution if a mutual resolution fails and the matter proceeds to a hearing. This rule is imposed to prevent any bias against a Complainant or Respondent for their actions or decisions during the mutual resolution process;
  - viii. The Chairperson will make all reasonable efforts to complete a mutual resolution within ten (10) business days from the date the Chairperson receives the Investigation Report from the Title IX Coordinator.
  - ix. A signed mutual resolution may not be appealed. If the Chairperson does not offer a mutual resolution, or the Respondent or Complainant does not accept a mutual resolution, the matter will proceed to a hearing. Further, the Complainant and Respondent have a right to end the informal process and begin the SMRB hearing process at any time during the mutual resolution process.

## 2) Pre-Hearing SMRB Procedures

Where a mutual resolution is not reached, or is not appropriate, the Title IX Coordinator will send the Investigation Report to the five voting members of the SMRB. The Title IX Coordinator or SMRB's administrative assistant will coordinate with the SMRB Chairperson and members and parties to schedule a hearing before the SMRB. The Title IX Coordinator or the SMRB's administrative assistant will schedule a hearing of the SMRB. Once a hearing date is confirmed, the Title IX Coordinator or SMRB's administrative assistant will send a Notice of Hearing to the Complainant, respondent, and Chairperson of the SMRB.

The Notice of Hearing shall include the following:

- i. A statement of the specific allegations against the respondent;
- ii. The date, time and location for the hearing;
- iii. A list of the names of the members of the SMRB, including the non-voting Chair and the procedures to follow for requesting recusal of any one of the SMRB members or the Chairperson;

- iv. The names of the witnesses the SMRB will call to provide information at the hearing;
- v. A brief description of the hearing process, including the standard of proof, which is a preponderance of the evidence;
- vi. Procedures for Complainant and Respondent to follow should they wish to identify witnesses (including character witnesses) to provide information at the hearing beyond those called by the SMRB and the time for doing this, which is no later than five (5) business days before the hearing;
- vii. A statement that the Respondent and Complainant may seek assistance from the non-voting Chairperson or the SMRB's administrative assistant in understanding the process and procedures of the hearing;
- viii. A statement indicating that the Complainant and Respondent have the right to be represented, at the Respondent or Complainant's expense, by a licensed attorney or non-attorney advisor during the hearing process;
- ix. Notice that the parties may request to participate in the hearing remotely if they do not wish to be physically present with the Respondent at the hearing, and the procedures for requesting such accommodation, and the time frame for doing so;
- x. Notice of the hearing procedures in the Sex/Gender-Based Misconduct Policy, and attaching a copy of the Policy;
- xi. Time limits, if any, imposed upon Complainant and Respondent in addressing the SMRB;
- xii. Notice that the Complainant and Respondent must complete FERPA consents for their advisors, if any, in advance of the hearing, and the procedures for doing so;
- xiii. Notice of the opportunity to submit additional information for the SMRB's consideration and notice that any and all new information provided – including new witnesses – must be received by the SMRB's Chairperson and Board's administrative assistant no later than five (5) business days before the start of the hearing. All new information submitted by a Complainant or Respondent will be provided to the other party in advance of the hearing and immediately upon receiving it;
- xiv. Notice that, where there are multiple allegations of Sex/Gender-Based Misconduct alleged by Complainant, the SMRB will reach separate decisions as to each allegation of Sex/Gender-Based Misconduct;
- xv. A confidential witness key to the Investigation Report will be provided, along with the Notice.

- 3) Conflicts of Interest. As soon as possible after receiving the Investigation Report and names of the parties and witnesses, any member of SMRB who has a real or perceived conflict of interest will disclose the same to the SMRB's administrative assistant. Complainant and Respondent will each be given an opportunity to request the recusal of any members(s) of the SMRB which request shall be received no later than 48 hours after receiving the Notice of Hearing, and shall be decided by the SMRB's administrative assistant. Any recused member shall be replaced by the President's appointment of another appropriately qualified individual.
  - 4) Ex Parte Communications with SMRB. The Complainant, Respondent, and witnesses that were interviewed during the Investigation are prohibited from discussing their grievance, the hearing, or any other matters related to their grievance with any members of the SMRB at any time outside of the hearing.
- 4) SMRB Hearing Procedures (days 45-60)**
- a) At the hearing, Complainant and Respondent will be allowed to have one advisor of their choosing attend, who may be legal counsel. Prior to accompaniment by an advisor, the Complainant and Respondent must complete a FERPA consent form. Such advisor may only counsel their advisee and may not speak at the hearing or present any evidence or argument on behalf of their advisee. A witness or potential witness may not serve as an advisor, and an advisor may not serve as a witness in the hearing. An advisor may not attend a meeting, interview, or hearing under this Policy in the absence of their advisee.
  - b) The Complainant, Respondent, and witnesses are expected to give truthful testimony and will be advised of the same during the hearing. Furnishing untruthful testimony may subject the Complainant, Respondent and/or witness to additional action under applicable University policies.
  - c) The SMRB has broad authority and discretion to conduct the hearing in any way it deems appropriate. Upon request by either party or at the SMRB's initiation, the hearing will be conducted such that a party does not have to be physically present in the same room as the other party, provided that the parties will be allowed to listen to, review each other's presentations of evidence, and ask questions of the other party through the Chairperson in real time. The SMRB has authority to conduct hearings via web-based platforms in its discretion.

Upon timely request five (5) business days in advance of the hearing, the Respondent or Complainant may request special accommodations for testimony by alternate methods (such as video conferencing). Such accommodations are at the discretion of the SMRB's Chairperson, in consultation with the Title IX Coordinator and SMRB's administrative assistant if desired. The Respondent and Complainant will be notified in writing in advance of the hearing of any special accommodations granted to a party or witness.

- d) Both Complainant and Respondent will be given a reasonably fair opportunity to present their positions in whatever form deemed appropriate by the SMRB. Without limitation, live testimony, documentary evidence and all other forms of evidence may be allowed by the SMRB. The SMRB has the authority to call witnesses and review any relevant evidence regardless of its source. Without limitation, the SMRB may require the testimony of the individual that conducted the investigation.
- e) Formal rules of evidence do not apply. The Chairperson of the SMRB, in consultation with the SMRB's administrative assistant, if desired, determines admissibility of all matters of evidence outside of the Investigation Report.
- f) The standard of proof by which it is determined whether or not a violation of this Policy has occurred is a preponderance of evidence (i.e., the evidence demonstrates that it is more likely than not that a violation has occurred). The SMRB should consider the evidence from both a subjective (whether the Complainant finds the conduct objectionable) and objective perspective (whether a reasonable person would find the conduct objectionable).
- g) The Chairperson of the SMRB, in consultation with the SMRB's administrative assistant if desired, shall exercise control over the hearing in order to maintain an efficient process and to achieve orderly completion of the hearing. The Chairperson may exclude any person who disrupts a hearing, including the Respondent, Complainant, advisors, witnesses, or any other individuals involved in the hearing.
- h) Each hearing (but not SMRB deliberations) will be audio recorded and/or transcribed at the request of the University and/or a party, and the recording and/or written transcript becomes part of the case file in the Title IX Office. All documents and other information included in the hearing records are the property of the University. Complainants, Respondents, witnesses, advisors,

or others are not permitted to make audio recordings of hearings. However, upon request by a party, the Title IX Coordinator will provide a copy of the recorded hearing.

- i) Written statements of a party or witness in lieu of appearance and testimony at the hearing may be admitted into evidence only where the witness is deemed “unavailable” by the SMRB’s Chairperson. For a witness to be considered unavailable, it must be clearly demonstrated to the Chairperson that the witness’s attendance would result in significant and unavoidable personal hardship or substantial interference with normal University activities. A witness’s desire to avoid cross-examination may not be used to demonstrate “personal hardship.” To be eligible for admission into evidence, such written statements must be signed by the individual writing the statement.
- j) If a Complainant or Respondent has a question for the other or a witness during the pendency of a hearing, he or she must direct the question to the Chairperson, who may then ask the question or a rephrased question in his/her discretion on behalf of either the Complainant or Respondent.
- k) Questioning and information regarding the Complainant’s or Respondent’s consensual sexual history with any person other than the other party, shall not be permitted. Otherwise, evidence of the Complainant’s and Respondent’s sexual history may be limited in the discretion of the Chairperson.
- l) The hearings held and this Policy are closed to the public. In a closed hearing, admission of any person to the hearing shall be at the discretion of the Chairperson. The Complainant and Respondent shall have the same opportunities to have others present.
- m) The Complainant and Respondent may remain present throughout the hearing, with the exception of the SMRB’s deliberations. If the Complainant or Respondent elects not to attend the hearing, the SMRB will make a determination of responsibility and sanction(s) in the absence of the Complainant and/or Respondent. A Complainant is not required to be present at the hearing as a prerequisite to proceeding with a hearing. If a Complainant chooses not to attend a hearing, and informs the University of the same in advance of the hearing, the Title IX Coordinator will request the Complainant to sign a statement indicating they are aware of the hearing but have voluntarily chosen not to attend and understands the hearing will proceed in

their absence. A party that chooses not to attend a hearing waives their right to appeal the findings and sanctions issued by the SMRB.

- n) Where there are multiple allegations of Sex/Gender-Based Misconduct alleged by Complainant, the SMRB will reach separate decisions as to each allegation of misconduct based on the standard of proof. The burden is on the University to gather sufficient evidence to enable the Board to reach a fair and impartial determination as to whether this Policy was violated.
- o) Respondent and Complainant may submit an impact statement and/or statements of character witnesses to the SMRB at the discretion of the Chairperson, which will be considered by the SMRB after the SMRB has reached a decision on whether this Policy was violated.
- p) The SMRB has broad authority and discretion to conduct the deliberations in any way it deems appropriate. The SMRB will determine, by majority vote, whether the Respondent is responsible for the Grievance alleged, based on whether it is “more likely than not” that the Respondent committed the violation. Within three (3) business days after its hearing, the SMRB will render a written decision in the matter explaining the rationale therefor, including any sanction that the SMRB deems appropriate, which shall be provided to all parties simultaneously in writing, along with instructions regarding how to pursue an appeal.
- q) Absent an appeal, the decision of the SMRB shall be final and binding on all parties upon the expiration of the time for an appeal.

## 5) **Appeal**

- a) Both the Complainant and the Respondent will have the right to request an appeal of the outcome within five (5) days of the issuance of a written decision by the SMRB.
- b) In the event that an appeal is requested, the President will request a review of the parties’ proceedings by five individuals in the pool of potential SMRB members who did not serve on the SMRB when the grievance was adjudicated (the “Appeals Board”). This group of individuals will:
  - i. Make a preliminary determination of whether an appeal is allowed. Such an appeal will only be allowed where the appellant articulates a

material deviation from the procedures outlined herein and such deviation significantly impacted the outcome of the proceedings.

- ii. If an appeal is not allowed, then the request for an appeal shall be denied and the decision of the SMRB shall be final. If, however, an appeal is allowed, the Appeals Board will:
  1. Review the transcript of the proceedings before the SMRB, along with any and all evidence presented to the SMRB;
  2. Allow the Complainant and Respondent a fair opportunity to supplement the record, as appropriate; and
  3. Render a written decision in the matter. The decision must identify the material deviation(s) and state that the material deviation significantly impacted the outcome of the proceedings. The decision may:
    - a. Affirm the findings of responsibility and the sanction(s);
    - b. Disaffirm the findings of responsibility sanctions and render a new decision;
    - c. Affirm the findings of responsibility and reduce but not eliminate the sanction(s).
  4. The SMRB's decision shall be provided to all parties simultaneously in writing. Such decision shall be final and binding on the parties.

## **6) Sanctions**

A wide range of sanctions is available as discipline in any given Sex/Gender-Based Misconduct Grievance proceeding. Sanctions including, but are not limited to the following, and may be assessed against a person who is deemed responsible for the alleged conduct. Depending on the severity, likelihood of repetition, and potential threat to the University environment, more severe sanctions may be assessed against an individual.

The following are the usual sanctions that may be imposed upon students or organizations singly or in combination that have engaged in sex/gender-based misconduct:

- **Warning:** A formal statement that the behavior was unacceptable and a warning that further infractions of the Policy, procedure, or directive will result in more severe sanctions/responsive actions;
- **Probation:** A written reprimand for a violation of this Policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any University policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from athletics, student organizations, or other University co-curricular activities, no-contact orders and/or other measures as deemed appropriate;
- **Educational/Training:** Required education or training to help the student understand why their behavior was offensive, and assist the student in avoiding offensive behavior in the future;
- **Suspension:** Termination of student status for a definite period of time;
- **Expulsion:** Permanent termination of student status, revocation of rights to be on campus for any reason or attend University-sponsored events. This sanction will be noted as a conduct expulsion on the student's official transcript.
- **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student is the subject of a pending grievance or disciplinary proceeding;
- **Organizational Sanctions:** Deactivation, de-recognition, loss of all privileges for a specified period of time;
- **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

The following are actions for an employee who has engaged in harassment, discrimination, or retaliation may include:

- Warning – Verbal or Written
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination

- Other: The University may assign any other sanctions as deemed appropriate.

The Lenoir-Rhyne University Sex/Gender-Based Misconduct Disciplinary Guidelines are as follows:

- Any person found responsible for violating the Non-Consensual Sexual Contact (where no intercourse occurred), Sexual Exploitation, Stalking, or Intimate Partner Violence policy will likely receive a sanction ranging from Probation to Expulsion in the case of a student or Termination in the case of an employee, depending on the severity of the incident, and taking into account any previous disciplinary violations;
- Any person found responsible for violating the Non-Consensual Sexual Intercourse policy will likely face a recommended sanction of suspension or expulsion in the case of a student, or suspension or termination in the case of an employee, depending on the severity of the incident, and taking into account any previous disciplinary violations;
- Any student or employee found responsible for violating the Sexual Harassment, Sex/Gender-Based Discrimination, or Retaliation policy will likely receive a sanction ranging from Warning to Suspension, depending on the severity of the incident, and taking into account any previous disciplinary violations.

A tenured faculty member can only be discharged or suspended from employment or diminished in rank through the procedures set forth in the Faculty Handbook (See Section III: Policies Related to Appointment and Evaluation of Faculty, Part A: Tenure, Appointments, and Due Process, Section VI. Due Process before Discharge of the Imposition of Serious Sanctions). Accordingly, if the Respondent is a tenured faculty member and the SMRB recommends suspension or termination from employment or diminishment in rank, the SMRB's recommendations are not final and will be referred to the Provost for process under the Faculty Handbook.

**POLICY AUTHORS**

UNIVERSITY TASK FORCE ON SEXUAL MISCONDUCT  
UNIVERSITY LEGAL COUNSEL  
DIRECTOR OF COMPLIANCE/TITLE IX COORDINATOR

**POLICY APPROVAL**

DR. FRED WHITT, UNIVERSITY PRESIDENT



September 1, 2018

---

PRESIDENT

---

DATE