

# TITLE IX SEXUAL MISCONDUCT & RELATIONSHIP VIOLENCE PROCEDURES

These procedures apply to disclosures and formal reports that meet the scope and jurisdiction of the Title IX Sexual Misconduct and Relationship Violence Procedures as defined in the relevant provisions (Scope and Jurisdiction) of this policy.

## Disclosures

- A. Any person may disclose sex discrimination, including Title IX sexual harassment, dating violence, domestic violence or stalking to the Title IX Coordinator in one of the following ways:
  1. mail
  2. telephone
  3. electronic mail
  4. any other means that results in the Title IX Coordinator receiving the person's verbal or written disclosure.
- B. The disclosing person does not need to be the reporting party
- C. A disclosing person may disclose an alleged instance of Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking to the Title IX Coordinator without initiating a formal University response.
- D. After a disclosure is made, the University will contact and offer to provide process counseling about available supportive measures, formal and informal procedures, which procedure is appropriate and how to file a formal complaint to the reporting party.
- E. All disclosure will be reviewed by the University to identify whether the conduct falls within the scope of this policy or other related policies.

## Formal Reports

- A. formal report is required to initiate the Title IX Sexual Misconduct and Dating Violence Procedures.
  1. Only individuals who are participating in or attempting to participate in the education program or activity of the University with which the formal report is filed may file a formal complaint.
  2. Linfield University must investigate the allegations in a formal report.
- B. Dismissal of a formal report:
  1. If the conduct alleged in a formal report would not constitute Title IX sexual harassment, dating violence, domestic violence or stalking as defined in this procedure or did not occur within the scope or jurisdiction of this procedure, the University must dismiss the formal report for purposes of Title IX

2. The University may dismiss a formal report at any time during the investigation or hearing stages for the following reasons:
  - a. reporting party notifies the Title IX Coordinator in writing that the reporting party would like to withdraw the formal report
  - b. the responding party is no longer enrolled or employed by Linfield University
  - c. circumstances prevent Linfield University from gathering evidence sufficient to reach a determination.
3. Upon dismissal of a formal report, the University will promptly send written notice of the dismissal and reason(s) therefor to parties.
4. Any formal report dismissed under these procedures will be reviewed by the Title IX coordinator to determine whether it is appropriate to commence a proceeding under the Linfield University Sexual Misconduct and Dating Violence Procedures.
- C. The University may consolidate formal reports where the allegations of Title IX Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking arise out of the same facts or circumstances.

## Rights of Parties

After the filing of a formal report, reporting party and responding party, have the right to:

- A. written notice of date, time, location, participants and purpose of all hearings, investigative interviews, or other meetings related to this procedure
- B. a process navigator of their choosing who can be, but is not required to be an attorney, to accompany them to any hearings, investigative interviews, or other meetings related to this procedure
- C. inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a formal report
- D. equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence to the investigator and at the hearing
- E. confidentiality of any records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional in connection with the provision of treatment to the reporting party or responding party, unless the reporting party or responding party provides voluntary, written consent for their use.
- F. access to process counseling and supportive services promptly after a disclosure is made and/or a formal report is filed.
- G. with regard to the responding party, no disciplinary remedies or sanctions being taken until there is a finding of responsibility after the completion of these procedures. This does not preclude the University from taking separate interim measures related to campus safety as described herein.

## Responsibilities of the University

During the Title IX Sexual Misconduct and Dating Violence Procedure, the University has the responsibility to:

- A. promptly contact a reporting party and offer process counseling.
- B. provide the parties the range of available supportive measures.
- C. to the extent possible, provide confidentiality surrounding supportive measures.
- D. take the reporting party's wishes into consideration when identifying supportive measures and University response.
- E. follow these procedures as outlined when formal reports are filed.
- F. establish the extent to which the process navigator of a reporting party or responding party's choosing may participate in hearings, investigative interviews, or other meetings related to this procedure.
- G. evaluate whether any person designated to facilitate this procedure has a conflict of interest or bias in any given case.
- H. preliminary review and investigate all formal reports that allege conduct that falls under this procedure.
- I. promptly and equitably determine if a formal report is not covered by this procedure and dismiss it.
- J. follow timeframes and ensure the reasonably prompt resolution of each case and provide written notice to parties of delays or extensions and reasons for delays or extensions.
- K. when a finding of responsibility has been determined, determine when appropriate, remedies for a reporting party and sanctions for a responding party.

## Formal Report Process

Upon receipt of a formal report:

- A. The University will provide written notice to all responding parties and reporting parties that includes:
  1. notice of this procedure and any available informal resolution process
  2. notice of the allegations of prohibited conduct and sufficient details of the Formal Report
- B. The University will provide on-going notice of any additional allegations included within the scope of the investigation that arise during the course of these procedures.
- C. The University will initiate an investigation into the allegations in the Formal Report.
- D. Interim measures may be taken by the University that include:
  1. removal of the responding party from the University's education program or activity on an emergency basis, if a safety and risk analysis has determined that there is an immediate threat to the physical health or safety of any

student or other individual arising from the allegations of prohibited conduct

- a. Responding party must be provided notice of removal and an opportunity to challenge the University's decision
2. any other interim measure intended to protect the physical health or safety of any student or other individual arising from the allegations of prohibited conduct.

## Investigations

- A. The investigative process must
  1. presume that the responding party is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of this procedure.
  2. presume that all complaints are made in good faith.
  3. include an objective evaluation of all relevant evidence.
- B. The burden to gather evidence rests on the University.
  1. The University must gather documents and evidence and conduct fact-finding interviews with parties and witnesses.
  2. The University must ensure that parties have an opportunity to participate in interviews with the investigator, provide witnesses and provide evidence to be reviewed.
    - i. The University must provide written notice to a party of their scheduled investigative interviews including the date, time, and location of the interview
- C. At the conclusion of an investigation, and after reviewing all relevant evidence and performing all relevant interviews, the investigator will draft a written investigative report that includes the factual findings as well as any evidence or interviews upon which those findings were determined.

1. The University will provide parties 10 academic calendar days to review the draft report, inspect any evidence obtained by the investigator, and submit a written response to the investigative report draft.
2. The investigator must review and consider the written responses to the draft report prior to finalizing it.
3. The University will provide parties with the final report to review and allow for parties to submit a final written response.
4. The University will provide the report and all final written responses to the Decision-maker(s) prior to the commencement of the hearing.

## Hearing Processes

Hearings provide an opportunity for the reporting party and responding party to respond to the allegations through statements to the decision-maker, cross-examination of other parties and witnesses to the alleged conduct, challenging any evidence gathered or presented, and presenting additional evidence for consideration.

**Timing**

1. The University must provide parties with notice of a hearing date within 15 academic calendar days of the submission of the final investigative report.
  - a. Notice must include the date, time, and location of the hearing.
2. The hearing is not to take place less than 10 academic calendar days after the submission of the final investigative report.

**Hearing Procedure**

1. The decision-maker(s) will oversee the hearing process.
2. All hearings must be live hearings and audio, audiovisual or transcript recordings of the hearing must be created and made available for all parties to review upon request.
3. Parties may request to be located in separate rooms during the hearing.
4. Parties may have a process navigator of choice present at the hearing who may observe, support and participate in cross-examination, this may be a process navigator different from the process navigator the responding party or reporting party uses at other stages through this procedure.

**Evidence**

1. Parties or their process navigator may make a statement to the Decision-maker(s), provide witnesses, provide evidence, and ask questions of the Decision-maker(s).
2. Parties' process navigator may cross examine witnesses and other parties.
3. All evidence considered by the investigator, discussed in any party's final response or that any party intends to present at the hearing must be made available to all parties at the hearing.

**Cross-Examination**

1. A party's process navigator of choice is permitted to cross-examine the other party and any witnesses.
  - a. If a party does not have a process navigator present the University will provide an process navigator.
  - b. Parties are prohibited from conducting cross-examination.
2. Cross-examination must be conducted directly, orally, and in real time
3. Cross-examination is limited to relevant questions.
  - a. Questions and evidence about the reporting party's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the reporting party's prior sexual behavior are offered to prove that someone other than the responding party committed the conduct alleged by the reporting party, or if the questions and evidence concern specific incidents of the reporting party's prior sexual behavior with respect to the responding party and are offered to prove consent.

- b. The decision maker determines whether the question is relevant and must explain any decision to exclude a question as not relevant.

4. If a party or witness does not submit to cross-examination the decision-maker may not rely on any statement of that party or witness in reaching a determination.

**Determinations**

1. The decision-maker(s) must determine by a preponderance of the evidence, whether the responding party is responsible for the prohibited conduct alleged in the formal report.
2. If the responding party is found responsible:
  - a. The decision-maker(s) must determine what remedies are appropriate for the reporting party given the determination of responsibility and prohibited conduct.
  - b. The decision-maker must determine what sanctions are appropriate for the responding party given the determination of responsibility and prohibited conduct.
3. The decision-maker's determination of responsibility, remedies and sanctions must be memorialized in a written determination and provided to parties.
4. The determination is considered final either:
  - a. If an appeal is not filed, on the date the University provides parties with the written determination as of the result of the appeal,
  - b. If no appeal is filed, on the date on which an appeal would no longer be considered timely

**Remedies**

1. Potential remedies must be designed to restore or preserve equal access to the University's education program or activity, and include:
  - a. Housing adjustments
  - b. Academic course adjustments
  - c. Class registration priority
  - d. Housing registration priority
  - e. Non-academic restrictions for use of campus facilities

**Sanctions**

Potential sanctions may be disciplinary, punitive or burden responding party, and include:

- a. warning: an official reprimand in writing, delivered to the accused student and placed in the student's file;
- b. probation: a condition that stipulates that any further violations of regulations may result in a suspension. Length of probation will be specified;
- c. probation with terms: a condition that adds to regular probation stipulations that may deny the accused student certain privileges or requires certain action of the student;

- d. recommendation for suspension: separation from the University for a definite or indefinite period of time;
- e. recommendation for dismissal: permanent separation from the University; and/or
- f. other action that may seem appropriate for any given case.

carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Sanctions against groups include those listed above in a-f, and also deactivation, loss of all privileges, including college recognition, either temporarily or permanently.

## Appeals Process

- A. Any party may appeal the following:
  - a. Determination regarding responsibility
  - b. University's dismissal of a formal report
- B. Any party wishing to appeal must file their request to appeal in writing with the Title IX Coordinator within 5 academic calendar days after being provided a written copy of the Decision-maker's determination or notice of University's dismissal of a formal report. The request to appeal must include a description of the basis for appeal.
  - a. Title IX Coordinator must provide a written notice and copy of the request to appeal to all parties and allow 5 academic calendar days for non-appealing parties to respond.
  - b. Responses to the request to appeal must be in writing
- C. The following are available bases for appeal:
  - a. Procedural irregularity that affected the outcome of the matter
  - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- D. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against reporting parties or responding parties generally or the individual reporting party or responding party that affected the outcome of the matter
- E. The Decision-maker(s) for the appeal may not be the same person who reached the initial determination regarding responsibility or dismissal of the formal report, the investigator, or the Title IX Coordinator.
- F. The appellate Decision-maker(s) will issue a written determination describing the outcome of the appeal and the rationale for the result to all parties within 72 hours after receiving the responses of non-appealing parties.

## Confidentiality

The University will keep confidential the identity of any individual who has made a disclosure or complaint of sex discrimination, including any individual who has made a disclosure or filed a formal report of prohibited conduct, any reporting party, any individual who has been disclosed as be the perpetrator of sex discrimination, any responding party, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to