

LENOIR-RHYNE UNIVERSITY

POLICY AND PROCEDURES

Title: Sex/Gender Non-Discrimination and Anti-Retaliation Policy (Interim)

Division/Department: University-Wide (Compliance & Title IX)

Purpose

The core purpose of this policy is the prohibition of sex discrimination, harassment, misconduct and/or retaliation. When an alleged violation of this policy is reported, the allegations are subject to resolution under this policy.

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POLICY

1. Glossary

- *Advisor* means a person chosen by a party or appointed by Lenoir-Rhyne to accompany the party to meetings related to the resolution process, to advise the party on that process and to conduct cross-examination for the party at the hearing, if any.
- *Appeal Decision-Maker* means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination and directs corrective action, accordingly.
- *Behavioral Intervention Team* means the team that determines whether a Respondent may be entirely or partially removed from Lenoir-Rhyne's education program or activities on an emergency basis after completing an individualized safety and risk analysis.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sex/gender harassment, discrimination or retaliation for engaging in a protected activity.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of sex/gender discrimination and retaliation (irrespective of Clery Act Campus Security Authority status). This includes University Counselors and Pastors, and the Student Health Provider.
- *Day* means a business day when Lenoir-Rhyne is in normal operation.
- *Decision-maker* means the person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- *Directly Related Evidence* is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-Maker(s).
- *Education program or activity* means locations, events, or circumstances where Lenoir-Rhyne University exercises substantial control over both the Respondent and the context in which the sex discrimination and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by Lenoir-Rhyne University.
- *Final Determination* is a conclusion by the preponderance of the evidence that the alleged conduct did or did not violate policy.
- *Finding* is a conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged (as in a "finding of fact").
- *Formal Complaint* means a document signed (digital or in-person) by a Complainant or by the Title IX Coordinator alleging a Respondent engaged in harassment or discrimination based on sex/gender or retaliation for engaging in a protected activity and requesting that the recipient investigate the allegation.

- *Formal Grievance Process* means the method set forth in this Policy of formal resolution to address prohibited conduct, and which complies with the requirements of the Title IX regulations (34 CFR §106.45) and the Violence Against Women Act § 304, if applicable.
- *Grievance Process Pool* includes any Investigators, Hearing Decision-makers, Appeal Decision-makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same complaint).
- *Hearing Facilitator* refers to the person designated to manage the administrative elements of a hearing and assist the Decision-makers, parties and witnesses.
- *Hearing Panel* refers to those who have decision-making and sanctioning authority within the Lenoir-Rhyne University's Formal Grievance process.
- *Informal Resolution* is a complaint resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a formal Final Determination being reached.
- *Investigator* means the person or persons charged by Lenoir-Rhyne University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence and compiling this information into an investigation report and file of Directly Related Evidence.
- *Mandated Reporter* means an employee/agent of the University who is obligated by policy to share knowledge, notice, and/or reports of sex/gender harassment, discrimination and/or retaliation with the Title IX Coordinator or Deputy Title IX Coordinator.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of sex/gender harassing, discriminatory and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of the Recipient explicitly vested with the responsibility to accept notices of and implement corrective measures for sex/gender harassment, discrimination and/or retaliation on behalf of the Lenoir-Rhyne.
- *Preponderance of the evidence* is the standard of evidence used by Lenoir-Rhyne under this Policy to determine whether a violation of this Policy occurred.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Procedures* means the grievance/resolution processes that begin on page 24 of this Policy.
- *Recipient* means a postsecondary education program that is a recipient of federal funding. For the purpose of this policy, "recipient" is Lenoir-Rhyne University, or the "University."
- *Relevant Evidence* is information in any form that tends to prove (inculpatory) or disprove (exculpatory) an issue in a complaint.

- *Remedies* are post-Final Determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence and restore access to the Lenoir-Rhyne’s educational program.
- *Respondent* means an individual who is reported to be the perpetrator of conduct that could constitute sex/gender harassment or discrimination, or retaliation for engaging in a protected activity.
- *Resolution* means the result of an Informal Resolution or Formal Grievance Process.
- *Sanction* means a consequence imposed by Lenoir-Rhyne University on a Respondent who is found to have violated this Policy.
- *Student* means any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework.
- *Title IX Coordinator* is the official designated by Lenoir-Rhyne to ensure compliance with Title IX and the Lenoir-Rhyne’s Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Title IX Coordinator for specific tasks. References to a *Deputy Title IX Coordinator* encompass the designated Deputies for Lenoir-Rhyne’s Columbia and Asheville Centers.
- Title IX Sexual Harassment is the umbrella category including the offenses of sexual harassment (quid pro quo and unwelcome conduct), sexual assault, stalking, dating violence and domestic violence (See Section 16 for greater detail).
- *Title IX Team* refers to the Title IX Coordinator, Deputy Title IX Coordinators, any member of the Grievance Process Pool and the Hearing Facilitator.

2. Rationale for Policy

Lenoir-Rhyne is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from sex/gender harassment, discrimination and/or retaliation. Lenoir-Rhyne values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Lenoir-Rhyne has developed policies and procedures that provide a prompt, fair and impartial process for those involved in an allegation of sex/gender harassment, discrimination and/or retaliation.

3. Applicable Scope

The core purpose of this policy is the prohibition of sex/gender harassment, discrimination and/or retaliation. When an alleged violation of this policy is reported, the allegations are subject to classification and subject to resolution using Lenoir-Rhyne’s Informal Resolution or Formal Grievance Process, and other procedures as detailed below (See Procedures/Resolution Processes), as determined by the Title IX Coordinator.

4. Title IX Coordinator

The Title IX Coordinator serves as Lenoir-Rhyne University’s Title IX Coordinator and oversees implementation of this Policy. The Title IX Coordinator has the primary responsibility for coordinating Lenoir-Rhyne’s efforts related to the intake, investigation, resolution and implementation of supportive measures to stop, remediate, and prevent sex/gender harassment, discrimination and/or retaliation prohibited by this Policy. The Title IX Coordinator may delegate duties in their discretion under this Policy.

5. Independence and Conflict-of-Interest

The Title IX Coordinator, with supervision from the Vice President of Diversity, Equity and Inclusion, oversees all resolutions under this Policy and Procedures.

The Title IX Coordinator manages the Title IX Team, including Deputy Title IX Coordinators, and acts free from bias and conflicts of interest. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias of, conflict of interest of, or to report misconduct by the Title IX Coordinator, contact the Vice President for Diversity, Equity and Inclusion (hereinafter “Vice President” or “Vice President for Diversity, Equity and Inclusion”) at 828.328.7443. Concerns of bias, a potential conflict of interest, and reports of misconduct by any other Title IX Team member should be raised with the Title IX Coordinator at 828.328.7443 or TitleIXCoordinator@lr.edu.

6. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Title IX Coordinator
Office of Title IX
Location/Address: Lineberger 208
625 7th Ave. NE, Hickory, NC 28601
Telephone: (828) 328-7443; Email: TitleIXCoordinator@lr.edu
Web: www.lr.edu/title-ix

Other Title IX Team Members

Vice President for Diversity, Equity and Inclusion/Hearing Facilitator – 828.328.7443
Deputy Title IX Coordinator (Columbia Center) – 803.786.5150

Deputy Title IX Coordinator (Asheville Center) – 828.407.4263
Members of the Grievance Process Pool - See Section 7. of Procedures

Officials with Authority

Lenoir-Rhyne has determined that the following positions are Officials with Authority (OWA) that may also accept notice or complaints on behalf of the Lenoir-Rhyne and will promptly forward all notices or complaints of sex/gender discrimination and/or retaliation to the Title IX Coordinator. For additional contact information, see the Lenoir-Rhyne Directory at www.lr.edu/directory.

President – 828.328.7334
Provost – 828.328.7981
Vice President for Business and Finance – 828.328.7100
Vice President of Institutional Advancement - 828.328.7360
Vice President for Diversity, Equity and Inclusion - 828.328.7443
Vice President for Mission, Engagement and Innovation 828.328.7334
Vice President of Athletics – 828.328.7128
Rector & Dean, LTSS - 803.461.3240
Assistant Provost and Dean of the Graduate School- 828.328.7728
Assistant Vice President for Human Resources – 828.328.7387
Dean of Student Life – 828.328.7246
Director of Residential Life – 828.328.7249
Director of Compliance/Title IX Coordinator – 828.328.7040
Deputy Title IX Coordinator Columbia – 803.786.5150
Deputy Title IX Coordinator Asheville – 828.407.4269
Director of Public Safety (Hickory) – 828.328.7145
Assistant Director of Public Safety (Columbia) – 803.461.3263

Mandated Reporters and Confidential Resources

Lenoir-Rhyne has classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sex/gender harassment, discrimination and/or retaliation, with the exception of Confidential Resources. Confidential Resources are employees that are required to maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order. At LR, confidential employees include counselors and medical care providers at the Cornerstone Student Support and Wellness Center) and University Pastors. Section 19 on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

We encourage all employees and students to attempt to resolve all complaints of alleged Policy violations using the procedures in this Policy before making an external complaint to the Office for Civil Rights and/or Equal Employment Opportunity Commission, discussed below.

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: 800.421.3481
Facsimile: 202.453.6012; TDD#: 877.521.2172
Email: OCR@ed.gov; Web: www.ed.gov/ocr

For complaints involving employees: [Equal Employment Opportunity Commission](http://www.eeoc.gov) (EEOC) ¹

7. Notice/Complaints of Sex Discrimination, Harassment, Misconduct and/or Retaliation

Notice or complaints of sex/gender harassment, discrimination and/or retaliation may be made using any of the following options:

- 1) File a report or Formal Complaint with, or give verbal notice to, the Title IX Coordinator, a Deputy Title IX Coordinator, or an Official with Authority (See Section 6. for list of Officials and contact information). Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, in-person, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
- 2) File a report or complaint online, using the reporting form posted at www.lr.edu/titleIX. Anonymous reports are accepted but can give rise to a need to investigate to determine if parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. Lenoir-Rhyne tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting online carries no obligation to make a formal complaint, and because Lenoir-Rhyne respects Complainant wishes regarding their report absent a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report.
- 3) Report to a Mandated Reporter (See Sections 6. and 19.).
- 4) Report to a Confidential Resource (Counselors, Health Care Providers, and University Pastors) (See Sections 6. and 19.).

A Formal Complaint is defined as a document submitted and signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that Lenoir-Rhyne investigate the allegation(s).

A report or complaint may be filed with the Title IX Coordinator in person, by mail, electronic mail, or by telephone, using the contact information in the section immediately above. A report or complaint may be filed online at www.lr.edu/title-ix. Reports made electronically through this Title IX webpage are not considered formal complaints until the Title IX Coordinator has confirmed the identity of the

¹ EEOC has jurisdiction over Title IX employment claims. Please consult: <http://www.eeoc.gov/field/index.cfm> to locate the local office's specific contact info. The local EEOC office for Lenoir-Rhyne's Hickory and Asheville campuses is in Charlotte, NC and the local EEOC office for the Columbia campus is in Greenville, SC.

Complainant and Complainant has indicated through a physical or digital signature that they wish to file a formal complaint and wish to have Lenoir-Rhyne investigate the allegations.

8. Supportive Measures

Lenoir-Rhyne will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sex discrimination, harassment, misconduct, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available. On-campus services are offered without fee or charge to the parties to restore or preserve access to Lenoir-Rhyne's education program or activity, including measures designed to protect the safety of all parties or Lenoir-Rhyne's educational environment, and/or deter sex discrimination, harassment, misconduct, and/or retaliation. All employees of Lenoir-Rhyne are expected to work with the Title IX Office in implementing supportive measures for the parties.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Lenoir-Rhyne will inform the Complainant that they may file a formal complaint with Lenoir-Rhyne either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented. The Title IX Coordinator will coordinate with other University officials to provide supportive measures. Lenoir-Rhyne will maintain the confidentiality of the supportive measures, provided confidentiality does not impair Lenoir-Rhyne's ability to provide the supportive measures. Lenoir-Rhyne will act to ensure as minimal an academic and/or occupational impact on the parties as possible. Lenoir-Rhyne will implement supportive measures in a way that does not unreasonably burden the other party.

Supportive Measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing mutual contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Class schedule modifications, withdrawals, or leaves of absence
- Trespass and Be-On-the-Lookout (BOLO) orders
- Increased security and monitoring of certain areas of the campus
- Referral to the Employee Assistance Program
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact or trespass orders or other restrictions will be referred to appropriate student or employee conduct processes and/or the Director of Public Safety for enforcement or added as collateral misconduct allegations to an ongoing complaint under this Policy.

9. Emergency Removal & Administrative Leave

Emergency Removal

Lenoir-Rhyne can act to remove a Respondent entirely or partially from its education program or activities, including employment, on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student, employee or other individual justifies removal.

The Title IX Coordinator Initiates the risk analysis process by recommending that the Behavioral Intervention Team (also known as BIT) perform a risk analysis of the applicable situation using its standard objective violence risk assessment procedures. The members of the Behavioral Intervention Team include:

- Dean of Student Life (if student is involved)
- University Counselor (appointed by Dean of Student Life)
- Director of Residential Life (if residential student involved)
- Director of Public Safety
- Hickory Police Department officer assigned to LRU (and appointed as needed by Director of Public Safety in Director's discretion)
- Assistant Provost and Dean of the Graduate School (if graduate student is involved)
- Assistant Vice President for Human Resources (if employee is involved)
- Vice President of Athletics or designee (if student-athlete involved)
- Director of Disability Services (as needed)

The BIT will inform the Title IX Coordinator of its decision, and the Title IX Coordinator will provide notice of the decision to Respondent verbally, and in writing if time allows. Where removal is imposed, the Title IX Coordinator will provide instructions to the Respondent about the process and deadlines for challenging the decision of the BIT. In all cases, the Respondent will have two (2) business days to challenge the decision of the BIT. If a Respondent needs an extension of time to find an Advisor and/or prepare for the challenge, they may submit a request in writing to the Title IX Coordinator who will either grant or deny the request.

If Respondent challenges the decision, Respondent will meet with the applicable University Official as follows:

- If the Respondent is a student, that applicable University official is the Vice President for Mission, Engagement and Innovation
- If the Respondent is a faculty, the applicable University Official is the Provost;
- If the Respondent is an employee, the applicable University Official is the Vice President of Diversity, Equity and Inclusion.

This meeting will occur prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

A Respondent may be accompanied by an Advisor of their choice when meeting with the applicable University Official for the show cause meeting. The Respondent will be given the option to access the BIT's written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation. The Respondent may also, if they wish, submit a written summary of their objections to the emergency removal prior to the meeting with the applicable University Official. The applicable administrator may change or modify the decision of the BIT.

There is no appeal process for emergency removal decisions. Violation of an emergency removal under this policy will be grounds for discipline.

When a meeting with the University Official is not requested within two business days after receiving the notice of the emergency removal from the Title IX Coordinator, objections to the emergency removal will be deemed waived.

The University will implement the least restrictive emergency actions possible based on the circumstances and safety concerns. As determined by the BIT, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, implementing no-contact orders, alternative coursework options, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending or restricting a student's participation in extracurricular activities, student employment, student organizational leadership or intercollegiate or intramural athletics.

Administrative Leave

Where the Respondent is an employee (including student employees), Lenoir-Rhyne can place the employee on administrative leave during the pendency of a Resolution Process.

The Title IX Coordinator will recommend the administrative leave process to the University Officials listed below. Decisions about administrative leave regarding a Respondent, including the conditions of the leave (such as whether the leave will be with or without pay for standard scheduled hours), will be made by the applicable University Official as follows:

- If the Respondent is a student, the Vice President for Mission, Engagement and Innovation
- If the Respondent is faculty, the Provost and
- If the Respondent is an employee, the Assistant Vice President for Human Resources

The Respondent may request a meeting to object to the administrative leave decision if the request is made within two (2) business days of receiving verbal or written notice of the administrative leave. After the meeting, the applicable University Official will inform the Respondent in writing about their final decision and will inform the Title IX Coordinator. There is no appeal for administrative leave

decisions. Violation of an administrative leave under this policy may be grounds for discipline.

10. Promptness

All allegations are acted upon promptly by Lenoir-Rhyne once it has received a Formal Complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Lenoir-Rhyne will avoid all undue delays within its control. Any time the general timeframes for resolution outlined in Lenoir-Rhyne's procedures will be delayed, Lenoir-Rhyne will provide written notice to the parties of the delay, the cause of the delay and an estimate of the anticipated additional time that will be needed as a result of the delay.

11. Confidentiality/Privacy

Every effort is made by Lenoir-Rhyne to preserve the privacy of reports.² Lenoir-Rhyne will not share the identity of any individual who has made a report or Formal Complaint of sex/gender harassment, discrimination and/or retaliation, any Complainant, any individual who has been reported to be the perpetrator of sex/gender harassment, discrimination and retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing or grievance proceeding arising under these policies and procedures.

Lenoir-Rhyne reserves the right to determine which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint. Information will be shared as necessary with Deputy Title IX Coordinators, Grievance Pool Members, witnesses and the parties.

Lenoir-Rhyne makes every effort to consult directly with a student about a matter that involves the student. However, Lenoir-Rhyne may need contact the emergency contacts of students without a student's knowledge to inform them of situations in which there is a significant and articulable health and/or safety risk.

12. Jurisdiction

² For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of Lenoir-Rhyne employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the Recipient's FERPA Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect privilege in certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. Lenoir-Rhyne has designated individuals who have the ability to have privileged communications as **Confidential Resources**. For more information about Confidential Resources, see Sections 6. and 19.

This policy applies to the education program and activities of Lenoir-Rhyne to conduct that takes place on the campus or on property owned or controlled by Lenoir-Rhyne, at University-sponsored events or in buildings owned or controlled by Lenoir-Rhyne's recognized student organizations. This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Lenoir-Rhyne's educational program. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest and may violate University policy.

Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity. A substantial University interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of the Lenoir-Rhyne.

If the Respondent is unknown or is not a member of the Lenoir-Rhyne community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Even when the Respondent is not a member of the Recipient's community, supportive measures and resources may be accessible to the Complainant by contacting the Title IX Coordinator. When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in connecting with the appropriate individual at that institution.

Similarly, the Title IX Coordinator may be able to assist and support a Complainant who experiences sexual harassment or retaliation in an externship, study abroad program or other environment external to Lenoir-Rhyne where sex/gender harassment, discrimination and/or retaliation policies and procedures of the facilitating or host organization may give recourse to the Complainant.

13. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the Lenoir-Rhyne's jurisdiction and/or significant time has passed, the ability to investigate, respond and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may consult with additional resources, and who may document allegations for future reference, offer supportive measures and/or remedies and/or engage in informal or formal action, as appropriate. When notice/complaint is affected by a significant time delay, Lenoir-Rhyne will determine which policies and procedures will be utilized to resolve the matter and inform all parties.

14. Online Sex/Gender Harassment, Discrimination, /or Retaliation

Lenoir-Rhyne's policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the Recipient's education program and activities or when they involve the use of Lenoir-Rhyne's networks, technology and/or equipment. Although Lenoir-Rhyne may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects. All individuals are encouraged to be good digital citizens and to refrain from online misconduct, such as participating in anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Lenoir-Rhyne community.

15. Policy on Non-Discrimination

Lenoir-Rhyne University does not discriminate on the basis of race, color, national origin, citizenship, religion, political affiliation, age, marital status, sex/gender including sexual orientation and gender identity, physical or mental disability, genetic information, pregnancy or veteran status in any University educational programs and/or activities, including admissions. Lenoir-Rhyne's policy of non-discrimination and equal opportunity extends to all aspects of employment, including, but not limited to, recruitment, hiring, training, promotion, transfer, reassignment, demotion, discipline, discharge, performance evaluation, compensation and benefits. Lenoir-Rhyne is committed to providing an environment that promotes non-discrimination, equal opportunity, and inclusion for faculty, staff, students, contractors, volunteers and visitors. For the complete Notice of Non-Discrimination and Equal Opportunity, please see www.lr.edu/title-ix/notice-non-discrimination-and-equal-employment.

16. Policy on Title IX Sexual Harassment

Students and employees are entitled to an employment and educational environment that is free of sex/based harassment and discrimination. Lenoir-Rhyne has adopted the following definition of "Title IX Sexual Harassment" to address unlawful discrimination under Title IX. Title IX Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence and stalking. This definition applies to all Formal Complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator.

Title IX Sexual Harassment includes:

Conduct on the basis of sex,³ or that is sexual in nature, that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. an employee of the recipient (Respondent),
 - b. conditions the provision of an aid, benefit, or service of the recipient,
 - c. on an individual's participation in unwelcome sexual conduct.

- 2) Sexual Harassment (Hostile Environment):
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and

³ Including sexual orientation and gender identity.

- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a Complainant equal access to the Lenoir-Rhyne's education program or activity.⁴

3) Sexual assault, defined as:

- a) Any sexual act⁵ directed against a Complainant ⁶,
 - o Without their consent, or,
 - o instances in which the Complainant is incapable of giving consent.

⁴ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

⁵ A "sexual act" is specifically defined by federal regulations to include one or more of the following:

Rape:

- o Penetration of Complainant
- o no matter how slight,
- o of the vagina or anus with any body part or object, or
- o oral penetration by a sex organ of another person,
- o without the consent of the Complainant, including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity

Sodomy:

- o Oral or anal sexual intercourse with Complainant,
- o forcibly, and/or
- o against their will (non-consensually), or
- o not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- o The use of an object or instrument to penetrate,
- o however slightly,
- o the genital or anal opening of the body of Complainant,
- o forcibly, and/or
- o against their will (non-consensually),
- o or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Fondling:

- o The touching of the private body parts of another person (buttocks, groin, breasts),
- o for the purpose of sexual gratification,
- o forcibly, and/or
- o against their will (non-consensually), or
- o not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

⁶ This would include having another person touch you sexually, forcibly, and/or without their consent.

- b) Incest:
 - Non-forcible sexual intercourse,
 - between persons who are related to each other,
 - within the degrees wherein marriage is prohibited by applicable state law.
 - c) Statutory Rape:
 - Non-forcible sexual intercourse,
 - With a person who is under the statutory age of consent in applicable state.
- 4) Dating Violence, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a person,
 - d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence⁷, defined as:
- a. violence,
 - b. on the basis of sex,
 - c. committed by a current or former spouse or intimate partner of the Complainant,
 - d. by a person with whom the Complainant shares a child in common, or
 - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the applicable state, or by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of the applicable state.
- 6) Stalking, defined as:
- a. engaging in a course of conduct,
 - b. on the basis of sex,
 - c. directed at Complainant, that
 - i. would cause a reasonable person to fear for the person’s safety, or

⁷ To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- ii. the safety of others; or
- iii. Suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Lenoir-Rhyne reserves the right to impose any level of sanction, ranging from disciplinary action up to and including suspension or expulsion/termination, for any offense under this Policy (See Procedures Section 35. below).

c. Force, Coercion, Consent, and Incapacitation⁸

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

⁸ The state definition of consent is applicable to criminal prosecutions for sex offenses but may differ from the definition used on campus to address Lenoir-Rhyne University policy violations.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is clearly communicated. If consent is withdrawn, that sexual activity should cease immediately. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Lenoir-Rhyne to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout and/or being drunk. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition and involuntary physical restraint.

A defense to a sexual assault policy violation is that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes a reasonable person is both sober and exercising sound judgment.

17. Policy on Other Sex/Gender Harassment and Discrimination

In addition to Title IX Sexual Harassment described above, Lenoir-Rhyne also prohibits the following additional offenses as forms of sex/gender harassment and discrimination when the conduct is based upon the Complainant’s sex/gender (including sexual orientation and gender identity).

a. Sex/Gender Discriminatory Harassment

Discriminatory harassment – defined as unwelcome conduct by any member or group of students or employees on the basis of sex/gender (including sexual orientation, gender identity and pregnant or parenting status) – is a form of prohibited discrimination under Lenoir-Rhyne’s policy.

Lenoir-Rhyne does not tolerate sex/gender discriminatory harassment of any employee, student, visitor, or third-party. Lenoir-Rhyne will act to remedy sex/gender harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.”

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits or opportunities.⁹ This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive *and* objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, Lenoir-Rhyne may impose sanctions on the Respondent through the applicable grievance process (See Procedures/Resolution Process Sec. 1).

b. Title VII/Federal Housing Administration (“FHA”) Sexual Harassment

This type of Sexual Harassment applies to situations where an employee is subjected to workplace sexual harassment (that does not meet the definition of Title IX Sexual Harassment) or where a situation involves a residential Complainant in Lenoir-Rhyne-provided housing. The following is required:

- i. Unwelcome verbal, written, graphic, and/or physical conduct;
- ii. that is severe or pervasive and objectively offensive;
- iii. on the basis of sex/gender, that
- iv. unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities.

When Title VII/FHA Sexual Harassment is alleged, Lenoir-Rhyne may impose sanctions on the Respondent through the applicable grievance process (See Procedures/Resolution Process Sec. 1).

c. Sexual Exploitation

Sexual Exploitation is defined as

- a. An individual taking non-consensual or abusive sexual advantage of another
- b. for their own benefit or for the benefit of anyone other than the person being exploited, and
- c. that conduct does not otherwise constitute sexual harassment under this policy.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy

⁹ This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Recipients Investigative Guidance.](#)

- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation or gender identity
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography. This also includes taking non-consensual photographs or videos of another person's genitals, or taking a consensual photographs or videos but then disseminating them without consent.
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Creation, possession, or dissemination of child pornography

When Sexual Exploitation is alleged, Lenoir-Rhyne may impose sanctions on the Respondent through the applicable grievance process (See Procedures/Resolution Process Sec. 1).

d. Sexual Assault, Dating Violence, Domestic Violence, and Stalking (non-Title IX Sexual Harassment)

Lenoir-Rhyne prohibits sexual assault, dating violence, domestic violence and stalking involving students and employees no matter where it occurs. For any alleged acts of Sexual Assault, Dating Violence, Domestic Violence, and Stalking as defined under Section 16. above that do not meet the requirements of Title IX Sexual Harassment, Lenoir-Rhyne reserves the right to address the conduct and impose sanctions on the Respondent using the applicable grievance process (See Procedures Sec. 1)

18. Policy on Retaliation (Prohibited Conduct)

Protected activity under this policy includes:

- reporting an incident that may implicate this Policy
- participating in the grievance/resolution process
- supporting a Complainant or Respondent
- assisting in providing information relevant to an investigation; and/or
- acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated and resolved through the appropriate grievance process, as determined and communicated to the parties by the Title IX Coordinator. Lenoir-Rhyne will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Lenoir-Rhyne and any member of the University community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and Procedure. The exercise of rights protected under the First Amendment does not constitute retaliation.

Filing a complaint with an office other than the Title IX Office for the purpose of interfering with or circumventing any right or privilege provided afforded within the Resolution Process set forth herein could be considered retaliatory. Therefore, Lenoir-Rhyne vets complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

Pursuing a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

19. Mandated Reporting

All Lenoir-Rhyne employees are expected to report actual or suspected sex/gender discrimination and/or retaliation to the Title IX Coordinator or a Deputy Title IX Coordinator immediately, unless they are a Confidential Resource.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting institutional resources. On campus, those designated as Confidential Resources may maintain confidentiality and are not required to report actual or suspected sex/gender harassment, discrimination and/or retaliation to the Title IX Coordinator or a Deputy Title IX Coordinator. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and Mandated Reporters will immediately pass reports to the Title IX Coordinator or a Deputy Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Lenoir-Rhyne for a Complainant or third-party (including parents/guardians when appropriate):

a. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors
- Off-campus University-contracted professional counselors
- On-campus health service providers
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Off-campus (non-employees):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

b. Anonymous Reports Submitted Online or through a Confidential Resource

A Complainant may make an anonymous report online at www.lr.edu/title-ix, or may ask that a Confidential Resource report their incident to the Title IX Coordinator but keep the Complainant's name confidential. When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Confidential Resource, but all other details should be shared with the Title IX Coordinator.

If a Complainant has requested the Complainant's anonymity be preserved, anonymous notice typically limits the University's ability to investigate, respond and provide remedies, depending on what information is shared. Anonymous notice will be investigated by the University to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures can be provided.

c. Mandated Reporters and Formal Notice/Complaints

All employees of Lenoir-Rhyne (including some student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator or a Deputy Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party. Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from the University.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sex/gender harassment, discrimination and/or retaliation of which they become aware to the Title IX Coordinator or a Deputy Title IX Coordinator is a violation of Lenoir-Rhyne policy and can be subject to disciplinary action.

20. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. The Title IX Coordinator has discretion over whether the University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process.

The Title IX Coordinator’s decision should be based on information that show a compelling risk to health and/or safety that requires Lenoir-Rhyne to pursue formal action to protect the community. A compelling risk to health and/or safety may result from:

- evidence of patterns of misconduct
- predatory conduct
- threats
- abuse of minors
- use of weapons; and/or
- use of violence.

Recipients may be compelled to act on alleged employee misconduct irrespective of a Complainant’s wishes. The Title IX Coordinator may request an opinion from the Behavioral Intervention Team regarding whether to continue proceed when the Complainant does not wish to do so.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University’s ability to pursue a Formal Grievance Process fairly and effectively. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When Lenoir-Rhyne proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. When the Complainant chooses not to participate, an Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want Lenoir-Rhyne to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Lenoir-Rhyne to honor that request, the University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Lenoir-Rhyne, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

21. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Lenoir-Rhyne must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. Lenoir-Rhyne will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

22. False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action under the applicable Lenoir-Rhyne code of conduct. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policies.

23. Amnesty

Lenoir-Rhyne encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the Lenoir-Rhyne community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Lenoir-Rhyne maintains a policy of offering amnesty (a reprieve) for parties and witnesses from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

Lenoir-Rhyne maintains a policy of amnesty for students who offer help to others in need or who may have violated the University’s drug and alcohol policy where the violations occurred in conjunction with the reported incident of sex discrimination, harassment, misconduct and/or retaliation. Although policy violations cannot be overlooked, Lenoir-Rhyne may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need or may have violated the University’s drug or alcohol policy.

24. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft and arson
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- c) VAWA-based crimes,¹⁰ which include sexual assault, domestic violence, dating violence and stalking
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations.

All personally identifiable information may be kept private, but statistical information must be shared with the Department of Public Safety regarding the type of incident and its general location (on or off-campus or in the surrounding area) for publication in the Annual Security Report and campus crime log.

Campus Security Authorities include:

- President and Vice Presidents
- All employees of Office of Student Life
- All employees of Department of Public Safety
- Local police
- All employees of Intercollegiate Athletics Department
- All employees of Human Resources
- Director of Compliance/Title IX Coordinator and Deputy Title IX Coordinators
- All employees of Admissions
- Advisors to Student Organizations.

¹⁰ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

PROCEDURES/RESOLUTION PROCESSES

Resolution Processes for Alleged Violations of this Policy on Non-Discrimination and Anti-Retaliation

1. Overview

Lenoir-Rhyne will act on any formal or informal notice/complaint of violation of the Policy that is received by the Title IX Coordinator¹¹ or Official with Authority.

The procedures below apply to all allegations of sex/gender harassment, discrimination and/or retaliation. Specifically:

- a. All Formal Complaints of Title IX Sexual Harassment as defined in Sec. 16, involving students and/or employees of Title IX Sexual Harassment as defined (Sec. 16) and determined by the Title IX Coordinator, will be resolved using this Policy and the Procedures below, and the Resolution Process will be facilitated by the Title IX Office;
- b. All reports that do not meet the definition of Title IX Sexual Harassment (Sec. 16 - as determined by the Title IX Coordinator) involve Other Sex/Gender Harassment, Discrimination (Sec. 17) and/or Retaliation (Sec. 18) and involve at least one employee (Complainant or Respondent) will be referred by the Title IX Coordinator to the Assistant Vice President for Human Resources for resolution;
- c. All reports that do not meet the definition of Title IX Sexual Harassment (Sec. 16 - as determined by the Title IX Coordinator) involve Other Sex/Gender Harassment, Discrimination (Sec. 17) and/or Retaliation (Sec. 18) and involve all students as Parties will be resolved using this Policy and the Procedures below, and the Resolution Process will be facilitated by the Title IX Office.
- d. All other reports will be resolved at the discretion of the Title IX Coordinator, upon consultation with the offices of Diversity, Equity and Inclusion, Human Resources, and Student Life.

All allegations of misconduct that is collateral or unrelated to conduct covered by this Policy will usually be addressed through procedures described in the student, faculty, and/or staff handbooks, as applicable.

2. Notice/Complaint

Upon receipt of a Formal Complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the University needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint.

As discussed in more detail below, the Title IX Coordinator will initiate at least one of the following responses:

¹¹ Anywhere this procedure indicates "Title IX Coordinator," Lenoir-Rhyne may substitute a trained designee.

- a. Offering supportive measures only because the Complainant does not want to file a Formal Complaint
- b. Referral of complaint to Human Resources
- c. Offering supportive measures and the Informal Resolution Process (upon submission of a Formal Complaint)
- d. Offering supportive measures and a Formal Grievance Process including an investigation and hearing (upon submission of Formal Complaint)

3. Initial Assessment

Following receipt of a Formal Complaint or notice of an alleged violation of this Policy, the Title IX Coordinator¹² engages in an initial assessment, typically within five (5) business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint due to a compelling threat to health and/or safety and whether to refer the matter to the Behavioral Intervention Team for a Violence Risk Assessment
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option where the Complainant makes a formal complaint, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determine appropriate supports and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
 - If a Formal Grievance Process is preferred by Complainant, the Title IX Coordinator determines if the alleged misconduct falls within the scope of Title IX:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate concern.

¹² The Vice President for Diversity, Equity and Inclusion and/or Title IX Coordinator will designate a trained individual to act as interim Title IX Coordinator to oversee the process below should an allegation be made about the Coordinator, the Coordinator is unavailable or unable to fulfill their duties, or the Title IX Coordinator has a conflict of interest.

- If alleged misconduct does not fall within the scope of Title IX Sexual Harassment as defined in Sec. 16., the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), and assess which policies may apply. Please note that dismissing a complaint under the 2020 Title IX Rule is solely a procedural requirement under Title IX and does not limit the Recipient’s authority to address a complaint with an appropriate process and remedies. If the alleged misconduct does not fall within the scope of Title IX Sexual Harassment and the complaint involves at least one employee, the Title IX Coordinator will notify the Complainant that the matter will be referred to the Human Resources office for resolution.

a. Violence Risk Assessment

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavioral Intervention Team (BIT) as part of the initial assessment. A VRA may aid in making certain determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant
- Whether to put the investigation on the footing of incident and/or pattern and/or climate
- To help identify potential predatory conduct
- To help assess/identify grooming behaviors
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful
- Whether to permit a voluntary withdrawal by the Respondent
- Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning and/or Trespass order is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

A VRA authorized by the Title IX Coordinator should be performed by the BIT. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

b. Dismissal of Complaint (Mandatory and Discretionary)¹³

Lenoir-Rhyne University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined above, even if proved
- 2) The conduct did not occur in an educational program or activity controlled by Lenoir-Rhyne (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent
- 3) The conduct did not occur against a person in the United States
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in LR's education program or activity, and the Title IX Coordinator has determined that they do not need to sign a Formal Complaint.¹⁴

The Title IX Coordinator may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein
- 2) The Respondent is no longer enrolled in or employed by the recipient
- 3) Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it. Upon reinstatement or refiling of a Complaint, the Title IX Coordinator will determine the appropriate manner to proceed based on the facts and circumstances of the Formal Complaint.

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate

4. Counterclaims

Lenoir-Rhyne is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

¹³ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

¹⁴ Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

5. Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may select whoever they wish to serve as their Advisor so long as the Advisor is eligible and available.¹⁵ Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

a. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process, including in the initial stages. The parties may choose Advisors from inside or outside of the Lenoir-Rhyne community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If an Advisor is assigned from or a party chooses from the Grievance Process Pool available at Lenoir-Rhyne, the Advisor will be trained by the University and familiar with the University's Resolution Process.

If the parties choose an Advisor from outside the pool of those identified by the Lenoir-Rhyne, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures. The Title IX Coordinator will, however, provide information regarding University policies and procedures upon request by the party and/or their Advisor(s).

b. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Lenoir-Rhyne cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney to the other party.

¹⁵ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

c. Advisors in Hearings/Lenoir-Rhyne-Appointed Advisor

Under the Title IX Rule, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning of the other parties and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor to conduct questioning at the hearing. If the party's Advisor will not conduct questioning, the University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing. A party's Advisor will be allowed to conduct a direct examination of their party at the hearing.

d. Pre-Interview Meetings

Advisors and their advisees may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Lenoir-Rhyne's policies and procedures.

e. Advisor Violations of Lenoir-Rhyne Policy

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not and whether they are selected by a party or assigned by Lenoir-Rhyne University. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Recipient officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination of the other party and direct examination of their party.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy or who refuses to comply with LR's established Rules of Decorum will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended or other appropriate measures implemented, including LR requiring the party to use a different Advisor or providing a different LR-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

f. Sharing Information with the Advisor and Privacy of Records Shared

Lenoir-Rhyne expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors.

The University also provides a consent form that authorizes the University to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Lenoir-Rhyne is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, the University will comply with that request but will also include the party as a recipient on all communications.

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Lenoir-Rhyne. Lenoir-Rhyne may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

g. Expectations of an Advisor

Lenoir-Rhyne generally expects an Advisor to adjust their schedule to allow them to be present University meetings/interviews/hearings when planned but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Lenoir-Rhyne may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

h. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Coordinator/Investigator(s) of the identity of their Advisor at least one (1) business day before the date of their first meeting with Coordinator or Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before a hearing, if possible.

i. Assistance in Securing an Advisor

The Title IX Coordinator will assist both parties in finding an attorney advisor, where such request is made by the party. However, the University will not be required to pay the costs or fees associated with an Advisor.

6. Informal Resolution Processes

Informal Resolution is not available in complaints where a student Complainant alleges Sexual

Harassment by an employee Respondent.

The Title IX Coordinator can always resolve a matter informally by providing supportive measures only to remedy the situation. A supportive measures-only approach can occur at any time, regardless of whether the Complainant has made a Formal Complaint.

To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the University.

Lenoir-Rhyne will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the parties agree not to disclose related to Informal Resolution, discussed below. Lenoir-Rhyne encourages parties to discuss any sharing of information with their Advisors before doing so.

The Title IX Coordinator may look to the following factors to assess whether Informal Resolution is appropriate, or which form of Informal Resolution may be most successful for the parties:

- The parties' amenability to Informal Resolution
- Likelihood of potential resolution, taking into account any power dynamics between the parties
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history
- Whether an emergency removal is needed
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Informal Resolution (time, staff, etc.)

Informal Resolution can include the approaches below.

a. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

b. Title IX Coordinator-Facilitated Resolution

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the University. Negotiated Resolutions are not appealable.

c. Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism and which mechanism. The most common mechanism is mediation, conducted by a trained mediator or other individual.

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

7. Formal Grievance Process Pool

The Formal Grievance Process relies on a pool of administrators¹⁶ (“the Grievance Process Pool” or “Pool”) to carry out the process.

a. Pool Member Roles

¹⁶ External, trained third-party neutral professionals may also be used to serve in Pool roles.

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Vice President for Diversity, Equity and Inclusion and/or Title IX Coordinator:

- To act as an Advisor to the parties
- To act as an Investigator
- To serve in a facilitation role in Informal Resolution if appropriately trained
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker
- To serve as Hearing Chair/Decision-Maker

b. Pool Member Appointment

The President, in consultation with the Vice President for Diversity, Equity and Inclusion and Title IX Coordinator appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes and/or talents identified in members of the Pool that make them best suited to particular roles.

c. Pool Member Training

The Pool members receive annual training. This training includes, but is not limited to:

- The scope of the Recipient's Sex/Gender Non-Discrimination and/or Retaliation Policy and Procedures/Resolution Processes
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the recipient with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes

- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Complainants and Respondents, and based on sex, race, religion and other characteristics protected by law and/or University policy
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- How to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

All Pool members are required to attend these trainings annually. Specific training is also provided for Appeal Decision-makers, Advisors (who are University employees), and Chairs. The materials used to train all members of the Pool are publicly posted at www.lr.edu/title-ix.

d. Pool Membership

The Pool includes:

- A minimum of 12 trained Pool members that are diverse
- Approximately half of the Pool is faculty and half is staff
- 2 trained Chairs
- The majority of members work on the Hickory campus
- At least 1 representative from the Columbia campus
- At least 1 representative from the Asheville campus

Pool members are usually appointed to three-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

8. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process (when Complainant submits a formal complaint). This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated
- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result
- A statement that Lenoir-Rhyne presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and

that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period

- A statement about Lenoir-Rhyne's policy on retaliation
- Information about the privacy of the process
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the parties that Lenoir-Rhyne's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process
- Detail on how the party may request disability accommodations during the interview process,
- A link to Lenoir-Rhyne's VAWA Brochure/Resource Guide on Sex/Gender Misconduct
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties' Lenoir-Rhyne-issued email or designated accounts. Once emailed and/or received in-person, notice will be presumptively delivered.

9. Resolution Timeline

Lenoir-Rhyne will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeals, if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

10. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator will begin an investigation. If the Title IX Coordinator is unavailable, has a conflict of interest, or for any other reason in their discretion, the Vice President for Diversity, Equity and Inclusion and/or Title IX Coordinator will appoint a trained individual(s) who will conduct the investigation.

11. Ensuring Impartiality

Any individuals materially involved in the administration of the Resolution Process, including the Title IX Coordinator, Deputy Title IX Coordinators, Investigator(s), Hearing Panel/Decision-maker(s) and Hearing Facilitator, may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, regarding any member of the Title IX Team and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact

of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Vice President for Diversity, Equity and Inclusion. If the Title IX Coordinator has a conflict of interest or bias, the Vice President will appoint a trained designee to conduct the investigation.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Lenoir-Rhyne operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof, which is a preponderance of the evidence.

12. Investigation Timeline

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take weeks or even months, depending on the nature, extent and complexity of the allegations, availability of witnesses, police involvement, etc.

Lenoir-Rhyne will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

13. Delays in the Investigation Process and Interactions with Law Enforcement

Lenoir-Rhyne may undertake a short delay in its investigation (several days to weeks) if circumstances require. Such circumstances include but are not limited to:

- a request from law enforcement to temporarily delay the investigation
- the need for language assistance
- the absence of parties and/or witnesses; and/or
- accommodations for disabilities or health conditions.

Lenoir-Rhyne will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, Lenoir-Rhyne will implement supportive measures as deemed appropriate.

Lenoir-Rhyne's action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence and identifying sources of

expert information, as necessary. At Lenoir-Rhyne, the Title IX Coordinator is the primary investigator, however, other trained individuals may be appointed to investigate a report at the discretion of the Title IX Coordinator in consultation with the Vice President for Diversity, Equity and Inclusion. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses and to fully review and respond to all evidence on the record.

The Coordinator/Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners, initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Conduct a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Grievance Process Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gathers, assesses, and synthesizes evidence, but makes no conclusions, engages in no policy analysis, and renders no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) an electronic or hard copy of the draft investigation report as

well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which Lenoir-Rhyne does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) (usually the Title IX Coordinator) shares the report with the Vice President for Diversity, Equity and Inclusion
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors and the Grievance Process Panel through electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of Lenoir-Rhyne are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The Recipient will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Though not preferred, witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s).

16. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

17. Evidentiary Considerations in the Investigation

Neither the investigation nor the hearing will consider: 1) incidents not relevant to the possible violation, unless they evidence a pattern; 2) the character of the parties or impact statements (reserved

for sanction phase when a party is found responsible for a Policy violation); or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

18. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing. The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Vice President for Diversity, Equity and Inclusion, in consultation with the Title IX Coordinator, will select appropriate Decision-Makers from the Pool depending on whether the Respondent is an employee or a student.

19. Hearing Decision-maker Composition

Lenoir-Rhyne will designate a three-member panel of Decision-Makers from the Pool, at the discretion of the Vice President for Diversity, Equity and Inclusion in consultation with the Title IX Coordinator. One of the three members of the panel will be appointed as Chair by the Vice President for Diversity, Equity and Inclusion in consultation with the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Vice President for Diversity, Equity and Inclusion in consultation with the Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason. Any person that has served as a party's Advisor during any portion of the process may not also be a Decision-Maker. A Decision-Maker must recuse themselves when appointed if - for whatever reason - they do not have the ability to be fair, neutral, and impartial when considering the evidence and making decisions.

The Investigator will serve as a witness in the hearing and will remain present for the duration of the hearing. The Vice President for Diversity, Equity and Inclusion will serve as the hearing facilitator. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair, Hearing Facilitator, or Title IX Coordinator

20. Additional Evidentiary Considerations in the Hearing

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then. The parties may each submit character letters and a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

The parties should submit the character letters and/or impact statement to the Title IX Coordinator or Vice President for Diversity, Equity and Inclusion in advance of the hearing. The parties shall not send any character letters and written impact statements directly to the Decision-Makers, including the Chair.

After post-hearing deliberation, the Decision-Makers render a determination based on the preponderance of the evidence - whether it is more likely than not that the Respondent violated the Policy as alleged.

21. Notice of Hearing

No less than ten (10) business days prior to the hearing (unless an expedited hearing is agreed to by all parties, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result
- The time, date and location of the hearing
- Description of any technology that will be used to facilitate the hearing
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator at least five (5) days prior to the hearing if they do not have an Advisor, and LR will appoint one. Each party must have an Advisor present. There are no exceptions
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already¹⁷
- An invitation to each party to submit to the Hearing Facilitator or Title IX Coordinator an impact statement pre-hearing that the Decision-Makers will review during any sanction determination
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing

¹⁷ The final investigation report may be shared using electronic means that preclude downloading, forwarding or otherwise sharing.

- Whether parties can bring mobile phones/devices into the hearing and, if so, the rules regarding having phones in the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the last week of classes will typically be held immediately after the end of the exam period or during the summer, as needed, to meet the resolution timeline followed by Lenoir-Rhyne and remain within the 60-90 business day goal for resolution. Employees who do not have 12-month contracts are still expected to participate in the grievance process that occur during months between contracts.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

22. Alternative Hearing Participation Options

If a party or witness prefers not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair as soon as possible, preferably at least five (5) business days prior to the hearing so that appropriate arrangements can be made. The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person.

23. Pre-Hearing Preparation

The Chair, Hearing Facilitator, or Title IX Coordinator after any necessary consultation with the parties, , will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Coordinator/Investigator(s) or have provided a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least ten (10) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than seven (7) days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the complaint.

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors immediately upon their appointment. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the

parties, witnesses, and Advisors within two (2) business days of receiving these identities. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

24. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors and invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant.

The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with the Vice President for Diversity, Equity and Inclusion (or Coordinator if Coordinator is not Investigator) or legal counsel. The Chair may ask the Vice President (or Coordinator if not Investigator) to attend pre-hearing meetings.

The pre-hearing meeting(s) will be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the same time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format.

25. Hearing Procedures

At the hearing, the Decision-Maker(s) has the authority to hear and make determinations on all allegations of violations of this Policy. The Decision-Maker(s) may also hear and make determinations on any additional alleged policy violations that occurred in concert with the sex/gender discrimination, harassment and/or retaliation, even though those collateral allegations may not specifically fall within this Policy if authorized by the Title IX Coordinator or Vice President for Diversity, Equity and Inclusion, in consultation with the appropriate University officials.

Participants at the hearing will include the Chair, Decision-Makers (Chair and other panel members), the hearing facilitator, the Investigator(s) who conducted the investigation, the Title IX Coordinator (if not the Investigator) the parties, Advisors to the parties, any called witnesses and anyone providing

authorized accommodations or assistive services.

The Chair will answer all questions of procedure, in consultation with the Title IX Coordinator, Vice President for Diversity, Equity and Inclusion and/or legal counsel, if any. Anyone appearing at the hearing to provide information will respond to questions on their own behalf. The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-maker(s) and the witnesses will then be excused.

26. Joint Hearings

In hearings involving more than one Respondent and/or involving more than one Complainant who have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or Complainant to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

27. The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties and other administrative elements of the hearing process are managed by a non-voting hearing facilitator.

28. Investigator Presents the Final Investigation Report

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

29. Testimony and Questioning

Once the Investigator(s) presents their report and responds to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the

default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

30. Refusal to Submit to Questioning; Inferences

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can rely only on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility (including statements made by parties/witnesses during the investigation and included in investigation report). The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

31. Recording Hearings

Hearings (but not deliberations) are recorded by Lenoir-Rhyne for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of Lenoir-Rhyne will be permitted to listen to the recording or review the transcript upon a request to the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

32. Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used.

The hearing facilitator will attend the deliberation, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact or character statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact or character statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by the Vice President for Mission, Engagement and Innovation (if Respondent is a student), the Provost (if Respondent is a faculty), and the Assistant Vice President for Human Resources (if the Respondent is an employee or contractor), and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as needed. The Decision-Maker may also determine whether remedies will be offered to the Complainant and document the remedies.

The Decision-Maker(s) will then prepare a written determination statement, detailing the determination, rationale(s) explaining the decision, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, recommendations and any sanctions. This report must be submitted to the Title IX Coordinator by the Chair within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

33. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair and Hearing Facilitator to prepare a Notice of Outcome. The Notice of Outcome will be reviewed by the Vice President for Diversity, Equity and Inclusion. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within five (5) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, emailed to the parties' Lenoir-Rhyne-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged Policy violation reported, including the relevant policy section, and will contain a description of the procedural steps taken by Lenoir-Rhyne from the receipt of the report to the determination, including all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify following for each alleged Policy violation:

- the finding on each alleged policy violation
- the findings of fact that support the determination
- conclusions regarding the application of the relevant policy to the facts at issue
- a statement of, and rationale for, the result of each allegation to the extent Lenoir-Rhyne is

permitted to share such information under state or federal law

- any sanctions issued which the Lenoir-Rhyne is permitted to share according to state or federal law and
- any remedies provided to the Complainant designed to ensure access to Lenoir-Rhyne's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any appeal.

34. Rights of the Parties

Lenoir-Rhyne will provide both parties access to the University's Statement of the Rights of the Parties, which is located in the University's Resource Guide for Sex/Gender Misconduct. The Statement can be found at www.lr.edu/title-ix/resource-guide-sexgender-discrimination-harassment-misconduct-university-policies.

35. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Whether Respondent has accepted responsibility for the conduct
- Previous allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sex/gender discrimination and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of Sex/gender discrimination and/or retaliation
- The need to remedy the effects of the sex/gender discrimination and/or retaliation on the Complainant and the community
- The impact on the parties
- Maintenance of a safe and respectful educational and employment environment
- Any other mitigating, aggravating or compelling circumstances
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by external authorities.

a. Student Sanctions/Responsive Actions

The following are the common sanctions¹⁸ that may be imposed upon students or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Lenoir-Rhyne policy, procedure or directive will result in more severe sanctions/responsive actions
- *Required Counseling*: A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders and/or other measures deemed appropriate
- *Suspension*: Termination of student status for a definite period of time and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Lenoir-Rhyne. This sanction will be noted permanently as a Conduct Suspension on the student's official transcript
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Lenoir-Rhyne-sponsored events. This sanction will be noted permanently 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 has an allegation pending or as a sanction if the student is found responsible for an alleged violation
- *Revocation of Degree*: Lenoir-Rhyne reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or directives in obtaining the degree or for other serious violations committed by a student prior to graduation
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including Lenoir-Rhyne registration) 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.

b. Employee Sanctions/Responsive Actions

Sanctions and responsive actions for an employee who has engaged in harassment, discrimination and/or retaliation include:

- Warning – Verbal or Written
- Performance Improvement Plan/Management Process
- Enhanced supervision, observation or review
- Required Counseling
- Required Training or Education
- Probation

¹⁸ Recipient policies on transcript notation will apply to these proceedings. For more specific sanctions against student organizations, see applicable student code of conduct.

- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Reassignment
- Assignment to new supervisor
- Restriction of stipends, research and/or professional development resources
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

With regard to a tenured or tenure-track faculty Respondent, any sanctions recommended that are subject to the Faculty Handbook will be referred to the Provost. The Provost will work with the Chair of the Decision-Making Panel and Title IX Coordinator to ensure this process is prompt and that the written decision regarding tenure and/or rank is included in the required Outcome letter along with the Decision-Maker's Findings and other Sanctions.

36. Withdrawal or Resignation While Charges Pending

a. Students:

If a student has an allegation pending for violation of the Policy, Lenoir-Rhyne may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the Resolution Process ends with a dismissal, as Lenoir-Rhyne no longer has disciplinary jurisdiction over the withdrawn student.

However, Lenoir-Rhyne will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. Such exclusion applies to all campuses of Recipient. A hold will be placed on their ability to be readmitted. They may also be barred from Recipient property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Lenoir-Rhyne unless and until all sanctions have been satisfied.

b. Employees:

Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Lenoir-Rhyne no longer has disciplinary jurisdiction over the resigned employee.

However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Lenoir-Rhyne University and the records retained by the Title IX and Human Resources offices will reflect that status.

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

37. Appeals

Any party may submit a written request for appeal (“Request for Appeal”), and it must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

A three-member appeal decision-maker panel, including the voting Chair, chosen from the Pool will be designated by the President, in consultation with the Vice President for Diversity, Equity and Inclusion and Title IX Coordinator. No appeal decision-maker panelists will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. A voting Chair of the Appeal panel will be designated.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

- (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 and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties, and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, the Decision-makers on appeal, and, when appropriate, the Investigators and/or the original Decision-maker(s).

All parties and their Advisors, the Title IX Coordinator, Decision-makers on appeal (including the identified appeal panel Chair) and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the Request for Appeal with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in five (5) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal and the subsequent responses will be shared with the Appeal Panel, and the Panel will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which Lenoir-Rhyne is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Lenoir-Rhyne is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

b. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed (i.e., not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If the Decision-Maker(s) recommends that any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above in Section 9.) must be permitted within 48 hours of implementation. The Title IX Coordinator will inform the parties in writing about all applicable procedures and deadlines when the Decision-Maker(s) recommend immediate implementation of sanctions.

Lenoir-Rhyne may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation from the University.

c. Appeal Considerations

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific ground for appeal.
- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the Title IX Coordinator/Investigator or original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).

- The Appeal Chair/Decision-maker(s) may consult with the Vice President for Diversity, Equity and Inclusion or Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Vice President for Diversity, Equity and Inclusion or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to Lenoir-Rhyne or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

38. Long-Term Remedies/Other Actions

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented and remedies required by the Decision-Maker, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by Lenoir-Rhyne to the Respondent to ensure no effective denial of educational access.

Lenoir-Rhyne will maintain the confidentiality of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

39. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion and/or termination from the University and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator, in consultation with other appropriate University Officials.

Supervisors are expected to maintain the confidentiality of findings and sanctions occurring under this Policy and to assist with enforcement of completion of sanctions/responsive actions for their employees in conjunction with the Title IX and Human Resources offices.

40. Recordkeeping

Lenoir-Rhyne, coordinated by and through the Title IX Coordinator, will maintain for a period of seven years records of:

1. Each formal investigation under this Policy including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation
2. Any disciplinary sanctions imposed on the Respondent
3. Any remedies provided to the Complainant designed to restore or preserve equal access to Lenoir-Rhyne's education program or activity
4. Any appeal and the result therefrom
5. Any Informal Resolution and the result therefrom
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers and any person who facilitates an Informal Resolution process. Lenoir-Rhyne will make these training materials publicly available on University's website and
7. Any actions, including any supportive measures and emergency leaves, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent
 - b. Any measures designed to restore or preserve equal access to the Lenoir-Rhyne's education program or activity and
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Lenoir-Rhyne will also maintain all records in accordance with state and federal laws.

41. Disabilities Accommodations in the Resolution Process

Lenoir-Rhyne is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's Resolution Process.

Anyone needing such accommodations or support should contact the Director of Disability Services, who

will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

42. Revision of this Policy and Procedures

This Policy and Procedures supersede any previous policy(ies) addressing sex discrimination, harassment, misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and Procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective as of the Approval Date below.

Author of Policy

Director of Compliance/Title IX Coordinator

Individuals Affected

All members of the University community including faculty, staff, students, contractors, visitors, Board members, and other agents of the University.

Approval



President

Approval Date

Policy Approved and Implemented: 10.2.20
First Addendum to Policy Approved: 1.11.21
Policy Amended: 4.2.21

First Addendum Rescinded: 2.14.22
Policy Amended: 2.14.22