

SECTION 1500.09

TITLE IX AND SEXUAL HARASSMENT

- 1) It shall be the policy of the State Board of Higher Education, the North Dakota University System, and Lake Region State College to fully comply with all aspects of Title IX of the Education Amendments of 1972 and the regulations promulgated under its authority. This policy shall not govern compliance with any other anti-discrimination or anti-harassment statute, rule, or regulation. Failure by an employee of the SBHE, NDUS, or Lake Region State College to comply with the requirements of Title IX or this policy may constitute a violation of Policy 308.1 – Code of Conduct or LRSC Policy 1500.05 – Code of Conduct. Nothing in this Policy should be read to require fewer due process safeguards than would otherwise be provided by SBHE Policy 514.

Lake Region State College prohibits all crimes of sexual misconduct as defined in this policy. This includes Violence Against Women Act (VAWA) offenses of dating violence, domestic violence, sexual assault and stalking. For purposes of complying with the Clery Act requirements, any violation meeting the definition of a Clery Act crime is reported on the Annual Security Report.

- 2) **Definitions.** For the purpose of this policy, the listed terms shall have the following definitions:
 - a. *Actual Knowledge.* Notice of sexual harassment or allegations of sexual harassment to Lake Region State College's Title IX Coordinator or any Lake Region State College official with authority to institute corrective measures on the Lake Region State College's behalf.
 - b. *Advisor.* A person chosen by a party or appointed by Lake Region State College 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.
 - c. *Complainant.* An individual who is alleged to be the victim of conduct which could, after investigation, constitute sexual harassment.
 - d. *Consent.* Words or actions showing a clear, knowing and voluntary agreement to engage in sexual activity.
 - i. Consent from sexual partners must be obtained. If confusion or ambiguity on the issue of consent arises anytime during sexual activity, consent must be clarified.
 - ii. Consent may not be inferred from:
 1. Silence, passivity or lack of active resistance.
 2. A current or previous dating or sexual relationship.
 - iii. Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
 - iv. Consent can be withdrawn by clear communication at any time.
 - e. *Dating Violence.* Includes but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence. Dating violence is violence committed by the respondent:
 - i. Who is or has been in a romantic or intimate relationship with the complainant; and

- ii. Where the existence of such a relationship shall be determined by considering the length of the relationship, the type of relationship, and the frequency of interactions between the complainant and respondent.
- f. *Day*. A business day when Lake Region State College is in normal operation.
- g. *Deliberate Indifference*. When Lake Region State College's response to sexual harassment is clearly unreasonable in light of the information known to Lake Region State College at the time.
- h. *Domestic Violence*. Violence committed by the respondent, who is:
 - i. a current or former spouse or intimate partner of the complainant,
 - ii. a person with whom the complainant shares a child in common,
 - iii. cohabiting with or has cohabited with the victim as a spouse or intimate partner,
 - iv. similarly situated to a spouse of the complainant under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred,
 - v. by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or
 - vi. any person against whose acts the complainant is protected by N.D.C.C. ch. 14-07.1.
- i. Education program or activity. Includes locations, events, or circumstances where Lake Region State College exercises substantial control over both the respondent and the context in which the sexual harassment occurs, as well as in any building owned or controlled by a student organization that is officially recognized by Lake Region State College.
- j. *Fondling*. The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- k. *Formal Complaint*. A document filed by a complainant (which either contains the complainant's signature or indicates that the complainant is the one filing the complaint) or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that Lake Region State College investigate.
- l. *Incest*. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- m. *Rape*. Penetration, no matter how slight, of the vagina or anus of the complainant with any body part or object by the respondent, or oral penetration of the complainant by a sex organ of the respondent, without the consent of the complainant.
- n. *Respondent*. An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- o. *Sexual Assault*. Either rape, fondling, incest, statutory rape, or any of the sexual offenses listed in N.D.C.C. ch. 12.1-20 or by the FBI's Uniform Crime Reporting system.
- p. *Sexual Harassment*. Conduct, on the basis of sex, constituting one (or more) of the following:
 - i. An employee of Lake Region State College conditioning the provision of an aid, benefit, or service of Lake Region State College on an individual's participation in unwelcome sexual conduct.

- ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Lake Region State College's education program or activity; or
 - iii. Sexual assault, dating violence, domestic violence, or stalking, as defined in this section.
 - q. *Sexual Offense*. Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - r. *Stalking*. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.
 - i. Course of conduct means two or more acts, including, but not limited to, acts which the stalker 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.
 - ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
 - iii. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
 - s. *Statutory Rape*. Sexual intercourse with a person who is under the statutory age of consent. In North Dakota the statutory age of consent is eighteen (18).
 - t. *Supportive Measures*. Non-disciplinary, non-punitive individualized services offered as appropriate (as reasonably available) and without fee or charge to the complainant or respondent.
- 3) **Title IX Coordinator**. An official designated by Lake Region State College to ensure compliance with Title IX and the Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- a. Title IX Coordinator, Sandi Lillehaugen – Main Campus, Office 120; 701-662-1543; Sandra.Lillehaugen@lrsc.edu
 - b. Title IX Deputy Coordinator, Brandi Nelson – Main Campus, Office 119; 701-662-1509; Brandi.Nelson@lrsc.edu

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. 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, conflict of interest or discrimination by the Title IX Coordinator, contact the Lake Region State College Vice President of Student Affairs, Casey Zehrer 701-662-1608; Casey.Zehrer@lrsc.edu. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

- 4) **Mandated Reporters**. All Lake Region State College employees (faculty, staff, administrators) are required to report actual or suspected discrimination or harassment related to Title IX to appropriate officials immediately.

The following describe the reporting options at Lake Region State College 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:
 - i. LRSC professional counselors and intern
 - ii. 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.

Lake Region State College employees who must maintain confidentiality are still required to submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

- 5) **Title IX Policy.** Lake Region State College will notify applicants for admission and employment, students, and employees of its Title IX Policy.
 - a. This notification states:
 1. Lake Region State College does not discriminate on the basis of sex in its education program or activity.
 2. Title IX and 34 C.F.R. 106 require Lake Region State College not to discriminate on the basis of sex.
 3. This requirement to not discriminate extends to admission and employment.
 4. All inquiries about the application of Title IX and 34 C.F.R. 106 to Lake Region State College should be referred to the Title IX Coordinator, the Department of Education's Assistant Secretary for Civil Rights, or both.
 - b. This policy will be displayed on the LRSC website and in the Student Handbook.
- 6) **Grievance Procedures.** Lake Region State College has adopted and published grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging sexual harassment or sex discrimination, and a grievance process that complies with this policy. These grievance procedures shall only apply to sex discrimination and sexual harassment occurring within the United States.
 - a. Lake Region State College shall notify applicants for admission and employment, students, and employees of the Lake Region State College's grievance procedures and grievance process, including, but not limited to, how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how Lake Region State College will respond.
- 7) **Method of Reporting.** Any person may report violation of this policy. Such report may be made

in person, by mail, by telephone, or by email, using the Title IX Coordinator's contact information or any other means which results in the Title IX Coordinator receiving the report, regardless of the time of day. Reporters have the option to notify law enforcement authorities, to be assisted by campus authorities in notifying law enforcement authorities.

- 8) **Preservation of Evidence.** Individuals are strongly encouraged to take immediate steps to preserve all evidence that might support a future report or an investigation by the police, by LRSC, or both. Such evidence may include:
 - a. forensic sexual assault examination,
 - b. clothing, sheets or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags),
 - c. electronic exchanges (e.g., text messages, emails, and Facebook, Instagram, Snapchat or other social media posts, to the extent that they can be captured or preserved),
 - d. photographs (including photographs stored on smartphones and other devices),
 - e. voice-mail messages and other physical, documentary and/or electronic data that might be helpful or relevant in an investigation, and/or
 - f. electronic and photographic evidence that may be lost through the upgrade or replacement of equipment (including smartphones), software and/or accounts or may simply be lost to the passage of time.
- 9) **Equitable Treatment.** At all times, Lake Region State College will treat complainants and respondents equitably by following a grievance process which complies with this policy before the imposition of disciplinary sanctions, and by providing remedies to a complainant if a respondent is found to be responsible for sexual harassment.
- 10) **Rights and Options.** Individuals have the right to:
 - a. make a report to local law enforcement,
 - b. have disclosures of sexual misconduct, including dating violence, domestic violence, sexual assault, or stalking, treated seriously,
 - c. decide whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by LRSC,
 - d. participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard,
 - e. be treated with dignity and to receive courteous, fair, and respectful health care and counseling services,
 - f. be free from any suggestion that a complainant is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations,
 - g. not be required to unnecessarily repeat a description of the incident,
 - h. be protected from retaliation,
 - i. have access to at least one level of appeal of a determination,
 - j. be accompanied by an adviser of choice who may assist and advise a complainant or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process, and
 - k. exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process, and
 - l. receive written notification of this policy.

11) **Pre-Grievance Process.**

- a. **Timing.** This grievance process shall be carried out using reasonably prompt time frames, including time frames for filing and resolving appeals, and for informal resolution processes if offered. Notwithstanding, temporary delays or extensions of the time frames must be offered for good cause, with written notice to the parties setting forth the cause for the action.
 1. *Good cause.* May include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for accommodations for language or disability.
- b. **Actual Knowledge of Sexual Harassment.** With or without the filing of a formal complaint, once Lake Region State College has actual knowledge of sexual harassment within its educational program or activity in the United States, Lake Region State College must respond promptly and without deliberate indifference pursuant to this policy and any applicable policies.
 1. Once Lake Region State College has actual knowledge of sexual harassment, the Title IX Coordinator or designee must contact the complainant and:
 - a. Discuss the availability of supportive measures.
 - b. Consider the complainant's wishes regarding supportive measures.
 - c. Inform the complainant that supportive measures are available with or without the filing of a formal complaint; and
 - d. Explain the process of filing a formal complaint.
 2. No disciplinary sanctions or other actions which are not supportive measures may be imposed against a respondent prior to the conclusion of the grievance process.
- c. **Supportive Measures.** Lake Region State College may offer the complainant supportive measures designed to restore or preserve equal access to the education program or activity without unreasonably burdening the respondent, including measures designed to protect the health and safety of both parties or the educational environment, or to deter further sexual harassment.
 1. **Examples of Permissible Supportive Measures.** Lake Region State College must tailor any supportive measures to the parties' situations. Some possible supportive measures include, but are not limited to:
 - a. Counseling;
 - b. Extensions of deadlines or other course-related adjustments;
 - c. Modifications of work or class schedules;
 - d. Campus escort services;
 - e. Mutual restrictions on contact between the parties;
 - f. Changes in work or housing locations;
 - g. Leaves of absence; and
 - h. Increased security or monitoring of certain areas of campus.
 2. Lake Region State College must maintain confidentiality with respect to supportive measures unless disclosure is required to implement the supportive measures.
 3. The Title IX Coordinator shall coordinate the effective implementation of supportive measures.
 4. Supportive measures may not restrict any party's rights under the United States Constitution.
- d. **Emergency Removal.** Lake Region State College may remove a respondent from the

education program or activity on an emergency basis, provided that the Lake Region State College determines, based on an individualized safety and risk analysis, that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal.

1. Lake Region State College must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

- e. **Administrative Leave.** Lake Region State College may place a non-student employee respondent on administrative leave during the pendency of a grievance process.

12) Grievance Process.

a. **Formal Complaint and Notice of Allegations.**

1. Once a formal complaint is received by Lake Region State College, they must provide the following written notice to the known parties:

- a. Notice of the grievance process, including any informal resolution process.
- b. Notice of the allegations of sexual harassment, including:
 - i. Sufficient details known at the time and with sufficient time to prepare a response, including, but not limited to, the names of the parties, the conduct allegedly constituting sexual harassment, and the date and location of the alleged conduct.
- c. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- d. A statement that the parties may have an advisor of their choice, who may be an attorney, and may inspect and review evidence. The statement should also indicate that if the party does not have an advisor of choice, Lake Region State College will appoint an advisor to assist with cross-examination for the live hearing.
- e. Notice of any provisions in Lake Region State College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

2. If during the course of the grievance process, additional allegations are added to the investigation which were not included in the initial notice, Lake Region State College must provide notice of the additional allegations to the parties.

b. **Advisors.**

- 1. Parties to a grievance proceeding must be afforded the opportunity to select the advisor of their choice to assist them during the proceeding, including during the live hearing.
- 2. If a party does not choose an advisor, Lake Region State College shall provide the party with an advisor. At minimum, Lake Region State College shall provide an advisor to conduct the party's cross-examination at the hearing. However, nothing in this policy or the Title IX regulations should be read to prohibit Lake Region State College to provide an advisor for the full duration of the grievance process, provided that the parties are treated equally as to timing insofar as Lake Region State College appoints advisors for both parties.
- 3. Lake Region State College is not required to provide attorneys to parties to

act as advisors, but appointed advisors should be provided with access to appropriate training to ensure an understanding of the grievance process, though the same training provided to Title IX Coordinators, decision-makers, and investigators is not required.

4. Lake Region State College is not required to attempt to create equality of advisors between the parties, particularly where one party selects an outside advisor, but should endeavor to seek parity of advisors where Lake Region State College provides advisors to both parties.

c. **Member Roles.** Lake Region State College has trained Title IX members to serve in the following roles, at the direction of the Title IX Coordinator:

1. To provide appropriate intake of and initial guidance pertaining to complaints
2. To act as an advisor to the parties
3. To investigate complaints
4. To serve as a hearing facilitator
5. To serve as a decision-maker regarding the complaint
6. To serve on an appeal panel

d. **Investigation.**

1. Lake Region State College is required to investigate every filed formal complaint unless the complaint is subject to dismissal, below.
2. At all times, the burden of proof and the burden of gathering evidence sufficient to make a determination regarding responsibility rests on Lake Region State College, and they may not seek to shift that burden to the parties.
 - a. Notwithstanding, Lake Region State College may not restrict the parties' ability to discuss the allegations or to gather or present relevant evidence.
3. At all times, Lake Region State College shall observe a presumption that respondent is not responsible for the alleged conduct until and unless there is a determination of responsibility at the conclusion of the grievance process.
4. Lake Region State College may not access, consider, disclose, or otherwise use a party's medical records made or maintained in connection with the provision of treatment to the party, unless voluntary, written consent to do so is provided by the party (or the party's parent, if the party is not eligible to provide consent).
5. Lake Region State College may not require, allow, rely upon, or otherwise use evidence that constitutes, or questions that seek disclosure of, information protected under a legally recognized privilege, unless that privilege is waived.
6. Lake Region State College must provide to the parties written notice of the date, time, location, participation, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare.
7. The parties must be afforded an equal opportunity to have others present during any grievance proceeding, including their advisor, though Lake Region State College may establish restrictions regarding the extent to which the advisor may participate in the proceedings, so long as the restrictions apply equally to both parties and comply with this policy.
8. Both parties must have an equal opportunity to inspect and review any evidence obtained as part of the investigation related to the allegations raised in a formal complaint, including any evidence upon which Lake Region State

College does not intend to rely in reaching a determination of responsibility and any inculpatory or exculpatory evidence, from whatever source.

9. At least 10 days prior to the preparation of the investigative report, Lake Region State College must provide each party and the party's advisor the evidence obtained in the investigation in an electronic format or hard copy. The parties may submit a written response to the evidence, which the investigator shall consider prior to completion of the investigative report.

10. At the conclusion of the investigation, the investigator must create an investigative report that fairly summarizes the relevant evidence. At least 10 days prior to the hearing, the investigator must send a copy of the investigative report to each party and the party's advisor, if any, for review and written response.

e. **Dismissal.**

1. **Mandatory Dismissal.**

- a. Lake Region State College must dismiss the formal complaint if, at any time during the investigation or hearing:
 - ii. The conduct alleged would not constitute sexual harassment as defined in this policy even if proved;
 - iii. The conduct alleged did not occur in the education program or activity; or;
 - iv. The conduct alleged did not occur against a person in the United States.

2. **Permissive Dismissal.**

- a. Lake Region State College may dismiss the formal complaint if, at any time during the investigation or hearing:
 - i. A complainant notifies the Title IX Coordinator, in writing, that the complainant would like to the withdraw the formal complaint or any allegations contained in the formal complaint;
 - ii. The respondent is no longer enrolled or employed by Lake Region State College; or
 - iii. Specific circumstances prevent Lake Region State College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in the formal complaint.
- b. In the event that a formal complaint is permissively dismissed, Lake Region State College should consult with its legal counsel prior to taking action under another provision of its code of conduct to avoid taking actions constituting retaliation.

3. **Notice of Dismissal.** Upon a dismissal pursuant to this section, Lake Region State College must promptly send written notice of the dismissal and reasons therefore to both parties simultaneously.

f. **Consolidation of Formal Complaints.** Lake Region State College may consolidate formal complaints against more than one respondent, by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

g. **Live Hearing.**

1. The grievance process must provide for a live hearing after the completion of the investigative report. All evidence obtained by the investigator as part of the investigative process must be made available to the parties and the decision-maker at the live hearing.
2. The live hearing will be presided over by the decision-maker, who will not be the investigator or the Title IX Coordinator.
 - a. The decision-maker may be one individual or more than one individual as set by Lake Region State College.
3. At the request of either party, the hearing must be conducted with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or witness answering questions. Hearings may be conducted with all parties physically present in the same geographic location, or, any parties, witnesses, and other participants may appear at the live hearing virtually, so long as the participants are able to simultaneously see and hear each other.
4. At the live hearing, the decision-maker must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those questioning credibility. This cross-examination must be conducted directly (the questions may not be asked by the decision-maker), orally, and in real time by the party's advisor and never by a party personally.
 - a. Prior to a party or witness answering a question, the decision-maker must rule on the relevance of the question and explain any decision to exclude a question as not relevant.
 - b. Decision-makers may request, but may not require, that questions by the parties be submitted in advance, to permit the decision-maker to rule on the relevance of questions.
 - c. Lake Region State College may limit the extent to which the party's advisor may participate in the hearing by Lake Region State College.
5. *Rape Shield*. Questions and evidence about the complainant's sexual predisposition or sexual history are not relevant, unless such questions are offered to prove that someone other than the respondent committed the alleged conduct, or regard specific incidents of the prior sexual behavior with respect to the respondent, and are offered to prove consent.
6. *Cross-Examination*. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility. Decision-makers may not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence or refusal to answer cross-examination or other questions. There are no exceptions to this exclusion as there are in legal proceedings.
7. *Hearing Decorum*. Decision-makers may enforce rules to ensure hearing decorum, such as requiring respectful treatment, specifying any objection process, governing timing of hearing and length of breaks, etc.
8. Lake Region State College must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

h. Determination Regarding Responsibility.

1. *Standard of Evidence.* All decisions in grievance processes under Title IX shall require a determination of responsibility based on the preponderance of the evidence.
2. After the conclusion of the live hearing, the decision-maker must issue a written determination regarding responsibility, which must include:
 - a. Identification of the allegations potentially constituting sexual harassment;
 - b. Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of the Lake Region State College's code of conduct to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the respondent, and whether remedies will be provided to the complainant; and
 - f. The procedures, timelines, and permissible bases for the complainant and respondent to appeal.
3. The written determination must be provided to the parties simultaneously. The determination regarding responsibility becomes final either on the date that notice of the result of any appeal is provided to the parties, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
4. The Title IX Coordinator shall be responsible to implement any remedies provided by the written determination.

13) **Disciplinary Sanctions.** Disciplinary sanctions imposed after the conclusion of the grievance process shall be assessed pursuant to the Lake Region State College's code of conduct, student handbook, employee handbook, or similar document which sets possible disciplinary sanctions for violations of Title IX or code of conduct, and shall be proportional to the determination of responsibility. These may include, but are not limited to:

- a. Written warning
- b. Limited access to campus
- c. Suspension or expulsion
- d. Counseling or training
- e. Restitution
- f. Performance improvement
- g. Loss of privileges or wages
- h. Class or job reassignment
- i. Termination

14) **Remedies.** Remedies offered after the conclusion of the grievance process on a finding of responsibility must be designed to restore or preserve equal access to the education program or activity. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.

15) Appeals.

- a. Both parties must be offered the opportunity to appeal from a determination regarding responsibility or from the dismissal of a formal complaint (or any allegations within the formal complaint). The following may form the basis for an appeal:
 1. Procedural irregularity that affected the outcome of the grievance process.
 2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could have affected the outcome of the matter; or
 3. 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 for or against the individual complainant or respondent, that affected the outcome of the grievance process.
 4. Other basis set forth in the campus-level processes, but which must be offered equally to both parties (for example, an appeal based on the severity of the sanctions).
- b. Upon filing of an appeal, Lake Region State College must:
 1. Notify the non-appealing party in writing when an appeal is filed and implement appeal procedures equally for both parties.
 2. Ensure that the appeal's decision-maker is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator.
 3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
 4. Issue a written decision describing the result of the appeal and the rationale for the result; and
 5. Provide the written decision simultaneously to both parties.
- c. In the event that a disciplinary sanction of suspension or expulsion is imposed by the decision-maker, Lake Region State College shall provide a method of reviewing an appeal from a determination regarding responsibility or dismissal for a period of at least one year following the original decision. Lake Region State College may set a shorter deadline for appeals from lesser discipline or for appeals filed by the complainant.

16) Informal Resolution. Lake Region State College may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, a waiver of the right to an investigation and adjudication of formal complaints, and may not require the parties to participate in an informal resolution process. Similarly, Lake Region State College may not offer an informal resolution process unless a formal complaint is filed. Notwithstanding, at any time before the written determination is issued, Lake Region State College may facilitate an informal resolution process that does not involve a full investigation and adjudication, so long as Lake Region State College:

- a. Provides the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with

respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

- b. Obtains the parties' voluntary, written consent to the informal resolution process; and
- c. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

17) Amnesty for Complainants and Witnesses. Lake Region State College community encourages the reporting of misconduct and crimes by complainants and witnesses. It is in the best interests of Lake Region State College community that complainants choose to report misconduct to Lake Region State College 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, Lake Region State College will grant amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident to complainants and witnesses.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a respondent is not based on gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty, the incentive to report serious misconduct, is rarely applicable to the respondent.

18) Jurisdiction. This policy applies to all education programs and activities of the Lake Region State College, to conduct that takes place on the campus or on property owned or controlled by Lake Region State College, at Lake Region State College-sponsored events, or in buildings owned or controlled by Lake Region State College's recognized student organizations. The respondent must be a member of Lake Region State College's community in order for its policies to apply.

Jurisdiction for off-campus misconduct that deprives someone of access to a Lake Region State College educational program or activity will also be investigated. Lake Region State College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Lake Region State College interest.

Regardless of where the conduct occurred, Lake Region State College will address Title IX related notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial Lake Region State College 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 anyone.
- 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 Lake Region State College.

If the respondent is unknown or is not a member of Lake Region State College 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.

When the respondent is not a member of the Lake Region State College's community, supportive measures, remedies, and resources may be accessible to the complainant by contacting the Title IX Coordinator.

Lake Region State College may take other actions as appropriate to help protect the complainant against third parties, such as barring individuals from Lake Region State College property and/or events.

When the respondent is enrolled in or employed by another NDUS institution, the Title IX Coordinator will assist the complainant with the reporting process at that institution.

- 19) **Bystander Intervention.** To create cultural change on campus, it's important that the entire campus community is actively addressing issues contributing to sexual violence. Here are some safe and positive options for bystanders:
- a. Talk to your friends honestly and openly about sexual assault.
 - b. Don't be a bystander – if you see something, intervene in any way you can.
 - c. Trust your gut. If something looks like it might be a bad situation it probably is.
 - d. Be direct. Ask someone who looks like they may need help if they're okay.
 - e. Get someone to help you if you see something – enlist a friend, RA, bartender, or host to help step in.
 - f. Keep an eye on someone who has had too much to drink.
 - g. If you see someone who is too intoxicated to consent, enlist their friends to help them leave safely.
 - h. Recognize the potential danger of someone who talks about planning to target another person at a party.
 - i. Be aware if someone is deliberately trying to intoxicate, isolate, or corner someone else.
 - j. Creating a distraction, drawing attention to the situation, or separating them.
 - k. Understand that if someone does not or cannot consent to sex, it's rape.
 - l. Never blame the victim.
 - m. If you are a victim or survivor, or helping someone in that situation go to www.notalone.gov to get the resources and information you need. You can also call the National Sexual Assault Hotline at 1-800-656 HOPE.

20) **Training.**

- a. LRSC will provide prevention and awareness training to all incoming students and new employees. Additional training opportunities will be available on an ongoing basis for both students and employees. The training will:
 - i. Clearly state that the institution prohibits dating violence, domestic violence, sexual assault, stalking and hazing.
 - ii. Define these behaviors consistent with federal and state law.
 - iii. Detail how to respond to misconduct complaints, the procedures to file a complaint and the importance of confidentiality.
 - iv. Promote risk reduction and safe bystander intervention strategies.

- v. Provide information on recognizing warning signs, health relationships, consent, and how to access resources.
- b. Students living in the residence halls are required to complete prevention and awareness training within their first semester. Completion of this training is required in order to continue living in campus housing.
- c. All persons involved in the grievance process, including, but not necessarily limited to Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process, must receive training on the following areas:
 - i. The definition of sexual harassment;
 - ii. The scope of the education program activity;
 - iii. How to conduct an investigation and grievance process, including hearing, appeals, and information resolution processes, as applicable;
 - iv. How to serve impartially, including by avoiding prejudgment of facts at issue, conflicts of interest, and bias.
- d. Decision-makers must receive training on the following areas:
 - i. Any technology to be used at a live hearing
 - ii. Issues of relevance or questions and evidence, including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant.
- e. Investigators must also be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- f. All materials used to train the foregoing individuals must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.

21) Recordkeeping.

- a. Lake Region State College shall retain, for a period of seven years, records of:
 - 1. Each sexual harassment investigation, including any determination regarding responsibility; any audio or audiovisual recording or transcript; any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant.
 - 2. Any appeal and the result therefrom.
 - 3. Any informal resolution and the result therefrom.
 - 4. All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, which Lake Region State College must make available on its website.
- b. Lake Region State College must create and maintain for seven years, records of any actions, including records of supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, Lake Region State College must document the basis for its response was not deliberately indifferent, and document that it took supportive measures, or, if supportive measures were not provided, an explanation of why such a response was not clearly unreasonable in light of the known circumstances.

22) Retaliation.

- a. No institution or other person may intimidate, threaten, coerce, or discriminate

against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, 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 part.

- b. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.
- c. The exercise of rights protected under the First Amendment does not constitute retaliation.
- d. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, although a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
- e. Complaints alleging retaliation may be filed pursuant to the grievance procedures for sex discrimination under Title IX.

23) **Resources for Support.** Confidential access to resources, reporting options, services, advocacy and medical treatment is available through on campus counseling, off-campus advocates and counselors, and medical providers. A list of these resources is available on the college website or from the Title IX Coordinator.

Protection Orders and Restraining Orders are court orders and, thus, Lake Region State College is not able to issue them. LRSC will assist both the respondent and the complainant (or any member of the LRSC community impacted by an order of protection), by helping the parties understand the availability of an order, the potential content and parameters of an order, and the consequences for violating an order. LRSC will also assist a protected party in determining the arrest of an individual violating an order of protection.

24) **Confidentiality.** Notwithstanding Chapter 44-04 of the North Dakota Century code, the identity of any individual who has made a report or complaint of sex discrimination or sexual harassment, any complainant, any respondent, and any witness, including the conduct of any investigation, hearing or judicial proceeding arising thereunder, shall be confidential.

25) **Federal Timely Warning Obligations.** The Clery Act requires Lake Region State College to issue a timely warning for any violation that poses a serious or continuing threat to the campus community. This includes Title IX violations such as rape, sexual assault, domestic violence, dating violence, and/or stalking.

Lake Region State College 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.

26) **Policy Conflicts.** Any conflicts between this Policy and any existing SBHE Policy, NDUS

Procedure, Lake Region State College policy or procedure, or student or employee handbook shall be resolved in favor of this policy.

History

Administrative Council Approved 07/09/2015

Administrative Council Approved 1500.09 (9) 12/2021/2015

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