

# ANTI-HARASSMENT POLICY

## Equal Opportunity and Anti-Harassment Policy Statement

Linfield University ("University") does not discriminate and prohibits discrimination against any individual based on any category protected under applicable federal, state, or local laws.

Accordingly, the University does not discriminate, and strictly prohibits unlawful discrimination on the basis of race (including traits historically associated with race, such as hair texture and protected hairstyles), color, religion, creed, national origin, ancestry, sex (including pregnancy, childbirth, or related medical conditions), gender, gender identity or expression, age, sexual orientation, physical or mental disability, citizenship, genetic information or predisposing genetic characteristics, marital status, familial status, domestic violence victim status, caregiver status, military status, including past, current, or prospective service in the uniformed services, or any other category or characteristic protected by applicable law.

The University will conduct a prompt and thorough investigation of all allegations of discrimination, harassment, retaliation, or any violation of this Policy in a confidential manner. The University will take appropriate corrective action, if and where warranted. The University prohibits retaliation against students, staff or faculty who provide information about, complain about, or assist in the investigation of any complaint of discrimination or violation of this Policy.

All incidents of Title IX Sexual Harassment, including Sexual Assault, Stalking, Dating Violence, and Domestic Violence meeting Title IX's definitional and jurisdictional requirements will be addressed under Linfield University's Title IX policy (<https://catalog.linfield.edu/spg/sexualmisconductandrelationshipviolencepolicy/>).

### Applicable Federal Law and State Law

This policy was written to follow the requirements of all applicable Federal and State laws. If this policy is inconsistent with those laws, or the laws change before it has been updated, state and federal law supersedes this policy.

If any provision of this policy is found to be invalid, illegal, unconstitutional, or unenforceable, that finding shall not affect or undermine the validity of any other provision.

### To Whom this Policy Applies

This policy applies to the entire University community, including, but not limited to, students, student organizations, faculty, administrators, staff, and members of the Board of Trustees, whether on or off campus, and third Parties such as guests, visitors, volunteers, invitees, and alumni when they are on campus or participating in University-sponsored activities. This policy may also pertain to instances in which the conduct occurred outside of the campus or University-sponsored activity if the University determines that the off-campus conduct affects a substantial University interest, including access to the educational program or activity, safety and security, compliance with applicable law, and meeting its educational mission. Any member of the campus community, guest, or visitor who

acts to deny, deprive, or limit the educational or employment opportunities and/or benefits of any member of the University community on the basis of a protected class is in violation of this policy.

Members of the University community are expected to provide truthful information in any report, meeting, or proceeding under this policy.

Any Respondent who is not a University student, faculty member, or staff member is generally considered a third party. The University's ability to take appropriate corrective action against a third party may be limited and will depend on the nature of the third party's relationship, if any, to the University. When appropriate, the Title IX Coordinator will refer such allegations against third-party Respondents to the appropriate office.

The status of a party may impact which resources and remedies are available to them, as described in this policy.

### Crime and Incident Disclosure Obligations

The Clery Act is a federal crime and incident disclosure law. It requires, among other things, that the University report the number of incidents of certain crimes, including some of the Prohibited Conduct in this policy, that occur in particular campus-related locations. The Clery Act also requires the University to issue a warning to the community in certain circumstances.

In addition to Clery Act reporting obligations, the University is required to submit a report to the Higher Education Coordinating Commission for the State of Oregon to comply with ORS 350.345 ([https://www.oregonlegislature.gov/bills\\_laws/ors/ors350.html](https://www.oregonlegislature.gov/bills_laws/ors/ors350.html)).

In the statistical disclosures and warnings to the community, the University will ensure that a Complainant's name and other identifying information is not disclosed.

The Responding Administrator will refer information to the Senior Director of Safety and Risk Management, when appropriate, for a determination about Clery-related actions, such as disclosing crime statistics or sending campus notifications.

### Reporting Prohibited Conduct Employee Reporting Obligations

Other than those serving in the capacity of Confidential Resources, described in this policy, all Linfield employees must immediately report possible violations of this policy to their manager, Title IX Coordinator, or the Department of Human Resources at [hr@linfield.edu](mailto:hr@linfield.edu). The University also encourages employees who themselves experience prohibited conduct under this policy to bring their concerns forward, though they are not required to do so.

When providing this information, the employee must include their own name and contact information, and all known details about an incident, which may include, if known, the dates, times, locations, names of involved individuals and the nature of the incident.

Aside from this reporting obligation, employees will, to the fullest extent possible, maintain the privacy of an individual's information, consistent with FERPA (<https://www.linfield.edu/registrar/ferpa.html>).

In addition, University employees are considered mandatory reporters of child abuse, elder abuse or abuse of persons with disabilities. These University employees are required by law to report incidents of abuse to the Oregon Department of Human Services immediately. Reports can be made 24 hours a day, 7 days a week by contacting the Oregon

Department of Human Services (ODHS). A fuller description of the mandatory child abuse reporting obligation and those covered by that obligation can be found on the Oregon Department of Human Services website: <https://www.oregon.gov/odhs/report-abuse/Pages/mandatory-reporting.aspx>

## Reporting to the Police

Some Prohibited Conduct may constitute a violation of both the law and University policy. The University encourages harmed persons to report alleged crimes promptly to local law enforcement agencies. All persons have the right to file with law enforcement and to decline to file with them. The decision not to file shall not be considered as evidence that there was not a violation of University policy.

Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence. The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. Conduct may constitute Prohibited Conduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. However, when a complaint is made to the University as well as to law enforcement, the University may delay its process if a law enforcement agency requests that the University delay its process for a reasonable amount of time to allow law enforcement to gather evidence of criminal misconduct. Criminal or legal proceedings are separate from the processes in this policy and do not determine whether this policy has been violated.

All investigations under this policy will be thorough, reliable and impartial, and will seek to collect evidence and names of witnesses to gather information that is directly or substantially relevant to whether the alleged policy violation occurred, and will not be based on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

In the case of an emergency, where the physical well-being of a member of the University community or the safety of the University as an institution is threatened, any individual with such knowledge should promptly inform the Senior Director of Safety and Risk Management. The University may take any immediate steps as may be necessary and appropriate under the circumstances to ensure the well-being of the University community and The University as an institution.

## Prohibited Conduct

All incidents of Title IX Sexual Harassment, including Sexual Assault, Stalking, Dating Violence, and Domestic Violence meeting Title IX's definitional and jurisdictional requirements will be addressed under Linfield University's Title IX policy (<https://catalog.linfield.edu/spg/sexualmisconductandrelationshipviolencepolicy/>).

The conduct prohibited by this policy is as follows:

### Discrimination

Discrimination is defined as treating members of a protected category less favorably because of their actual or perceived membership in that category or as having a policy or practice that adversely impacts the members of one protected category more than others.

## Harassment

Harassment is verbal or physical conduct that insults or shows hostility or aversion toward an individual because of the individual's age (40 and older); ancestry; sex; sexual orientation (including transgender status, gender identity or expression); pregnancy (including childbirth, lactation, and related medical conditions); gender; race (including physical characteristics that are historically associated with race, including, but not limited to, natural hair, hair texture, hair type, and protective hairstyles such as hair color or manner of wearing hair that includes, for example, braids, regardless of whether the braids are created with extensions or styled with adornments, locs, and twists); religion; color; national origin; physical or mental disability; genetic information (including testing and characteristics); expunged juvenile record; familial relationship; marital status; veteran status; uniformed servicemember status; status as a victim of domestic violence, harassment, sexual assault, bias, or stalking; or any other status protected by federal, state, or local laws.

Again, while it is not possible to list all the circumstances that may constitute other forms of harassment, the following are some examples of conduct that may constitute harassment:

- The use of disparaging or abusive words or phrases, slurs, negative stereotyping, or threatening, intimidating, or hostile acts that relate to the above protected categories;
- Written or graphic material that insults, stereotypes, or shows aversion or hostility toward an individual or group because of one of the above protected categories and that is placed on walls, bulletin boards, or elsewhere on our premises, in emails or voicemails, or otherwise circulated in the ; and
- A display of symbols, slogans, or items that are associated with hate or intolerance toward any select group.

## Sexual Harassment

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment or an Individual's educational or employment progress, development, or performance; (2) submission to, or rejection of, such conduct by an individual is used as the basis for employment or educational decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or access to the University' education program or activity or creating an intimidating, hostile, or offensive environment.

While it is not possible to identify every act that constitutes or may constitute sexual harassment, the following are some examples of sexual harassment:

- Unwelcome requests for sexual favors;
- Lewd or derogatory comments or jokes;
- Comments regarding sexual behavior or another person's body;
- Sexual innuendo and other vocal activity such as catcalls or whistles;
- Obscene letters, notes, emails, invitations, photographs, cartoons, articles, or other written or pictorial materials of a sexual nature;
- Repeated requests for dates after being informed that interest is unwelcome;
- Retaliating against another for refusing a sexual advance or reporting an incident of possible sexual harassment to the University or any government agency;

- Offering or providing favors or employment benefits such as promotions, favorable evaluations, favorable assigned duties or shifts, etc., in exchange for sexual favors; and
- Any unwanted physical touching or assaults or blocking or impeding movements.

## Sexual Assault

Having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity (see below for definition of consent and incapacitation). Sexual contact includes:

- sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, or tongue) or an object, or requiring another to penetrate themselves with a body part or an object, however slight;
- sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual's body for the purpose of sexual gratification.
  - Sexual touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant's own body.

## Dating Violence

Violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - a. The length of the relationship;
  - b. The type of relationship; and
  - c. The frequency of interaction between the persons involved in the relationship.

Emotional and psychological abuse do not constitute violence for this definition.

## Domestic Violence

Felony or misdemeanor crimes of violence committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the University, or a person similarly situated to a spouse of the victim;
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- Shares a child in common with the victim; or
- Commits acts against a youth or adult victim protected from those acts under the jurisdiction's family or domestic violence laws.

Emotional and psychological abuse do not constitute violence for this definition.

## Stalking

Engaging in a course of conduct, directed at a specific person, that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

## Sexual Coercion

The application of unreasonable pressure, including emotionally or physically manipulative actions or statements, or direct or implied threats, to compel the person to engage in sexual activity.

## Sexual Exploitation

The abuse or exploitation of another person's sexuality without consent, for the perpetrator's own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. Sexual Exploitation includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage over that person; causing the prostitution of another person; electronically recording, photographing, or transmitting intimate or sexual utterances, sounds or images of another person, whether authentic or created or enhanced through the use of technology; allowing third Parties to observe sexual acts; engaging in voyeurism; distributing intimate or sexual information about another person; and/or knowingly transmitting a sexually transmitted infection, including HIV, to another person.

## Retaliation

Retaliation is any materially adverse action taken against an individual because they were involved in the disclosure, reporting, investigation, or resolution of a report of Prohibited Conduct. Retaliation includes threats, intimidation, harassment, coercion, discrimination, violence, or any other conduct against any person by the University, a student, or an employee or other person authorized by the University to provide aid, benefit, or service under the University's education program or activity, for the purpose of interfering with any right or privilege secured by this policy or by law, including Title IX or its regulations. Adverse action does not include perceived or petty slights, or trivial annoyances.

The prohibition against retaliation applies to any individuals who participate (or refuse to participate) in any manner in an investigation, or hearing, and to any student who refuses to participate in an investigation, proceeding, or hearing.

Retaliation may occur even where there is a finding of "not responsible" under this policy. Good faith actions lawfully pursued in response to a report of Prohibited Conduct are not Retaliation.

## Reporting Discrimination and Harassment

Any person that has witnessed or has been subjected to any form of prohibited conduct should document the behavior and immediately report it to your manager, the Title IX Coordinator, the Department of Human Resources at [hr@linfield.edu](mailto:hr@linfield.edu).

The University prohibits retaliation against students, staff or faculty who, based on a reasonable belief, provide information about, complain, or assist in the investigation of any complaint of harassment or discrimination.

The University will promptly and thoroughly investigate any claim and take appropriate action where the University find a claim has merit. To the extent possible, the University will retain the confidentiality of those who report suspected or alleged violations of the harassment policy.

Discipline for violation of this policy may include, but is not limited to, reprimand, suspension, demotion, transfer, and discharge. If the University determines that harassment or discrimination occurred, corrective action will be taken to effectively end the harassment. As necessary, the University may monitor any incident of harassment or discrimination to assure the inappropriate behavior has stopped. In

all cases, the University will follow up as necessary to ensure that no individual is retaliated against for making a complaint or cooperating with an investigation.

### State and Federal Remedies

In addition to the University reporting process, if you believe you have been subjected to discrimination or harassment, you may file a formal complaint with the government agencies listed below. Using the University complaint process does not prohibit you from filing a complaint with these agencies.

Claims must be filed within the following time frames:

- Complaints filed with the Oregon Bureau of Labor and Industries (BOLI) must be filed within five years after the occurrence of the alleged discrimination.
- Complaints filed with the federal Equal Employment Opportunity Commission (EEOC) must generally be filed within 180 days of the alleged discrimination. This deadline is extended to 300 days if BOLI or a local agency enforces a law that prohibits employment discrimination on the same basis.
- If the basis for filing the complaint is covered by both state and federal law, a complaint filed with BOLI is automatically filed with the EEOC.

#### EEOC Seattle Field Office

Address: 909 First Avenue, Suite 400, Seattle, WA 98104-1061

Phone: 800-669-4000

Fax: 206-220-6911

TTY: 800-669-6820

ASL Video Phone: 844-234-5122

Website: <https://publicportal.eeoc.gov/portal/>

#### BOLI, Civil Rights Division Offices

##### Eugene

1400 Executive Parkway, Suite #200

Eugene, OR 97401

541-686-7623

##### Salem

3865 Wolverine St. NE, Bldg. E-1

Salem, OR 97305

503-378-3292

##### Portland

800 NE Oregon St., Suite #1045

Portland, OR 97232

971-673-0764

### Agreements

The University may not, as a condition of employment, continued employment, promotion, compensation, or the receipt of benefits, require or coerce you to enter into an agreement that contains a nondisclosure provision, a non-disparagement provision, or any other provision that has the purpose or effect of preventing you from disclosing or discussing any conduct:

- That constitutes unlawful discrimination or harassment (including sexual assault); and
- That occurred between employees or between the University and an employee in the workplace or at a work-related event that is off the employment premises and coordinated by or through the University; or

- That occurred between the University and an employee off the employment premises.
- If you have claimed to be a victim of unlawful discrimination or harassment (including sexual assault), the University may only enter into a settlement, separation, or severance agreement with you that includes one or more of the following provisions, if you request to enter into such an agreement:
  - A nondisclosure provision, a non-disparagement provision, or any other provision that has the purpose or effect of preventing you from disclosing or discussing any conduct as outlined in the previous paragraph.
  - A provision that prevents the disclosure of factual information relating to a claim of discrimination or conduct that constitutes sexual assault; or
  - A no-rehire provision that prohibits you from seeking re-employment with the employer as a term or condition of the agreement.
- If the University makes a good faith determination that you have engaged in unlawful discrimination or harassment, the University may enter into a settlement, separation, or severance agreement that includes one or more of the provisions described above.
- Any settlement, separation, or severance agreement reached by you and the University may be revoked within seven days of its execution, and the agreement will not become effective until after the revocation period has expired.

## Responding to a Report

The following process will be used following the receipt of a report of Prohibited Conduct.

### Initial Contact

Following receipt of a report alleging Prohibited Conduct, the responding Administrator will contact the Complainant to meet with them for an initial intake and assessment meeting, and will provide the following:

- An invitation to meet to offer assistance and explain their rights, resources, and options under this policy.
- Access to this policy.
- Information regarding available campus and community resources.
- The availability of supportive measures regardless of whether a complaint is filed and/or any resolution is initiated.
- The options for resolution (support only, agreement-based, investigation) and how to initiate such resolution processes.
- The right to notify law enforcement as well as the right not to notify law enforcement, if appropriate.
- The importance of preserving evidence and, in the case of potential criminal misconduct, how to get assistance from Public Safety or local law enforcement in preserving evidence, if appropriate.
- The right to a Process Advisor of choice, if applicable, during University proceedings under this policy including the initial meeting with the responding Administrator.
- A statement that retaliation for filing a complaint, or participating in the complaint process, is prohibited.
- Information on how to initiate the Investigation or Agreement Based Resolution process.

### Initial Intake & Assessment

The Initial Assessment process seeks to gather information about the nature and circumstances of the report to determine whether this policy applies to the report and, if so, which resolution process may

be appropriate, as well as which section of the resolution procedures apply based on the conduct and the status of the Parties. The initial assessment is not a finding of fact or responsibility. If the individual bringing forward the complaint is not the actual Complainant, the Responding Administrator will limit communication to general information on policies and processes.

Should the Complainant wish to initiate a resolution process, the Responding Administrator will determine whether this policy applies and, if so, the appropriate process under this policy. The Responding Administrator will communicate this determination to the Complainant.

If the information provided does not suggest a potential violation of this policy, the Responding Administrator will provide the Complainant written notice that the matter is being referred for handling under a different policy, and/or to another appropriate office for handling.

## Requests for Confidentiality or No Further Action

When a Complainant requests that the University not use their name as part of any resolution process, or that the University not take any further action, the University will generally try to honor those requests. However, there are certain instances in which the University has a broader obligation to the community and may need to act against the wishes of the Complainant. In such circumstances, the Responding Administrator will notify the Complainant in writing of the need to act. The factors the Responding Administrator will consider when determining whether to act against the wishes of a Complainant include:

1. The Complainant's request not to proceed with initiation of a complaint.
2. The Complainant's reasonable safety concerns regarding initiation of a complaint.
3. The risk that additional acts of Prohibited Conduct would occur if a complaint were not initiated.
4. The severity of the alleged Prohibited Conduct, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
5. The age and relationship of the Parties, including whether the Respondent is an employee of the University.
6. The scope of the alleged Prohibited Conduct, including information suggesting a pattern or ongoing alleged to have impacted multiple individuals.
7. The availability of evidence to assist a Decisionmaker in determining whether Prohibited Conduct occurred.
8. Whether the University could end the alleged Prohibited Conduct and prevent its recurrence without initiating its resolution procedures under this policy.
9. Whether the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other persons, or that the conduct as alleged prevents the University from ensuring equal access on the basis of sex to its education program or activity.

## Interim Action

### Emergency Removal

The University retains the authority to remove a Respondent from the University's program or activity on an emergency basis, where the University (1) undertakes an individualized safety and risk analysis, (2) determines that an immediate and serious threat to the health or safety of a Complainant or any student, employee, or other individual arising from the allegations of Prohibited Conduct justifies a removal, and (3) the

University provides the Respondent with notice of and an opportunity to challenge the decision immediately following the removal.

The Respondent may challenge the decision immediately following the removal by notifying the Responding Administrator in writing. The University will designate an impartial individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was reasonable.

For all other Prohibited Conduct, the University may defer to its interim suspension policies for students and administrative leave for employees.

### Administrative Leave

The University retains the authority to place an employee Respondent on administrative leave during a pending complaint process under this policy, with or without pay as appropriate. Administrative leave may be a supportive measure, or emergency removal. Administrative leave implemented as a supportive measure or as emergency removal is subject to the procedural provisions above, including the right to challenge the decision to implement that measure.

## Dismissal of a Complaint

Before dismissing a complaint, the University will make reasonable efforts to clarify the allegations with the Complainant.

The University may dismiss a complaint if:

- The University is unable to identify the Respondent after taking reasonable steps to do so.
- The Respondent is not participating in Linfield's education program or activity and is not employed by the University.
- The Complainant voluntarily withdraws their complaint in writing and the Responding Administrator declines to initiate a complaint.
- The Complainant voluntarily withdraws some but not all allegations in a complaint in writing, and the University determines that the conduct that remains alleged in the complaint would not constitute Prohibited Conduct under this policy. or
- The University determines the conduct alleged in the complaint, even if proven, would not constitute Prohibited Conduct under this policy.

Upon dismissal, the University will promptly notify the Complainant in writing of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then the University will notify the Parties simultaneously in writing. If a dismissal of one or more allegations changes the appropriate decision-making process under these procedures, the Responding Administrator will include that information in the notification.

The University will notify the Complainant that a dismissal may be appealed based on the Appeals section. If dismissal occurs after the Respondent has been notified of the allegations, then the University will also notify the Respondent that the dismissal may be appealed on the same basis. If a dismissal is appealed, the University will follow the procedures outlined in the Appeals section of these procedures.

When a complaint is dismissed, the University will, at a minimum:

- Offer support to the Complainant as appropriate.
- If the Respondent has been notified of the allegations, offer support to the Respondent as appropriate.

- Take other prompt and effective steps, as appropriate, to ensure that Prohibited Conduct does not continue or recur within the University's education program or activity.

A Complainant who decides to withdraw a complaint or any portion of it may later request to reinstate it or refile it.

## Referrals for Other Misconduct

The University can refer complaints of misconduct not covered by this policy for handling under any other applicable University policy or code. As part of any such referral for further handling, the University may use evidence already gathered through any process covered by this policy.

## Consolidation of Cases

The University may consolidate complaints under this policy as appropriate: for example, if there are multiple complaints where the allegations of Prohibited Conduct arise out of the same facts or circumstances, or there are multiple complaints with overlapping Parties.

The University also reserves the right to use this policy to adjudicate other allegations and conduct charges as defined by policies outside of the scope of this policy in instances when the conduct is associated with an alleged issue of Prohibited Conduct under this policy. The Responding Administrator will address these consolidated complaints in collaboration and coordination with other appropriate offices, such as Student Rights and Responsibilities and Human Resources. Allegations of a violation of a separate policy are not required to be handled using the procedural requirements set forth in this policy.

## Student Withdrawal or Employee Resignation while Matters are Pending

If a student or employee Respondent permanently withdraws or resigns from the University with unresolved allegations pending, the University will consider whether and how to proceed with the resolution process. The University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s) and any ongoing effects of the alleged Prohibited Conduct.

A student Respondent who withdraws or leaves while the process is pending may not return to the University without first resolving any pending matters. Such exclusion applies to all University campuses and programs. Admissions will be notified that the student cannot be readmitted. They may also be barred from University property or events. If a student Respondent withdraws or takes a leave for a specified period (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to the University unless and until the matter is fully resolved.

Allegations that are unresolved at the time of an employee Respondent's resignation will still be investigated. Rehire status will be determined by the outcome of that investigation.

## Options for Resolution

There are multiple ways to resolve a complaint or report of Prohibited Conduct. Whenever possible, the University will utilize the resolution method chosen by the Complainant. This section includes information on Support-Based Resolution, Agreement-Based Resolution, and Investigation.

Cases involving students as the Respondent will be managed by the Title IX Coordinator. Cases involving faculty or staff will be managed by the Director of Human Resources.

## Support- Based Resolution

A support-based resolution is an option for a Complainant who does not wish the University to take any further steps to address their concern, and when the Responding Administrator determines that another form of resolution, or further action, is not required. Some types of support that may be appropriate include adjustments or changes to class schedules; moving from one residence hall room to another; adjusted deadlines for projects or assignments; adjustments to work schedule or arrangements; escorts to and around campus; or counseling.

Students who experienced sexual misconduct may also seek waivers from the GPA requirements related to participating in an institution-sponsored program or activity. Contact the Title IX Coordinator for information on how to seek a waiver. (<https://www.linfield.edu/safety/sexual-misconduct/compliance.html>)

A support-based resolution does not preclude later use of another form of resolution, for example if new information becomes available to the University and the Responding Administrator determines there is need for additional steps to be taken, or the Complainant later decides to pursue a Resolution Agreement or investigation, or investigation and hearing.

## Agreement-Based Resolution

Agreement-Based Resolution is an alternative to the investigation procedures where the Parties each voluntarily agree to resolve the complaint in a way that does not include an investigation and does not include any finding of responsibility. Agreement-Based Resolution is a voluntary, structured interaction between or among affected parties that balances support and accountability. If the University offers Agreement-Based Resolution to the parties, and they voluntarily consent to engage in that process, the Responding Administrator must still take other prompt and effective steps as needed to ensure that discrimination does not continue or recur within the education program or activity. Parties and the Responding Administrator may agree to pause or exit the investigation procedures to explore Agreement-Based Resolution.

Any party may design a proposed agreement between the parties. The Responding Administrator must approve of the use of the Agreement-Based Resolution process and approve the final agreement between the parties. Agreement-Based Resolution may be initiated at any time before the final determination's release. Because Agreement-Based Resolution does not involve an investigation, there is not any determination made as to whether a Respondent violated this policy. Parties will not be required to interact with each other through the process.

The Responding Administrator has the discretion to determine that Agreement-Based Resolution is not an appropriate way to address the reported conduct, and that the matter must instead be resolved through the Investigation or Investigation and Hearing process.

## Initiating the Agreement-Based Resolution Process

Prior to the initiation of Agreement-Based Resolution, the Responding Administrator will provide the Parties written notice that includes:

- The specific allegation and the specific conduct that is alleged to have occurred.
- The requirements of the Agreement-Based Resolution process.
- Any consequences resulting from participating in the Agreement-Based Resolution process, including the records that will be

maintained or could be shared, and whether the University could disclose such information for use in a future the University resolution process, including an investigation and resolution process arising from the same or different allegations, as may be appropriate.

- Notice that an agreement resulting from the Agreement-Based Resolution process is binding only on the parties and is not subject to appeal.
- Notice that once the Agreement is finalized and signed by the Parties, they cannot initiate or continue an investigation procedure arising from the same allegations.
- A statement indicating that the decision to participate in the Agreement-Based Resolution process does not presume that the conduct at issue has occurred.
- A statement that the Respondent is presumed not responsible for violating this policy, unless Respondent admits to violations of this policy.
- An explanation that all parties may be accompanied by a Process Advisor of their choice.
- A statement that any party has the right to withdraw from the Agreement-Based Resolution process and initiate or resume resolution procedures at any time before agreeing to a resolution.
- The date and time of the initial meeting with staff or the Responding Administrator, with a minimum of 3 business days' notice.
- Information regarding supportive measures, which are available equally to the parties. and
- The potential terms that may be requested or offered in an Agreement-Based Resolution agreement.

### Facilitating an Agreement

If all Parties are willing to explore Agreement-Based Resolution, the Responding Administrator will then meet separately with each party to discuss the Agreement-Based Resolution process and facilitate an agreement. If an agreement cannot be reached, either because the Parties do not agree, determine they no longer wish to participate in the Agreement-Based Resolution process, or the Responding Administrator does not believe that the terms of the agreement or continuing the Agreement-Based Resolution process are appropriate, the Responding Administrator may decide that the reported conduct will instead be addressed through the investigation or investigation and hearing process. The Responding Administrator will inform the Parties of such decision, in writing.

Agreement-Based Resolution processes are managed by facilitators who do not have a conflict of interest or bias in favor of or against Complainants or Respondents generally or regarding the specific parties in the matter. The Responding Administrator may serve as the facilitator, subject to these restrictions. The investigator or Decisionmaker for the matter may not facilitate an Agreement-Based Resolution in that same matter.

Any party may craft or create the terms of their agreement and will be asked for their suggestions or ideas. Examples of agreements may include but are not limited to:

- an agreement that the Respondent will change classes or housing assignments.
- an agreement that the Parties will not communicate or otherwise engage with one another.
- an agreement that the Parties will not contact one another.
- completion of a training or educational project by the Respondent.

- completion of a community service project by the Respondent.
- an agreement to engage in a restorative justice process or facilitated dialogue. and/or
- discipline agreed upon by all parties.

Information shared by any party will not be used in any related resolution process of the same complaint under this policy. No evidence concerning the allegations obtained within the Agreement-Based Resolution process may be disseminated to any outside person, provided that any party to the Agreement-Based Resolution process may generally discuss the allegations under investigation with a parent, Process Advisor, or other source of emotional support, or with an advocacy organization. An admission of responsibility made during an Agreement-Based Resolution process, however, may not be incorporated into the investigation and adjudication proceeding.

### Finalizing the Resolution Agreement

Once the final terms of the Resolution Agreement have been agreed upon by all parties, in writing, and approved by the Responding Administrator, the matter will be considered closed, and no further action will be taken. Once signed, no appeal is permitted. The Agreement-Based Resolution process is generally expected to be completed within thirty (30) business days and may be extended by the Responding Administrator as appropriate. All parties will be notified, in writing, of any extension and the reason for the extension.

Records of an Agreement-Based Resolution process can be shared with other offices as appropriate.

Any violations of the terms of the Resolution Agreement may result in disciplinary action.

### Investigation

The following information applies to all types of investigation procedures.

#### Acceptance of Responsibility

If a Respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the designated sanctioning officer will issue an appropriate sanction or responsive action as to those violation(s) and continue processing any remaining allegations of Prohibited Conduct, if any.

#### Assignment of the Investigator and/or Decisionmaker

The University will assign a trained investigator or decision-maker to conduct an adequate, reliable, and impartial investigation in a reasonably prompt timeframe. The University reserves the right to utilize internal or external investigators or decisionmakers

All parties have the option to participate in the investigation and each have the same rights during the resolution process including the right to a Process Advisor, to submit relevant witness names and evidence, and to review the evidence gathered by the investigator prior to a final determination being rendered.

The investigator will establish deadlines for submission of names of relevant witnesses and submission of evidence and communicate those deadlines to the parties in writing. The University reserves the right to assign a decisionmaker who is not the investigator at or before the conclusion of the investigation.

#### Conflict of Interest or Bias

After a Notice of Investigation is issued to all parties, any party may object to the participation of the Responding Administrator, decisionmaker, or designated investigator on the grounds of a

demonstrated bias or actual conflict of interest. All parties will have three (3) business days from the date of the Notice of Investigation to object to the selection of the investigator, decisionmaker, or the Responding Administrator. If a decisionmaker is appointed after the Notice of Investigation is sent, each party will have three (3) business days to object to the selection of the decisionmaker after the decisionmaker's appointment. Objections to the Responding Administrator are to be made, in writing, to the Vice President for Student Affairs and Director of Human Resources.

Objections to the appointment of the investigator are to be made in writing, to the Responding Administrator.

All objections will be considered, and changes made as appropriate. If the objection is substantiated as to either the Responding Administrator or the Investigator, that individual shall be replaced. Any change will be communicated in writing.

### **Timeline**

The University strives to complete the investigation process within ninety (90) business days from the date of the Notice of Investigation.

The timeline for any part of the resolution process may be extended for good cause by the Responding Administrator. All parties shall be notified, in writing, of any extension to the timeline granted, the reason for it, and the newly anticipated investigation completion date. Good cause reasons for extension may include ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials.

The University shall not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

The investigator and/or Responding Administrator shall provide the Parties with periodic status updates, in writing.

### **Burden and Standard of Review**

The University has the burden of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This burden does not rest with any party, and any party may decide to limit their participation in part or all of the process, or to decline to participate. This does not shift the burden of proof away from the University and does not indicate responsibility. The standard of proof used in any investigation and decision-making process is the preponderance of the evidence standard, which means more likely than not.

### **Written Notice of Meetings**

The University will provide to a party or witness whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time to prepare to participate.

### **Evidence Gathering Interviews**

The investigator will interview all parties and relevant witnesses and gather relevant documentary evidence provided by the parties and any identified witnesses. Interviews may be conducted in person, or via video conference. When a party meets with an investigator, the investigator will ask questions related to the allegations in the complaint and a party is given the opportunity to speak to the allegations and related events. Parties may identify fact witnesses and provide evidence that is relevant to the allegations and not otherwise impermissible. This will include

inculpatory evidence (that tends to show it more likely that someone committed a violation) and exculpatory evidence (that tends to show it less likely that someone committed a violation). The investigator ultimately determines whom to interview to determine the facts relevant to the complaint.

### **Impermissible Evidence**

The following types of evidence, and questions seeking that evidence, are impermissible. This means this information will not be accessed or considered, except by the University to determine whether one of the exceptions listed below applies. This information will not be disclosed or otherwise used, regardless of relevance:

1. Evidence that is protected under a privilege recognized by Federal or State law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
2. Evidence provided to an employee designated by the University as exempt from internal reporting under this policy, unless the person who made the disclosure or otherwise provided evidence to that employee has voluntarily consented to re-disclosure.
3. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party's or witness's voluntary, written consent for use in its resolution procedures. and
4. Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to alleged sex-based harassment. The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent to other sexual activity or preclude a determination that Prohibited Conduct occurred.

### **Investigation Procedures**

The University will assign a trained investigator and/or trained decision maker to conduct an adequate, reliable, and impartial investigation and determination in a reasonably prompt timeframe. The University reserves the right to utilize internal or external investigators and decision makers.

All parties have the option to participate in the investigation and each have the same rights during the resolution process including the right to a Process Advisor, to submit relevant witness names and evidence, and to review the evidence gathered by the investigator prior to the investigator's making any findings.

### **Notice of Investigation**

Prior to the start of an investigation, the Parties will be provided a written Notice of Investigation communicating the initiation of an investigation. Should additional allegations be brought forward, or information regarding location or date of the incident(s), a revised written Notice of Investigation shall be provided to all parties.

The Notice shall include, at a minimum:

- The University resolution procedures, including the applicable determination procedure, and any alternative resolution process, with a link to the full procedures.

- The specific allegations, including the identity of the parties, and dates and location if known.
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s).
- A statement that Retaliation is prohibited.
- Contact information for the assigned investigator and decisionmaker, as well as the process for raising a challenge to the appointed investigator, decisionmaker, or Responding Administrator, and the deadline for doing so.
- Expected length of the major stages of the resolution process and any applicable deadlines.
- Whether the Investigator, or another individual, shall serve as the decisionmaker.
- A statement that the Respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the investigation and decision-making procedures.
- The parties may have a Process Advisor of their choice who may be a friend, colleague, therapist, or attorney.
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence, and to provide a response.
- A statement that the University prohibits knowingly making false statements or knowingly submitting false information during resolution procedures, with a link to the relevant policy(ies).
- The date and time of the initial interview with the investigator, with at least five (5) business days' notice.

### Individual Interviews

The investigator will hold individual interviews with parties and witnesses to ask relevant and not otherwise impermissible questions and follow-up questions, including questions exploring credibility. Only the investigator and the party or witness may attend each individual interview, and a party may be accompanied by their Process Advisor. Additional attendees may be permitted at the discretion of the Responding Administrator in connection with approved disability-related accommodation. All persons present at any time during any part of the investigation or resolution process are expected to maintain the privacy of the proceedings and not discuss or otherwise share any information learned as part of those proceedings and may be subject to further the University discipline for failure to do so.

The University may also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.

The individual interviews may be conducted with all participants physically present in the same geographic location, or, at The University discretion, with all participants joining virtually through a video conferencing option.

The University will share expectations of decorum to be observed at all times in any meeting or proceeding under this policy. These expectations are applied equally to all parties and Process Advisors. The University can remove, with or without warning, from any meeting or proceeding any involved party, witness, or Process Advisor who does not comply with these expectations and any other applicable University rules.

### Evidence Review

At the conclusion of all fact-gathering, the investigator will provide each party and their Process Advisor, if any, the opportunity to review all relevant and not otherwise impermissible evidence gathered.

The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation, to submit any additional relevant evidence, and the names of any additional witnesses with relevant information. This is the final opportunity to offer evidence, or the names of witnesses. Given the sensitive nature of the information provided, the University will facilitate this review securely. None of the parties nor their Process Advisors may copy, remove, photograph, print, image, videotape, record, or otherwise duplicate or remove the information provided. Any student or employee who fails to abide by this may be subject to discipline. Any Process Advisor who fails to abide by this may be subject to discipline and/or may be excluded from further participation in the process.

The parties will have at least 5 business days to inspect and review the evidence and submit a written response to the investigator. The University will provide access to copies of the parties' written responses to the investigator to all parties and their Process Advisors, if any. The Responding Administrator shall have the discretion to extend the evidence review period based on the volume and nature of the evidence. At the conclusion of the evidence review, when deemed appropriate by the investigator, the investigator shall then conduct any additional fact-gathering as may be necessary. If new, relevant evidence is gathered during this second fact-gathering period, the new evidence will be made available for review by the parties and their Process Advisors. The parties shall have 5 business days to provide a response to the newly gathered evidence. No new evidence will be accepted as part of any response, except that the investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The investigator will consider the parties' written responses before finalizing the investigation report.

The parties may submit a written impact statement before the resolution process ends. The impact statement is not evidence and will be reviewed only after a determination of responsibility is reached.

### Investigation Report

The investigator, who may also serve as the decisionmaker, or the appointed decisionmaker shall evaluate the relevant and not impermissible evidence and make factual determinations regarding each allegation and determine whether a violation of the policy occurred.

The decisionmaker may choose to place less or no weight upon statements by a party or witness who refused to respond to questions deemed relevant and not impermissible or declined to participate. The decisionmaker will not draw an inference about whether Prohibited Conduct occurred based solely on a party's or witness's refusal to respond to questions.

The decisionmaker shall prepare a report which shall include:

- A description of the allegations of Prohibited Conduct.
- Information about the policies and procedures used to evaluate the allegations.
- A description of the procedural steps taken from the receipt of the complaint through the determination, including any notifications to

the parties, interviews with parties and witnesses, and methods used to gather other evidence.

- An evaluation of the relevant and not otherwise impermissible evidence and the rationale for that evaluation.
- Findings of fact for each allegation, with rationale.
- Conclusions regarding which section of this policy or other University policy, if any, the Respondent has or has not violated, with rationale.

This report shall be provided to the Responding Administrator. In the event that the decisionmaker has determined that a violation of University policy has occurred, the Responding Administrator shall then provide the report to the appropriate Sanctioning Officer to determine the sanction, and the Responding Administrator shall then determine the appropriate remedy(ies) for the Complainant and any impacted parties.

The Responding Administrator shall then provide the parties and their Process Advisors, if any, with a written Notice of Outcome and a copy of the investigation report. The Notice of Outcome shall include:

A statement of, and rationale for, any disciplinary sanctions the University imposed on the Respondent

A statement as to whether remedies will be provided to the Complainant, a description of any remedies that apply to the Complainant

The University procedures and the permitted reasons for the parties to appeal, including identifying the Appeals Officer.

How to challenge participation by the Appeals Officer for bias or conflict of interest, which the Responding Administrator will resolve in their sole discretion.

In the instance where the Respondent is an employee, the Director of Human Resources will utilize appropriate resolution procedures according to University policies.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

## Appeals

Dismissals of complaints and determinations made in the investigation and decision-making processes may be appealed in writing by either party. Appeals will be sent to the Responding Administrator, who will then send the appeal to an Appeals Officer assigned to conduct a written review of the appeal(s) and to make a final determination. Appeals must be in writing and filed within ten (10) business days following the issuance of the outcome letter.

When an appeal is filed, the other party shall be notified and provided with a copy of the filed appeal within one (1) business day and have five (5) business days to respond to the appeal in writing. Any party's decision not to submit a reply to an appeal is not evidence that the non-appealing party agreed with the appeal.

Within three business days of an Appeal Officer being assigned, either party may provide written objection to the Appeal Officer based on a bias or conflict of interest. Any objection is to be sent to the Responding Administrator. Should the Responding Administrator determine that there is an actual bias or conflict of interest, the Responding Administrator will appoint another Appeal Officer.

Appeals may be filed only on the following three grounds:

1. **Procedural Error:** A procedural error occurred and would change the outcome. A description of the error and its impact on the outcome of the case must be included in the written appeal.
2. **New Evidence:** New evidence or information has arisen that was not available or known to the party during the investigation or hearing, that would change the outcome. Information that was known to the party during the resolution process but which they chose not to present is not considered new information. The new evidence, an explanation as to why the evidence was not previously available or known, and an explanation of its potential impact on the investigation findings must be included in the written appeal.
3. **Actual Conflict of Interest or Demonstrated Bias:** The Responding Administrator, Investigator, or others with a role in the process with an actual conflict of interest or demonstrated bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent, that would change the outcome. Any evidence supporting the alleged conflict of interest or demonstrated bias must be included in the written appeal.

The Appeal Officer will make a determination regarding the appeal and communicate that decision, along with a rationale for the decision to the Responding Administrator who will communicate the Appeal Officer's decision to the Parties. The decision of the Appeals Officer is final.

## Failure to Complete Sanctions/Comply with Responsive Actions

All responding Parties are expected to comply with conduct sanctions/ responsive actions/ corrective actions within the timeframe specified by the University. Responding Parties needing an extension to comply with their sanctions must submit a written request to the Responding Administrator stating the reasons for needing additional time.

Failure to follow through on conduct sanctions/responsive actions/ corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive actions/ corrective actions, such as suspension, expulsion, or termination.

Students who fail to comply will be referred to the Office of Student Rights and Responsibilities.

Employees who fail to comply will be referred to the Office of Human Resources.

## Record Retention

In implementing this policy, records of all reports and resolutions will be kept by the Responding Administrator in accordance with the applicable University records retention schedule. All records will be afforded the confidentiality protections required by law, including the Family Educational Rights and Privacy Act governing confidentiality of student information.

## Additional Enforcement Information

The U.S. Equal Employment Opportunity Commission (EEOC) investigates reports of unlawful harassment and discrimination, including sex-based harassment, in employment.

The U.S. Department of Education, Office for Civil Rights (OCR) investigates complaints of unlawful discrimination and harassment of students and employees in education programs or activities.

For more information, contact the nearest office of the EEOC or OCR.

The OCR National Headquarters is located at:

**U.S. Department of Education**

Office for Civil Rights

Lyndon Baines Johnson Department of Education Bldg

400 Maryland Avenue, SW

Washington, DC 20202-1100

Telephone: 800-421-3481

Fax: 202-453-6012; TDD: 800-877-8339

Email: OCR@ed.gov

**U.S. Equal Employment Opportunity Commission (EEOC)**

<https://www.eeoc.gov/contact-eeoc> (<https://www.eeoc.gov/contact-eeoc/>)

**State Office:**

Seattle Office

Office for Civil Rights

U.S. Department of Education

915 Second Avenue Room 3310

Seattle, WA 98174-1099

Telephone: 206-607-1600

Fax: 206-607-1601; TDD: 800-877-8339

Email: OCR.Seattle@ed.gov

## Policy Review & Revision

These policies and procedures will be reviewed and updated regularly by the Responding Administrator. The Responding Administrator will submit modifications to this policy in a manner consistent with institutional policy upon determining changes to law, regulation or best practices require policy, or procedural alterations not reflected in this policy and procedure. Procedures in effect at the time of its implementation will apply. The policy definitions in effect at the time of the conduct will apply even if the policy is changed subsequently, unless the Parties consent to be bound by the current policy.

This policy may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon posting to the University website.