

Approved on 8/31/20

Administrative Council Meeting Minutes

Wednesday, August 12, 2020

Teams 10:00 a.m.

(Highlight in blue assignments that need to be completed)

VOTING MEMBERS PRESENT

Dr. Doug Darling- President

Lloyd Halvorson- Vice President for Academic/Student Affairs

Corry Kenner- Vice President for Administrative Affairs

NON-VOTING MEMBERS PRESENT

Richard Drury-Faculty Senate Representative

Bobbi Lunday-Recorder

Guests

1) CALL TO ORDER/REVIEW MINUTES

a) Call to Order

i) The meeting was called to order at 10:00 a.m.

b) Review of July 27, 2020 Minutes

i) The minutes of the previous meeting were reviewed and approved.

2) OLD BUSINESS

a) DOL Grant for Community Colleges (President)

i) No ideas generated from either department.

3) NEW BUSINESS

a) 400.29 Outlook Calendar Policy Proposal (Administrative Affairs)

i) Approved new policy (attached below)

b) 1500.09 Title IX Policy Update (Academic/Student Affairs)

i) NDUS rewrote Title IX policy and gave campuses until 8/14/20 to update their policy to reflect change. Repealed policy 1500.09 SEXUAL MISCONDUCT & TITLE IX COMPLIANCE. Approved policy 1500.09 TITLE IX and SEXUAL HARRASSMENT. The proposed replacement was approved with pending grammatical revisions due to the short period of time mandated to have the new one in place. Policies attached below with grammatical changes in place.

c) Suggestion Box Items

i) There were two suggestions on required testing and one on having office doors closed/locked. Council discussed and decided not to pursue corrective measures.

d) LRSC Restart Plan Updates (All)

i) VP Halvorson reported he is still waiting for COVID safe policies from faculty for specific areas. He is also concerned about the lack of COVID safe rules in place for the residence halls. [President Darling, VP Halvorson, VP Kenner will meet with Director Dunbar, Director Estenson and Director Shark and support them in writing the Covid19 safe regulations.](#)

ii) President Darling stressed the urgency for Faculty to have plans to teach students how to use the technology in case we have to go to distance synchronous learning.

e) HLC Update (Academic/Student Affairs)

i) HLC has added a 6th member to our team from Moorhead, MN. That member will come to campus to complete our visit.

f) Enrollment Report (Academic/Student Affairs)

- i) The Aug 6, 2020 enrollment report is down in year to year comparison, but non-degree are roughly half the credits and there are several dual credit schools yet to register as they were unable to register last spring.
- g) **Adult Farm Management position** (Academic/Student Affairs)
 - i) LRSC alum Bayarbat Badarch, has been chosen to fill the Adult Farm Management position.
- h) **Office Moves** (Academic/Student Affairs)
 - i) Steve Shark has moved into Brigitte Greywater's old office, Jessica Dimitch Director of Counseling has moved across the hall from Student Services and the counseling intern will be in the office next to her. In the third office along that wall will be where Stevan Waddell English/Head Volleyball coach will be located. Kelsey Walters Financial Aid Director has moved into Steve Shark's old office and Annie Rasmusson has traded places with Merissa Halvorson who will assist Walters with Financial Aid. Jenna Brooks will work from home as an online instructor for the first semester while Casey Zerher will teach her on campus classes. He will move to Melana Howe's office by the Business wing and Melana will move to Erin Wood's office in the Foundation area. Erin Wood will move to Katie Nettell's old office and Doreen will work from Alaina Schmid's old office in the Science wing and April Duchscher will move into Jenna's old office in room 32.
- i) **Flu Shot Clinic on Campus** (Academic/Student Affairs)
 - i) Melissa Moser would like to keep the flu shot event on campus. Council agreed that she should continue to schedule with Annette Groves of Ramsey County Health to give flu shots with social distancing in mind and maybe use the gym instead of Colonial room.
- j) **NDTC Offer** (President)
 - i) NDTC is remodeling and would like to offer LRSC first chance to have their office cubicles. There was some discussion about using them to turn room 34 into office space. Director Estenson and VP Halvorson can meet to assess. Faculty Representative Drury suggested setting a couple up in Heidi Schneider's lab area so her students can learn to work on computers in those cubical settings.

4) ADJOURNMENT

- a) **Adjournment**
 - i) The meeting was adjourned at 11:20 a.m.
- b) **Upcoming Scheduled Council Meetings**
 - (1) The next meeting of the Administrative Council will be M-Aug 31@2p



POLICY AND PROCEDURE MANUAL CHANGE REQUEST FORM

NAME OF POLICY, PROCEDURE OR FORM	CHAPTER NUMBER	ARTICLE NUMBER
OUTLOOK CALENDAR POLICY	400	29

REQUESTED ACTION: CHANGE ADD REMOVE

Text of Requested Change: (Continue on other side or attach a separate document.)

Outlook Calendar is the calendar and scheduling component of Outlook that is fully integrated with email, contacts, and other features. The use of Microsoft's Outlook Calendar is the official means of scheduling to facilitate the business purposes of LRSC.

1. The primary purpose of Microsoft's Outlook Calendar is provided to all staff and faculty of the Lake Region State College (LRSC) as a management tool to enhance the communications and scheduling needed to conduct college business in a consistent and efficient manner.

2. The use of Microsoft's Outlook Calendar for personal events and scheduling is secondary but adds value and convenience when used in conjunction with official business planning.

Procedure

1. Calendar Properties should have the default set to: Free/Busy time, subject, location.

2. Create appointments, meetings, class schedules and events on your Outlook Calendar, to enable LRSC leadership, management and peers to view for event and meeting planning, open and available times for work related projects, and for times when staff or faculty are absent, on leave, or out of the office.

3. Mark class time, appointments, meetings and events on your Outlook Calendar to show if you are to be considered available or unavailable by using the Show As feature: Free, Working Elsewhere, Tentative, Busy or Out of the Office.

4. All work and class related events and times should be shared and open for viewing.

5. All personal events and appointments scheduled during the workday can be marked as private.

HAS THIS CHANGE BEEN REVIEWED FOR CONSISTENCY WITH NDUS POLICY?	Reviewer Initials
<input type="checkbox"/> YES <input type="checkbox"/> NO	

NAME OF LRSC GROUP SUBMITTING CHANGE REQUEST	DATE
Administrative Affairs	8/13/2020
SIGNATURE & TITLE OF SUBMITTER	DATE
Digitally signed by Corry G. Kenner, VP for Admin Affairs Date: 2020.08.11 08:46:52 -05'00'	

ADMINISTRATIVE COUNCIL ACTION:

- | | |
|--|---|
| <input checked="" type="checkbox"/> REQUEST APPROVED | <input type="checkbox"/> REQUEST TABLED FOR FURTHER REVIEW
Date: _____ |
| <input type="checkbox"/> REQUEST NOT APPROVED | <input type="checkbox"/> REQUEST APPROVED WITH REVISIONS
Date: _____ |

LRSC PRESIDENT'S SIGNATURE	DATE
	8/12/2020

The official original copy of the Change Request will be filed in the President's Office and copies distributed to the:

- Faculty Senate President
- Staff Senate President

Final printed versions of the change will be distributed to the following for placement in paper manuals:

- Library Director
- Administrative Affairs
- Academic and Student Affairs
- CCF / Advancement

**Lake Region State College
Policy and Procedure Manual**

SECTION 400.29
OUTLOOK CALENDAR POLICY

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 - a. Mark class time, appointments, meetings and events on your Outlook Calendar to show if you are to be considered available or unavailable by using the Show As feature: Free, Working Elsewhere, Tentative, Busy or Out of the Office.
 - b. All work and class related events and times should be shared and open for viewing.
 - c. All personal events and appointments scheduled during the workday can be marked as private.

History

Administrative Council Approved 08/12/2020



**POLICY AND PROCEDURE MANUAL
CHANGE REQUEST FORM**

NAME OF POLICY, PROCEDURE OR FORM	CHAPTER NUMBER	ARTICLE NUMBER
SEXUAL MISCONDUCT & TITLE IX COMPLIANCE	1500	09

REQUESTED ACTION: CHANGE ADD REMOVE

Text of Requested Change: (Continue on other side or attach a separate document.)
This policy does not meet the Federal law for Title IX and needs to be repealed.

HAS THIS CHANGE BEEN REVIEWED FOR CONSISTENCY WITH NDUS POLICY?	Reviewer Initials
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	SJL

NAME OF LRSC GROUP SUBMITTING CHANGE REQUEST	DATE
Title IX Coordinator	8/11/2020
SIGNATURE & TITLE OF SUBMITTER	DATE
Sandi Lillehaugen Digitally signed by Sandi Lillehaugen Date: 2020.08.11 15:58:13 -05'00'	8/11/2020

ADMINISTRATIVE COUNCIL ACTION:

- REQUEST APPROVED REQUEST TABLED FOR FURTHER REVIEW
 Date: _____
 REQUEST NOT APPROVED REQUEST APPROVED WITH REVISIONS
 Date: _____

LRSC PRESIDENT'S SIGNATURE	DATE
	8/12/2020

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SECTION 1500.09
SEXUAL MISCONDUCT & TITLE IX COMPLIANCE

- 1) Lake Region State College (LRSC) strives to create a campus community free from interpersonal abuse. In working to achieve this intent, LRSC commits to:
 - a. Taking action to stop misconduct,
 - b. Taking action to remedy its effects by providing advocacy, support and appropriate referral services for recipients of the behavior,
 - c. Taking action to prevent recurrences,
 - d. Educating individuals and promoting discussions on interpersonal abuse and violence, and
 - e. Conducting impartial investigations of all reports of misconduct through fair, equitable and prompt procedures. Campus investigations will be conducted independently from any law enforcement investigations.

- 2) This policy is required by federal law and implementation is guided by the U.S. Department of Education, Office of Civil Rights.
 - a. In accordance with Title IX, LRSC does not discriminate on the basis of gender in educational programs, activities and/or employment.
 - b. Any form of retaliation is prohibited and is considered misconduct.
 - c. Misconduct is prohibited in all forms, regardless of intent to harm.
 - d. Also prohibited under Title IX is any rule violated on the basis of gender, gender identity and/or sexual orientation which is severe enough to cause discriminatory effect. This may include, but is not limited to bullying, cyber-bullying, relationship violence and stalking.

- 3) For the purpose of this policy, the following definitions apply:
 - a. Bullying is repeated and/or aggressive behavior likely to intimidate, hurt, control or diminish another person, physically or mentally. Cyber-bullying is bullying that takes place using technology.
 - b. Consent is 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.
 - c. Coercion is compelling another to engage in conduct by threatening to expose a secret or publicize an asserted fact, whether true or false, that would affect another's reputation, academic or otherwise, or cause emotional distress. Coercion also means to exploit fear or anxiety through intimidation, domination or control with the intent to compel conduct or compliance.
 - d. Domestic/Dating Violence is physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense committed by any person who is or has been in a relationship of a romantic or intimate nature with another.
 - e. Gender-based harassment is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the college's education or work programs or activities.

- f. Hostile environment is an environment in which misconduct occurs and is sufficiently severe, pervasive or persistent that it denies or limits a person's ability to participate in or benefit from any educational program, activity and/or employment.
- g. Incapacitation is a state where a person cannot make rational, reasonable decisions because they lack the capacity to give consent, due to the use of drugs or alcohol, unconsciousness, or because of an intellectual or other disability.
- h. Intimidation is threats or acts that cause reasonable fear.
- i. Misconduct is any conduct that qualifies as bullying, coercion, cyber-bullying, domestic/dating violence, sexual assault, sexual exploitation, sexual harassment, stalking, or other harassment as a result of a person's gender, sexual orientation or gender identity.
- j. Retaliation is any type of harassment or adverse action taken against a person because of their participation in a misconduct investigation.
- k. Responsible employees include all LRSC faculty, staff and volunteers.
- l. Sexual Activity includes both sexual acts and sexual contact.
 - i. Sexual Act is sexual contact involving penetration, however slight, between the penis and the vulva, the penis and the anus, the penis and the mouth, the mouth and the vulva, or any other portion of the human body and the penis, anus or vulva; or the use of an object which comes in contact with the victim's penis, vulva or anus.
 - ii. Sexual Contact means any touching, whether or not through the clothing or other covering, of sexual or other intimate parts of the person. Intimate parts would include the groin, buttocks, breasts or genitalia (penis/vulva).
- m. Sexual Assault is when a person knowingly engages in sexual activity with another or who causes another person to engage in sexual activity:
 - i. Without consent,
 - ii. Using force, threats, intimidation or coercion,
 - iii. When a person knows or has reasonable cause to believe that the victim is unaware that sexual activity is being committed upon him or her,
 - iv. When a person knows or has reasonable cause to believe that the victim suffers from a mental disease or defect which renders the victim incapable of understanding the nature of the person's conduct, or
 - v. When a person, or someone with knowledge of that person's intent, has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing, without the victim's knowledge, intoxicants, a controlled substance, or other means for the purpose of preventing resistance.
- n. Sexual Exploitation is the intent to arouse, appeal to, or gratify a person's lust, passions or sexual desires. This may include, but is not limited to:
 - i. Masturbating in a public place or in the presence of a minor,
 - ii. Exposing one's penis, vulva, or anus in a public place or to a minor in a public or private place,
 - iii. Engaging in voyeurism or surreptitiously intruding on another's right to sexual privacy,
 - iv. Knowingly exposing another to a sexual transmitted disease or HIV,
 - v. Prostituting another person or one's self,
 - vi. Recording, photographing, disseminating, publishing (electronically or otherwise) or relaying sexual images of another without written consent.
- o. Sexual harassment includes unwelcome behavior of a sexual nature that is made explicitly or implicitly a condition of an individual's education, employment, or participation in college-sponsored programs or activities. When the submission to or rejection of such behavior or conduct is a factor in decisions affecting that individual's education, employment, or participation in college-sponsored programs or activities sexual harassment has occurred. Sexual harassment has also occurred when the behavior creates an objectively hostile environment, or is sufficiently severe, persistent, or pervasive.
- p. Sexual image is any image that qualifies under the definition in the North Dakota Century Code 12.1-27.1-03.1 or any image that is sufficiently provocative to show sexual intent.

- q. Sexual misconduct is any conduct that qualifies as sexual assault, sexual exploitation, or sexual harassment.
- r. Stalking is engaging in intentional course of conduct directed at a specific person, which frightens, intimidates, or harasses that person, and that serves no legitimate purpose. The course of conduct may be directed toward that person or a member of that person's immediate family or household and must cause a reasonable person to experience fear, intimidation, or harassment.

In the absence of a definition included in this policy, that provided by the North Dakota Century Code will be used.

- 4) **APPLICABILITY:** Any incident of misconduct that may affect a student, employee, visitor, or volunteer's ability to participate in or benefit from a LRSC educational program, activity, and/or employment. This policy applies to all students, employees, visitors, and volunteers, and other third parties at all on and off campus locations.
- 5) **SEEKING ASSISTANCE:** 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.
- 6) **AMNESTY FOR ALCOHOL, DRUG AND OTHER CODE OF CONDUCT VIOLATIONS:** Students who experience sexual misconduct, report an incident of sexual misconduct, or assist a victim of sexual misconduct, while under the influence of alcohol or other drugs will not be subject to the student conduct process or suffer discipline from any other college sanctioned activity, club, or team for the alcohol or drug offense, nor will the alcohol or drug offense become part of the student's conduct record. LRSC cannot absolve anyone of criminal responsibility. Counseling referrals may be made as deemed appropriate by the Title IX Coordinator or Director of Student Affairs.

REPORTING: Responsible employees must address sex and gender-based discrimination and harassment by reporting misconduct to the Title IX Coordinator or a vice-president. Others are encouraged to immediately report violations of this policy. Incidents may be reported regardless of how much time has passed. The report must be made to or forwarded to the Title IX Coordinator or a vice president. Third party and anonymous complaints will be accepted, however, LRSC's ability to investigate and resolve may be limited.

Lake Region State College Title IX Staff:

Sandi Lillehaugen, Title IX Coordinator - Office 120; 701-662-1543; Sandra.Lillehaugen@lrsc.edu
Brandi Nelson, Title IX Deputy Coordinator - Office 119; 701-662-1509; Brandi.Nelson@lrsc.edu

If criminal activity is involved, students and employees may contact local law enforcement. If an individual chooses to file a report with the police for sexual misconduct, it is important not to destroy physical evidence. An evidence collection kit, preventative treatment for sexually transmitted diseases, treatment of injuries and other health services can be obtained from any medical provider.

- 7) **CONFIDENTIALITY:** Individuals may request confidentiality. The Title IX Coordinator will evaluate the request and determine the extent to which confidentiality may be maintained. LRSC must weigh the requests for confidentiality against its need to protect the safety and security of the entire campus.
- 8) **EMPLOYEE RESOLUTION:** Accused employees are subject to NDUS and SBHE policies and procedures regarding resolution, adjudication, appeals, discipline and/or dismissal.
- 9) **STUDENT RESOLUTION:** Misconduct complaints may be resolved formally or informally. LRSC will attempt to complete the investigation within 60 days. During this process, the complainant and the accused shall:
 - a. Receive written notice:
 - 1. Identifying the allegation(s) against the student.

2. Providing three days' notice to any requests for information or response from the accused. The notice requirement can be waived if the accused consents to a shorter notice period. The notice process may also be waived during an emergency suspension process.
 3. Of information about the right to have a support person, advocate or attorney, at the student's expense and initiation, to fully participate in the process.
- b. Have equal opportunity to present witnesses and other evidence and respond to allegations.
 - c. Be provided with timely and equal access to information.
 - d. Be informed of the outcome, the sanction (if any) and the right to appeal.

10) INFORMAL RESOLUTION: Except in cases that may result in a student's suspension or expulsion, complainants may choose to pursue an informal resolution. Informal resolution is entirely voluntary and must be agreed upon by the complainant and accused. The Title IX Coordinator will investigate or assign an investigator to oversee this process. The Director of Student Affairs shall decide the appropriate sanction to be imposed. No appeal is allowed.

11) STUDENT ADJUDICATION PROCESS

a. Investigation Process

1. The Title IX Coordinator shall be responsible to assign each formal complaint to an investigator(s).
2. The Title IX Coordinator may recommend interim measures to the Director of Student Affairs.
3. Interim measures will be communicated in person (when possible) and in writing to both the complainant and the accused. These may include, but are not limited to:
 - a. Assistance moving safely between campus buildings,
 - b. Issuing a no contact order to the complainant and/or accused,
 - c. Moving the complainant and/or accused to different campus housing,
 - d. Altering the class schedule of the complainant and/or accused,
 - e. Providing counseling services,
 - f. Providing academic support services, and/or
 - g. Placing student employees on leave or suspension pending the outcome of the investigation.

b. Decision-making Process

1. The Director of Student Affairs and Title IX Coordinator shall:
 - a. Review the investigative report, and consider only relevant evidence while excluding evidence that is neither relevant nor probative.
 - b. Determine whether policy was violated using a "preponderance of the evidence" standard.
 - c. Decide the appropriate sanctions to be imposed. These may include, but are not limited to:
 1. Written warning
 2. Limited access to campus
 3. Suspension or expulsion
 4. Counseling or training
 5. Restitution
 6. Performance improvement
 7. Loss of privileges or wages
 8. Class or job reassignment
 9. Termination

2. The Title IX Coordinator will communicate in person (when possible) and provide in writing the final decision to both the complainant and the accused.

- c. Student Appeal Process: Both the complainant and accused have the right to appeal. An appeal must be made in writing to the Title IX Coordinator within 60 days of notification of the final decision. The other

person will be notified if an appeal has been filed. The Title IX Coordinator will assign members to the appellate panel.

The original decision may be appealed only due to:

1. **Procedural Errors:** The appellant alleges that there was a deviation or change from the procedures outlined in the adjudication process which adversely impacted the outcome of the complaint. If the appellate panel determines that there was a procedural error which may have altered the outcome of the case, the appeal will be investigated.
2. **New Evidence:** The appellant alleges that new evidence became available which would have impacted the outcome of the complaint. The appellant must (i) present the new evidence, (ii) explain why it was unavailable prior to the original decision and (iii) prove that the new evidence may have altered the outcome. The other person will be given an opportunity to address the new evidence.
3. **Severity of the Disciplinary Action:** The accused believes that the disciplinary action issued was insufficient or excessive.

The appellate panel will make a recommendation to the Vice President of Administrative Affairs who will then make the final decision and impose sanctions, if any, within 21 calendar days.

The accused has an additional right to appeal, within one year of the original final decision, to the Vice President of Academic and Student Affairs. The Vice President of Academic and Student Affairs may grant a rehearing, order a new hearing, reduce or modify the suspension or expulsion, grant other appropriate relief or uphold the original decision. Upon conclusion of all appeal activities, a final decision will be made within 21 days. If the appeal results in the reversal of the decision or a change to the sanction, the institution may reimburse the student for any tuition and fees paid to the institution for the period of suspension or expulsion which had not been previously refunded.

The Vice President of Academic and Student Affairs reserves the right to hear an appeal at any time should exculpatory information become available.

12) RECORDS RETENTION/REPORTING

1. **Document Retention:** After the decision has been issued, and after all appeals have been exhausted, all materials created by or reviewed by the investigators and/or the appellate panel will be retained by the Title IX Coordinator in accordance with the NDUS Records Retention Schedule.
2. **Internal Reporting:** If the final decision involves suspension, expulsion or termination, the resolution will become a permanent part of the accused student or employee record.
3. No student involved can be required to sign a nondisclosure agreement or to otherwise agree to a prohibition from truthfully discussing the case.

13) **FALSE REPORTS:** Knowingly making a false statement, presenting inaccurate information or withholding evidence constitutes misconduct under LRSC Policy 800.30 (Student Conduct) and Policy 1500.05 (Code of Conduct) and may result in disciplinary action.

14) **RETALIATION:** Any person who retaliates against an individual reporting misconduct, filing a misconduct complaint or participating in an investigation is subject to disciplinary action up to and including suspension, expulsion or termination.

15) **TRAINING:** LRSC will engage in and require prevention and awareness training for students and employees who live, learn and/or work on the LRSC campus. Annual training for LRSC's conduct and misconduct policies will be provided. Student training will focus on how to file a misconduct complaint, discussion on consent and incapacitation, resources available, complaint procedures, and bystander intervention. Employee training will

focus on how to appropriately respond to misconduct complaints, the procedures to file a complaint and the importance of confidentiality. More comprehensive training will be provided to Title IX coordinators, investigators and others involved in the adjudication process. The Title IX Coordinator will be responsible to organize the training and track completion. Failure to attend constitutes minor misconduct under the LRSC Student Conduct policy (800.30) and/or a violation of the LRSC Code of Conduct policy (1500.05).

- 16) The Title IX Coordinator is responsible for coordinating compliance with federal and state discrimination and sexual harassment laws. The Title IX Coordinator is also responsible to:
- a. Ensure an up-to-date Sexual Misconduct & Title IX Compliance Policy,
 - b. Provide educational programs regarding harassment, discrimination and misconduct,
 - c. Respond to, investigate and seek resolutions to Title IX complaints,
 - d. Ensure impartial, fair and prompt investigation into all complaints,
 - e. Provide training to students and employees,
 - f. Oversee all Title IX complaints and reporting of student and employee misconduct,
 - g. Identify and address all systems relating to misconduct, and
 - h. Collaborate with law enforcement when investigations overlap.

LRSC has reporting obligations under The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act). LRSC must disclose information about certain crimes that occur on campus, on public property within or immediately adjacent to the campus, and in or on other buildings or property that are owned or controlled by LRSC. The Clery Act also requires LRSC to issue timely warning notices about crimes that pose a serious or on-going threat to the campus community. The Director of Academic Affairs is responsible for Clery Act reporting and compliance.



**POLICY AND PROCEDURE MANUAL
CHANGE REQUEST FORM**

NAME OF POLICY, PROCEDURE OR FORM	CHAPTER NUMBER	ARTICLE NUMBER
Title IX and Sexual Harassment	1500	09

REQUESTED ACTION: CHANGE ADD REMOVE

Text of Requested Change: (Continue on other side or attach a separate document.)
New policy to replace repealed Sexual Misconduct and Title IX Compliance. This policy meets the Federal regulations that go into effect on August 14, 2020.

HAS THIS CHANGE BEEN REVIEWED FOR CONSISTENCY WITH NDUS POLICY?	Reviewer Initials
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	SJL

NAME OF LRSC GROUP SUBMITTING CHANGE REQUEST	DATE
Title IX Coordinator	8/11/20
SIGNATURE & TITLE OF SUBMITTER	DATE
Sandi Lillehaugen Digitally signed by Sandi Lillehaugen Date: 2020.08.12 08:25:07 -05'00'	8/11/20

ADMINISTRATIVE COUNCIL ACTION:

- REQUEST APPROVED REQUEST TABLED FOR FURTHER REVIEW
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 REQUEST NOT APPROVED REQUEST APPROVED WITH REVISIONS
 Date: 8/12/2020

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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.

- 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. *Dating Violence.* 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.
 - e. *Day.* A business day when Lake Region State College is in normal operation.
 - f. *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.
 - g. *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; or
 - v. any person against whose acts the complainant is protected by N.D.C.C. ch. 14-07.1.
 - h. *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.
 - i. *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.
 - j. *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.
 - k. *Incest.* Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

- i. *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.
- m. *Respondent*. An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- n. *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.
- o. *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.
- p. *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.
- q. *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).
- r. *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 Academic and Student Affairs, Lloyd Halvorson, 701-662-1681; Lloyd.Halvorson@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:
 - i. Lake Region State College does not discriminate on the basis of sex in its education program or activity.
 - ii. Title IX and 34 C.F.R. 106 require Lake Region State College not to discriminate on the basis of sex.
 - iii. This requirement to not discriminate extends to admission and employment.
 - iv. 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 Sexual Harassment.** Any person may report sex discrimination, including sexual harassment (whether or not the person making the report is the victim of the alleged sexual harassment or sex discrimination). 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.
- 8) **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.
- 9) **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.

- i. **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.
 - i. 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.
 - ii. 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.
 - i. **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.
 - ii. Lake Region State College must maintain confidentiality with respect to supportive measures unless disclosure is required to implement the supportive measures.
 - iii. The Title IX Coordinator shall coordinate the effective implementation of supportive measures.
 - iv. 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.
 - i. 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.

10) Grievance Process.

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

- i. 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.
 - ii. 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.**
- i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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:
- i. To provide appropriate intake of and initial guidance pertaining to complaints
 - ii. To act as an advisor to the parties
 - iii. To investigate complaints
 - iv. To serve as a hearing facilitator
 - v. To serve as a decision-maker regarding the complaint
 - vi. To serve on an appeal panel
- d. Investigation.**
- i. Lake Region State College is required to investigate every filed formal complaint unless the complaint is subject to dismissal, below.

- ii. 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.
 - iii. 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.
 - iv. 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).
 - v. 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.
 - vi. 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.
 - vii. 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.
 - viii. 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.
 - ix. 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.
 - x. 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.**
- i. **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.
 - ii. **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.
 - iii. **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.**
 - i. 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.
 - ii. 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.
 - iii. 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.
 - iv. 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.
 - v. **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.
 - vi. **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.

- vii. *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.
- viii. 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.

- i. *Standard of Evidence.* All decisions in grievance processes under Title IX shall require a determination of responsibility based on the preponderance of the evidence.
- ii. 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.
- iii. 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.
- iv. The Title IX Coordinator shall be responsible to implement any remedies provided by the written determination.

11) 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.

12) 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.

13) 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:
 - i. Procedural irregularity that affected the outcome of the grievance process.
 - ii. 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
 - iii. 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.
- iv. 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:
 - i. Notify the non-appealing party in writing when an appeal is filed and implement appeal procedures equally for both parties.
 - ii. 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.
 - iii. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
 - iv. Issue a written decision describing the result of the appeal and the rationale for the result; and
 - v. 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.
- 14) **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.

15) **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.

- 16) **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.

17) **Training.**

- a. 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 or activity;
 - iii. How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable;
 - iv. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- b. Additionally, 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.
- c. Investigators must also be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- d. All materials used to train the foregoing individuals must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.
- e. All training materials used to train the foregoing individuals must be made available to the public by posting on the Lake Region State College's website.

18) Recordkeeping.

- a. Lake Region State College shall retain, for a period of seven years, records of:
 - i. 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.
 - ii. Any appeal and the result therefrom.
 - iii. Any informal resolution and the result therefrom.
 - iv. 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.

19) 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.

- 20) 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.

21) **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.

22) **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.