

Sexual Misconduct Policy, Section I: Institutional Values and Community Expectations

Lewis & Clark College is committed to providing a non-discriminatory and harassment-free educational, living and working environment for all members of the Lewis & Clark community, including students, faculty, administrators, staff, and visitors. The College prohibits all forms of sexual or gender-based harassment, discrimination or violence. Misconduct of this nature is contrary to Lewis & Clark's institutional values and is prohibited by state and federal law. Sexual or gender-based violence includes non-consensual sexual contact, non-consensual sexual penetration, sexual exploitation, and intimate partner violence.

Lewis & Clark encourages the prompt reporting of any incident of sexual or gender-based misconduct to the College and to local law enforcement or civil rights enforcement agencies. Upon learning of a report, the College will take prompt and effective action by: providing interim measures and support for individuals who seek assistance under this policy (referred to as the "Reporting Party"); addressing the safety of individuals and the campus community; and as warranted, pursuing resolution through informal measures or formal disciplinary action against the accused individual (referred to in this policy as the "Respondent").

Amnesty for Alcohol or Other Drug Use

The college community encourages the reporting of prohibited conduct under this policy. It is in the best interest of this community that as many Reporting Parties as possible choose to report to college officials, and that witnesses come forward to share what they know. To encourage reporting, an individual who reports sexual harassment or other forms of prohibited conduct, either as a Reporting Party or a third-party, will not be subject to disciplinary action by the College for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may,

however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

Retaliation

Retaliation should be reported promptly to the Title IX Coordinator, and a finding of responsibility for retaliation may result in disciplinary action independent of any sanction or interim measures imposed in response to the underlying allegations of sexual or gender-based misconduct. Retaliation includes any action or threat of action designed to dissuade a person from reporting misconduct or participating truthfully in an investigation.

Prosocial action encouraged

The College encourages all members of our community to engage in creating a safe, welcoming and respectful environment on campus. In particular, the College expects that all Lewis & Clark community members will take reasonable and prudent action to prevent or stop an act of sexual misconduct. Taking action may include direct intervention when safe to do so, enlisting the assistance of friends, contacting law enforcement, or seeking assistance from a person in authority. Community members who chose to exercise this positive moral obligation will be supported by the College and protected from retaliation.

Sexual Misconduct Policy, Section II: Resources

This page is incorporated into policy, but will be updated and amended as contact information changes. Please also refer to the resources on our student-focused webpage, here:

<https://www.lclark.edu/healthy-relationships/>

There are many resources available on campus and in the surrounding community. As detailed below, there are Confidential Resources that by law cannot share information without the consent of the individual seeking assistance. There are also a variety of College resources that will be discreet and private, but are not considered confidential. These resources will maintain

the privacy of an individual's information within the limited circle of those directly involved in assisting the individual or resolving a formal complaint.

A. Confidential Resources

There are several legally-protected confidential resources available as designated below. These confidential resources will not share information with the College or anyone else without the individual's permission.

On Campus Confidential Resources:

Confidential Advocate, formerly known as Sexual Assault Response Advocate

Provides crisis support and resource options to community members who experience sexual assault of any kind. Support includes, but is not limited to, advising, support, and connection to additional resources.

<http://go.lclark.edu/SARA>

Sexual Assault Response Network Coordinator

Melissa Osmond, Associate Director of Health Promotion and Wellness

Support includes, but is not limited to advising, case management, and accompanying survivors to rape treatment centers or medical services. As the SARN Coordinator, conducts comprehensive outreach and educational programming.

(503) 768-7112, mosmond@lclark.edu

Lewis & Clark Counseling Service

Provides psychological counseling services.

(503) 768-7160, counsel@lclark.edu

Lewis & Clark Student Health Service

Provides medical examinations, examinations, STI testing, pregnancy screening, birth control counseling and supplies (including emergency contraception). Also provides referral to off campus medical providers and specialists.

(503) 768-7165, health@lclark.edu

Office of Religious & Spiritual Life

Provides spiritual guidance and in the context of ordained clergy, religious support.

(503) 768-7085, chapel@lclark.edu

Ombuds Office

Provides impartial, informal, and independent perspective.

(503) 768-7336, ombuds@lclark.edu

Employee Assistance Program

Provides telephone consultation or face-to-face meeting with a master's level consultant; also provides educational materials through an online library of downloadable materials and interactive tools.

(800) 433-2320

esupport@cascadecenters.com

Off Campus Confidential Resources:

Call to Safety

Provides a 24-hour hotline for survivors of domestic violence and sexual assault, and concerned family, friends, and community members. Hotline advocates are available to provide crisis intervention and to connect callers with local domestic violence and sexual assault/rape service providers.

(503) 235-5333

Sexual Assault Resource Center

Provides a 24-hour hotline with resources and referrals to counseling, hospitals, legal information, safe places, support groups, multi-cultural/bilingual resources and religiously affiliated resources.

(503) 640-5311

Rape, Abuse and Incest National Network (RAINN)

An anonymous national sexual assault hotline.

(800) 656-4673

Rape Victim Advocates – Multnomah County

Advocates provide free and anonymous resources and referrals to counseling, safe places, and support groups. This service specializes in legal options, information and assistance regarding criminal charges and crime victim compensation.

(503) 988-3222

Sexual and Gender Minorities Youth Resource Center (SMYRC)

SMYRC provides mental health counseling to sexual minority youth 23 and under. Services include assessment, individual treatment, groups, couples, and family therapy.

(503) 872-9664

B. Confidential Medical Resources

A medical provider can provide emergency and/or follow-up medical services.

A medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect (including prevention of sexually transmitted illnesses and pregnancy) and second, to properly collect and preserve evidence. There is a limited window of time (within 84 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any particular course of action. The decision to seek timely medical attention and gather any evidence, however, will preserve the full range of options to seek resolution under this policy or through the pursuit of criminal prosecution.

On campus, the Student Health Service can provide medical care; however, they are not equipped for forensic examinations. The following local health care facilities offer Sexual Assault Forensic Exams (SAFE):

OHSU Emergency Room: (503) 494-7551

Hospital home page: <http://www.ohsu.edu/xd/health/index.cfm>

Location: 3181 S.W. Sam Jackson Park Rd. Portland, Oregon 97239

Legacy Emanuel Emergency Room: (503) 413-4121

Home page:

<http://www.legacyhealth.org/locations/hospitals/legacy-emanuel-medical-center.aspx>

Location: 2801 N. Gantenbein St. Portland, OR 97227-1623

Transit: TriMet 4, 33, 44

Providence Portland Medical Center - Glisan St: 503-215-6000

Hospital home page: <http://oregon.providence.org/patients/Pages/default.aspx>

Location: 4805 NE Glisan St. Portland, OR 97213-2933

Transit: TriMet 19

Providence St. Vincent's Emergency Room: 503-216-1234

Hospital home page: <http://oregon.providence.org/patients/Pages/default.aspx>

Location: 9205 SW Barnes Rd. Portland, OR 97225-6603

Transit: TriMet 20

C. Additional Campus Resources

In addition to those listed above and the Title IX team, Lewis & Clark community members have access to a variety of other resources provided by the College. The staff members listed below are trained to support individuals affected by sexual harassment or misconduct and to coordinate with the Title IX Coordinator consistent with the College's commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will maintain the privacy of an individual's information within the limited circle of those involved in the Title IX resolution process.

Campus Living

Can provide reasonable remedies and arrangements for housing. Available on weekdays during regular office hours.

living@lclark.edu, (503) 768-7123

Campus Safety

Available as a first option to report an incident of sexual violence or intimate partner violence. Also provides an escort service on campus to any student. Available 24 hours a day, 7 days a week.

(503) 768-7777 (emergency line)

Office of the Vice President of Student Life and Dean of Students

Can provide connection to a network of support and resources.

VPSL@lclark.edu, (503) 768-7110

D. Community Resources

Students, faculty and staff may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention and assistance in dealing with the criminal justice system. All individuals are encouraged to use the resources that are best suited to their needs, whether on or off campus.

It may be helpful for survivors to have someone who can help them explore their off-campus options and guide them through legal processes; a campus Sexual Assault Response Advocate (SARA) can provide assistance in this area. In addition, two local resources, Call to Safety and the Sexual Assault Resource Center offer advocacy support.

Portland Police Bureau: 503-823-0000, 503-823-3333 (non-emergency)

Home page: <http://www.portlandoregon.gov/police/30539>

Location: 1111 S.W. 2nd Avenue Portland, OR 97204

Multnomah County Victim Assistance: (503) 988-3222

Home page: <http://web.multco.us/dcj/victims>

Police Sexual Assault Detail Department: (M-F, 8am-4pm): (503) 823-0434

Domestic Violence Reduction Unit 8am-4pm): (503) 998-6400

Home page: <http://www.portlandoregon.gov/police/35679>

Women Strength (Free self-defense classes through the Portland Police Bureau)

Website: <http://www.portlandoregon.gov/police/35911>

Sexual Misconduct Policy,

Section III: Prohibited Conduct

The College prohibits all forms of sexual and gender-based harassment, including sexual violence and intimate partner violence. Each of these terms encompasses a broad range of behavior. In general, sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to incapacitation. Intimate partner violence refers to any act of violence or threatened act of violence, sexual or otherwise, against a person who is or has been involved in a sexual, dating, domestic or other intimate relationship with that person.

A. Consent: Force, Coercion, Incapacitation, Drugs and Alcohol

Consent: Consent consists of an affirmative, conscious decision by each participant to engage in mutually agreed-upon sexual activity. The following are essential elements of effective consent:

Informed and reciprocal: All parties must demonstrate a clear and mutual understanding of the nature and scope of the act to which they are consenting and a willingness to do the same thing, at the same time, in the same way.

Freely and actively given: Consent cannot be obtained through the use of force, coercion, threats, intimidation or pressuring, or by taking advantage of the incapacitation of another individual.

Mutually understandable: Communication regarding consent consists of mutually understandable words and/or actions that indicate an unambiguous willingness to engage in sexual activity. In the absence of clear communication or outward demonstration, there is no consent. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response. An individual who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. Relying solely upon non-verbal communication can lead to a false conclusion as to whether consent was sought or given.

Not indefinite: Consent can be withdrawn by any party at any time. Recognizing the dynamic nature of sexual activity, individuals choosing to engage in sexual activity must evaluate consent in an ongoing manner and communicate clearly throughout all stages of sexual activity. Withdrawal of consent can be an expressed “no” or can be based on an outward demonstration that conveys that an individual is hesitant, confused, uncertain or is no longer a mutual participant. Once consent is withdrawn, the sexual activity must cease immediately and all parties must obtain mutually expressed or clearly stated consent before continuing further sexual activity.

Not unlimited: Consent to one form of sexual contact does not constitute consent to all forms of sexual contact, nor does consent to sexual activity with one person constitute consent to activity with any other person. Each participant in a sexual encounter must consent to each form of sexual contact with each participant.

Even in the context of a current or previous intimate relationship, each party must consent to each instance of sexual contact each time. The consent must be based on mutually understandable communication that clearly indicates a willingness to engage in sexual activity. The mere fact that there has been prior intimacy or sexual activity does not, by itself, imply consent to future acts.

In the state of Oregon, minors under the age of 18 cannot give consent.

Force: Force is the use or threat of physical violence or intimidation to overcome an individual’s freedom of will to choose whether or not to participate in sexual activity. For the use of force to be demonstrated, there is no requirement that a Reporting Party resists the sexual advance or request. However, resistance by the Reporting Party will be viewed as a clear demonstration of non-consent.

Coercion: Coercion is the improper use of pressure to compel another individual to initiate or continue sexual activity against their will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Coercion includes, but is not limited to: threatening to “out” someone based on sexual orientation, gender identity or gender expression, and threatening to harm oneself if the other party does not engage in the sexual activity.

Incapacitation: Incapacitation is a state where an individual cannot make an informed and rational decision to engage in sexual activity because they lack conscious knowledge of the nature of the act (e.g., to understand the who, what, when, where, why, or how of the sexual interaction) and/or is physically helpless. An individual is incapacitated, and therefore unable to give consent, if they are asleep, unconscious, or otherwise unaware that sexual activity is occurring.

Incapacitation may result from the use of alcohol and/or drugs. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation. The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impact an individual's:

- decision-making ability;
- awareness of consequences;
- ability to make informed judgments; or
- capacity to appreciate the nature and the quality of the act.

In evaluating incapacitation, the decision-maker considers the totality of available information in determining two issues:

1. Was the Reporting Party incapacitated; AND
2. Did the Respondent know, or should the Respondent reasonably have known, the Reporting Party was incapacitated?

Alcohol and Other Drugs: In general, sexual contact while under the influence of alcohol or other drugs poses a risk to all parties. Alcohol and drugs impair a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

Being intoxicated or impaired by drugs or alcohol is never an excuse or defense for sexual harassment or other forms of prohibited conduct, and does not diminish one's responsibility to obtain consent.

B. Forms of Prohibited Conduct

Sexual misconduct may fall under the scope of Title IX prohibited conduct. If the reported conduct would fall within the Title IX definition, a formal investigation and Live Hearing will be required.

B1. Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature.

Sexual harassment can include:

- unwelcome sexual advances,
- requests for sexual favors, or
- other verbal, nonverbal or physical conduct of a sexual nature;
- where such conduct is sufficiently severe or pervasive that it has the effect, intended or unintended,
- of unreasonably interfering with an individual's work or academic performance or
- it has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person.

Sexual Harassment includes, but is not limited to:

attempting to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; cyber-bullying of a sexual nature; retaliation for a refusal to comply with a sexual based request; to condition a benefit on the submission to sexual advances; gender- or sex- based bullying

Other forms of Prohibited Conduct

The following forms of conduct are specifically prohibited under this policy, as are attempts to commit them.

B2. Non-Consensual Sexual Contact

Non-Consensual Sexual Contact is:

- any intentional sexual touching,
- with any object or body part,
- by any person upon any person

- without consent.

Sexual Contact includes, but is not limited to:

intentional contact with intimate parts of another, causing another to touch one's intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth or any other part of the body that is touched in a sexual manner.

B3. Non-Consensual Sexual Penetration

Non-Consensual Sexual Penetration is:

- any sexual penetration,
- with any object or body part,
- by any person upon any person,
- that is without consent.

Sexual penetration includes, but is not limited to:

Vaginal penetration by a penis, object, tongue or finger; anal penetration by a penis, object, tongue, or finger; and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

B4. Sexual Exploitation

Sexual Exploitation is:

- taking non-consensual or abusive sexual advantage of another,
- for one's own advantage or benefit,
- or to benefit or advantage anyone other than the one being exploited.

Sexual Exploitation includes, but is not limited to:

invasion of sexual privacy; prostitution of another person; non-consensual video or audio-recording of sexual activity; sharing private sexual materials, such as video or pictures, without the consent of all involved parties; engaging in voyeurism; knowingly transmitting an STI or HIV to another person; exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals; or inducing incapacitation with the intent to make one vulnerable to non-consensual sexual activity.

B5. Intimate Partner Violence

Intimate partner violence is often referred to as dating violence, domestic violence or relationship violence. Intimate partner violence is:

- any act of violence or threatened act of violence against a person who,
- is, or has been, involved in a sexual, dating, domestic, or other intimate relationship with the Respondent.

Intimate partner violence includes, but is not limited to:

physical violence, sexual violence, emotional violence, and economic abuse. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and occurs regardless of racial, social, or economic background.

B6. Stalking

Stalking is governed by this policy when it is sexual in nature, or sex or gender-based. Stalking is:

- a course of physical or verbal conduct directed at another individual,
- that could be reasonably regarded as likely to alarm, harass, or cause fear of harm or injury to that person or to a third party.

A course of conduct consists of at least two acts. The feared harm or injury may be physical, emotional, or psychological, or related to the personal safety, property, education, or employment of that individual. Stalking includes cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

B7. Prohibited Relationships by Persons in Authority

Sexual or other intimate relationships in which one party maintains a direct supervisory or evaluative role over the other party are prohibited. In general, this includes all sexual or other intimate relationships between students and

their employers, supervisors, professors, coaches, advisors or other College employees where a direct supervisory or evaluative role is maintained. College employees (faculty, staff, and students) who supervise or otherwise hold positions of authority over others are prohibited from having a sexual or other intimate relationship with an individual under their direct supervision.

The College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. However, faculty, administrators, and others who educate, supervise, evaluate, employ, counsel, coach, or otherwise guide students should understand the fundamentally asymmetrical nature of the relationship they have with students or subordinates. Intimate or sexual relationships where there is differential in power or authority produce risks for every member of our community and undermine the professionalism of faculty and supervisors. In either context, the unequal position of the parties presents an inherent element of risk and may raise sexual harassment concerns if one person in the relationship has the actual or apparent authority to supervise, evaluate, counsel, coach or otherwise make decisions or recommendations as to the other person in connection with their employment or education at the college.

Sexual relations between persons occupying asymmetrical positions of power, even when both consent, raise suspicions that the person in authority has violated standards of professional conduct and potentially subject the person in authority to charges of sexual harassment. Similarly, these relationships may impact third parties based on perceived or actual favoritism or special treatment based on the relationship.

Therefore, persons with direct supervisory or evaluative responsibilities who contemplate beginning or are involved in such relationships are required to promptly: 1) discontinue any supervising role or relationship over the other person; and 2) report the circumstances to their own supervisor. Failure to fully or timely comply with these requirements is a violation of this policy, and the person in authority could be subject to disciplinary action, up to and including dismissal from employment by the College.

Nothing in this section is intended to permit conduct that would otherwise be prohibited or contrary to rules of conduct or ethics promulgated by professional organizations, such as rules applicable to lawyers or counselors.

Any individual may file a complaint alleging harassment or discrimination, including an aggrieved party outside the relationship affected by the perceived harassment or discrimination. Retaliation against persons who report

concerns about consensual relationships is prohibited and constitutes a violation of this policy.

Sexual Misconduct Policy, Section IV: Interim Measures (Supportive Measures and Protective Measures)

A. Overview

Upon receipt of a report, the College will take reasonable and appropriate interim measures designed to remedy a hostile environment and protect the parties involved. The College will make reasonable efforts to communicate with the parties to ensure that all safety, emotional, and physical well-being concerns are being addressed. **Supportive measures are available regardless of whether formal disciplinary action is sought by the Reporting Party.** Supportive measures will be designed to address the impact of conduct. Interim protective measures will be designed to minimize the impact on the parties.

B. Supportive Measures

- Access to on-campus counseling services and assistance with referrals to off-campus care
- Rescheduling of exams and assignments (in conjunction with appropriate faculty)
- Providing alternative course completion options (with the agreement of the appropriate faculty)
- Change in class schedule, including the ability to take an “incomplete,” drop a course without penalty or transfer sections (with the agreement of the appropriate faculty)

- Change in work schedule or job assignment
- Change in on-campus housing
- Arranging to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies
- Assistance from College support staff in completing housing relocation
- Voluntary leave of absence
- Providing an escort to ensure safe movement between classes, activities, and employment responsibilities
- Providing student health services
- Providing academic support services, such as tutoring

C. Interim Protective Measures

Interim protective measures will be implemented at the discretion of the College, and designed for the safety of the individuals and the campus community. Any interim protective measure may be appealed to the Vice President for Student Life.

A Reporting Party or Respondent may request a No-Contact Letter or other protection, or the College may choose to impose interim protective measures at its discretion to ensure the safety of all parties, the broader College community and/or the integrity of the process.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure.

Interim protective measures may include:

- Imposition of campus No-Contact Letter
- Interim suspension or College-imposed leave
- Limit an individual or organization's access to certain College facilities or activities pending resolution of the matter

- Any other measure that can be tailored to the involved individuals to achieve the goals of this policy.

D. Interim Suspension or Separation

Where the report of prohibited conduct poses a substantial and immediate threat of harm to the safety of an individual, members of the campus community, or the performance of normal College functions, the College may place a student or student organization on interim suspension, or may impose leave for an employee. Pending resolution of the report, the individual or organization may be denied access to campus, campus facilities and/or all other College activities or privileges for which they might otherwise be eligible, as the College determines appropriate. When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

The full provisions for Interim Suspension for students are contained in the Code of Conduct. Provisions for suspension of faculty members are contained in the Faculty Handbook. Staff may be placed on leave at the discretion of the College.

Sexual Misconduct Policy, Section V: Formal Complaint, Formal Resolution, and Appeal

A. Formal Complaint

Disciplinary action against a Respondent may only be taken after a formal complaint and grievance process. A formal complaint means a written request for investigation and formal resolution, listing the alleged misconduct to be investigated.

Specific procedures apply when the conduct, as alleged in the formal complaint, falls under the federal Title IX definition of sexual harassment. The specific procedures for a federal Title IX formal complaint include formal investigation and a Live Hearing. These procedures apply whether the Respondent is a student, staff, or faculty member.

B. Formal Resolution

Where the conduct, as alleged in the formal complaint, would violate this policy but not the federal Title IX definition of sexual harassment, specific procedures for Formal Resolution will vary based upon the role of the Respondent, because the relationship of students, staff, and faculty to the College differ in nature. Each of the procedures, however, is guided by the same principles of fundamental fairness and respect for all parties: notice of alleged misconduct, an equitable opportunity to be heard, and an equitable opportunity to respond to information gathered under this policy. The disciplinary procedures are as follows:

- For a complaint against a student, disciplinary action may be taken by the Assistant Dean of Student Rights and Responsibilities or their designee following a finding of responsibility based on the evidence gathered in an investigation. The Assistant Dean of Student Rights and Responsibilities shall have the discretion to convene a properly trained hearing panel to make a finding of responsibility, or to offer alternative resolution options with the voluntary informed consent of both/all parties.
- For a complaint against a staff member, disciplinary action may be taken at the conclusion of the investigation by the Associate Vice President and Director of Human Resources, in consultation with the Dean or Vice President overseeing the division where the employee works. The AVP and Director of Human Resources shall have the discretion to appoint a hearing panel comprised of staff and/or faculty.
- For a complaint against a faculty member, disciplinary action may be taken at the conclusion of the investigation by the Dean of the school where the faculty member works pursuant to the Procedures outlined in the Faculty Handbook, and in consultation with the Associate Vice President and Director of Human Resources.

C. Appeals

The route for appealing a decision depends on the disciplinary procedure applied. As described above, this is based on the difference in relationships to the College of staff, faculty, and students.

When the Respondent is a student:

- Appeals of cases involving a complaint against a student are handled as outlined in the **Student Code of Conduct, section XIX. Appeals.**

When the Respondent is a staff member:

- Employees who disagree with a decision may appeal using the employee grievance procedures available to them.
- Students who disagree with a decision may appeal the decision in writing to the **AVP and Director of Human Resources.**
- Any appeal shall be filed in writing no later than 5:00 pm. on the fifth day following the delivery of written notice of the decision to the student and shall include all arguments and materials to be considered.

When the Respondent is a faculty member:

- Faculty who disagree with a decision may appeal using the faculty grievance procedures available to them.
- Students who disagree with a decision about a faculty Respondent may appeal the decision in writing to the Dean of the appropriate school.
- Any appeal shall be filed in writing no later than 5:00 pm. on the fifth day following the delivery of written notice of the decision to the student and shall include all arguments and materials to be considered.

Sexual Misconduct Policy, Section VI: Principles of

Investigation and Adjudication

A. Introduction

These procedures are entirely administrative in nature and are not considered legal proceedings. Formal investigation and adjudication serve to determine responsibility for a violation of College policy, and have no association with any civil or criminal proceeding. A criminal or civil proceeding may run concurrently with a College procedure.

B. Presumption of non-responsibility

The investigation is an impartial, fact-finding process. Reports are presumed made in good faith. Respondents are presumed not responsible. This presumption is overcome only when a preponderance of the evidence establishes that the Respondent committed the prohibited conduct alleged in the notice of investigation.

C. Standard of proof

The standard of proof to find a violation of this policy is a preponderance of the evidence. Preponderance of the evidence means that based on the totality of evidence and reasonable inferences from the evidence, it is *more likely than not* that the Respondent committed the prohibited conduct charged.

Put another way, the preponderance of the evidence means such evidence that when weighed against that opposed to it, has the more convincing force and the greater probability of truth.

D. Equitable Process Protections for Parties

During the process outlined in this policy, both the Reporting Party and the Respondent can expect the following:

- To be informed of the allegations, investigation procedures, and avenue of appeal
- A fair, thorough, reliable, and impartial investigation by a trained and experienced investigator

- The opportunity to have an advisor of their choice at any and all parts of the process, including any interview, Evidence Review, and hearing.
- The opportunity to provide relevant information and names of relevant witnesses. Declining to present information or witnesses will not be considered an admission of responsibility.
- The opportunity to inspect documents and/or relevant information gathered during the investigation, including all inculpatory and exculpatory evidence. This opportunity takes place at least ten (10) calendar days before a hearing, and is referred to as Evidence Review.
- To be notified of the names of any person involved in the investigation or hearing under this policy.
- Communication from the Title IX Coordinator, investigator, and/or the Director of Student Rights and Responsibilities, regarding next steps and the reason for any delays.

If the Reporting Party or Respondent identifies concerns about actual bias or conflict of interest in the investigatory, hearing, or appeal process, they should notify the *Title IX Coordinator* in writing as soon as possible. If the concern is about the Title IX Coordinator, the party should notify the Dean of Equity and Inclusion. Actual bias is an articulated prejudice in favor of or against one party or position; it is not generalized concern about the personal or professional backgrounds, interests, positions, or beliefs of the decision makers in the process.

Where actual bias or conflict of interest is established, the affected investigation, sanctioning, or appeal will be managed by separate individuals identified by the College, in a manner that eliminates the identified bias or conflict.

E. Role of an Advisor

Throughout the process, both the Reporting Party and the Respondent may use an advisor of their choice. The advisor may be any person - parent, friend, mental health professional, certified victim's advocate, attorney, or advisor trained by the College. An advisor may not be a witness or have any conflicting role in the process or with a party.

Students have the option to use an advisor from **the advisor list maintained by the College**. The advisor list maintained by the College will provide the names, experience, and training of individuals, as well as their availability as advisors to a Reporting Party or Respondent or both. Advisors include law school students who undergo a semester of training at the law school.

Advisors from the College list are available to students at no cost.

The role of the advisor is to provide support and assistance in understanding and navigating the investigation process. In a Live Hearing, the advisor's role is to ask questions of witnesses and the other party, subject to the **Live Hearing conduct expectations**. To protect the privacy of those involved, all advisors are required to sign a confidentiality agreement prior to attending an interview or otherwise participating in the College's investigatory or formal resolution process.

The College's duty is to the student, not the advisor. All communication is made directly with the student. The process will not be unreasonably delayed to accommodate the schedule of the advisor. An advisor must be familiar with college policy and may be required to meet with the *Title IX Coordinator* or other college administrator in advance of participation in college proceedings.

The Reporting Party or Respondent speak for themselves. The advisor may not testify in or obstruct an interview, disrupt a hearing, or disrupt any other part of the process. The Title IX Coordinator, Adjudicator or hearing decision-maker, and Assistant Dean of Student Rights and Responsibilities each have the right to determine what constitutes appropriate behavior of an advisor and take reasonable steps to ensure compliance with this policy.

To limit the number of individuals with confidential information about the issues, each party may identify *one* advisor. Advisor changes may be made in exceptional circumstances.

F. Evidence

Rules of evidence and discovery used in state and federal proceedings are not applicable to the investigatory process for prohibited conduct. The investigation will consider information that is relevant, material, and close in time to the conduct at issue; in other words, information that makes the existence of a fact or inference more or less likely.

Information that is not relevant or is not considered reliable may be excluded during the investigative or adjudicatory process. For instance, polygraph tests will not be considered in determining whether a fact exists.

(a) Character evidence

Character witnesses, statements, or letters are not admissible as evidence and are not considered.

Examples of character evidence include statements, resumes, transcripts, and letters from friends, family, or faculty.

With the exceptions listed in (b) and (c) below, prior acts are not admissible to prove *disposition to commit* prohibited conduct. Prior acts of prohibited and non-prohibited conduct by a Respondent may be admissible to establish motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake/accident.

(b) Prior sexual history

Generally, the sexual history of a Reporting Party, Respondent, or witness will not be admitted or considered as evidence unless directly relevant and temporally proximate to an issue.

Character or reputation regarding sexual activity is *never* relevant and will not be considered as evidence.

When is sexual history relevant?

- When there is evidence of substantially similar conduct by a *Respondent*, regardless of a finding of responsibility. This evidence may also be relevant to establish motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake/accident;
- When there is prior sexual history between the parties and the Respondent states that the Reporting Party gave consent. Specifically, their prior sexual history may be relevant to assess how consent was communicated between the parties. However, the mere fact of a current or previous dating/sexual relationship does not constitute consent;
- When sexual history may be relevant to prove a material fact. For example, to explain an injury or physical finding.

(c) Prior acts of Intimate Partner Violence

Prior acts of intimate partner violence by a Respondent, regardless of a finding of responsibility, are admissible in determining responsibility in an investigation for the same or similar conduct.

Prior acts of intimate partner violence may also be relevant to establish motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake/accident.

G. Timeliness

It is the college's goal to complete an investigation and adjudication in a timely manner by balancing principles of thoroughness, fairness, and promptness. Notice of an investigation will include anticipated timing of completion.

In some cases, the Title IX Coordinator may determine that good cause exists to grant a delay: in order to conduct a fair and complete investigation, to accommodate an investigation by law enforcement, to accommodate the availability of witnesses or delays by the parties, to account for college breaks, to arrange for language interpretation, to arrange for disability accommodation, or due to the complexity of the investigation.

Any extension for good cause will be **shared in writing** with the parties, and will include the reason for the delay and anticipated timing of completion.

Sexual Misconduct Policy, Section VII: Investigation Process

A. Notification

If the college proceeds to a formal investigation, the Reporting Party and the Respondent are notified of the investigation. The notification will identify the alleged misconduct with specific information including date, time, location, alleged acts, and the applicable policy definition under investigation.

The parties will be notified about this policy, procedural steps and expectations, the role of an advisor, and support resources. The Respondent will also be given a date by which they must contact the investigator.

Respondents who do not respond to the notification within the designated time frame or who cannot be contacted after reasonable attempts remain subject to an investigation and any sanction imposed as a result of a finding of responsibility. The college may place a hold on Respondent's registration or transcript release during the investigation.

B. Fact-gathering

It is the responsibility of the college, not the parties, to gather information and interview witnesses.

The investigator will meet separately with the Reporting Party and Respondent. If not previously provided, each party is provided with information about procedural protections, the investigative process, avenues of appeal, and information about available resources.

The investigator will ask both parties for all information related to the alleged prohibited conduct; including names of witnesses, documents, emails, texts, social media posts, photographs, the existence of video footage, and call logs. The parties can provide further information or materials until Evidence Review. During the course of the investigation, the investigator may identify additional witnesses and gather supplemental evidence.

The College will designate an investigator with specific training and experience investigating allegations of sexual harassment and other forms of prohibited conduct. The investigator will be trained regarding their impartial role, and will be free of any conflict of interest. The investigator may be an employee of the College or an external investigator engaged to assist the College in its fact gathering.

The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be thorough, impartial, and fair, and all individuals will be treated with appropriate sensitivity and respect. The investigation will be conducted in a manner that is respectful of individual privacy concerns.

Students, staff, and faculty contacted as witnesses have the responsibility to participate fully and truthfully in College investigations. Written statements are not accepted in lieu of live in-person or video interviews by the designated investigator.

C. Evidence Review

At the conclusion of the investigation, the Reporting Party and the Respondent are given an individual and separate opportunity to review the information collected. This is called Evidence Review. Information collected is reviewed in its original form. Information that is excluded from review will not be considered in making findings of fact or determining responsibility. The Title IX Coordinator or Assistant Dean of Student Rights and Responsibilities may exclude evidence from review that violates the privacy rights of third parties.

Witness statements, physical and documentary evidence, and audio/visual material is provided for review. Parties are not provided copies, allowed to download or reproduce, or allowed to take photographs. Parties may take notes. As with all aspects of investigation and adjudication, the parties may bring their advisor with them to Evidence Review.

D. Hearing

At the time of Evidence Review, the parties will be notified about the schedule and procedures for a hearing. If the conduct under investigation falls within the scope of Title IX, a Live Hearing with an adjudicator will be scheduled. The Live Hearing will be held no sooner than ten (10) calendar days after Evidence Review by the parties.

If the conduct under investigation is covered by this policy but is not within the scope of Title IX (for example, the Reporting Party is not a current student or the conduct happened outside the United States), a hearing panel or hearing by an adjudicator can be convened by the Assistant Dean of Student Rights and Responsibilities. Parties will be notified regarding the identities of any decision-maker, the schedule and format of the hearing, the role of an advisor, and any conduct expectations during the hearing.

Any adjudicator or member of a hearing panel must have the required training under this policy, experience sufficient to serve as an impartial decision-maker, and be free of conflict of interest toward the parties or the incident(s).

Sexual Misconduct Policy, Section VIII: Title IX Prohibited Conduct

The Sexual Misconduct policy of the College covers a broader scope of conduct and locations than required by Title IX of the Education Amendments Act of 1972. Where the following criteria are met, Department of Education federal regulations (issued under Title IX) require a grievance process that includes formal investigation and adjudication through a Live Hearing:

1. The Respondent is a student, staff, or faculty of the College;
2. The Reporting Party is currently enrolled in or actively trying to access classes or other educational program or activity of the College;
3. The misconduct occurred in the United States;
4. The misconduct occurred in an educational program or activity of the College;
5. The Reporting Party signed a formal complaint requesting investigation of the sexual misconduct allegation; and
6. The allegation fits one of the below categories:

Categories of conduct:

Sexual harassment, defined as conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the Reporting Party equal access to the College's education program or activity;
3. Dating violence;

4. Domestic violence;
5. Sexual assault, which includes the sex offenses of fondling (nonconsensual sexual touching), incest, statutory rape, and rape; or
6. Stalking.

The Title IX Coordinator is responsible for determining whether misconduct, as alleged, fits the above definitions and therefore falls within the scope of Title IX prohibited conduct. Either the Title IX Coordinator or a Deputy Title IX Coordinator will discuss this determination with the Reporting Party, in order to provide the Reporting Party with clear information about options and procedures for the formal resolution of the misconduct. The determination that Title IX procedures apply will be clear in the notification of investigation provided to the Respondent, and copied to the Reporting Party. The determination will be clear in notifications to the Respondent and Reporting Party regarding the procedures for Evidence Review and Live Hearing.

Under very limited circumstances, the Title IX Coordinator may be required to sign a formal complaint in place of the Reporting Party; for example, where there is a threat to campus safety and a Reporting Party is not available to sign.

Sexual Misconduct Policy, Section IX: Live Hearing Procedure and Conduct Expectations

A. Overview

A Live Hearing is used in certain cases: where legally required under federal Title IX regulations, and on a discretionary basis where the Reporting Party requests it *and* the College determines that a case cannot reasonably be heard and resolved without the Live Hearing process.

The Live Hearing will be held before a trained and experienced adjudicator. The information reviewed during the Evidence Review will be available for reference and consultation at the Live Hearing.

During the Live Hearing, the adjudicator may ask questions of parties and witnesses. An advisor for each party may cross-examine parties and witnesses. The adjudicator will allow time for the questioning by advisors, subject to the conduct expectations below. Responses provided at the Live Hearing are considered evidence and may be used in the findings of fact and responsibility.

B. Structure and Setting

The Live Hearing will be scheduled in advance. The parties will be informed of the name of the adjudicator, the date, time, expected duration, and location of the hearing. Hearings may be conducted via appropriate video call technology, at the request of a party or due to current public health recommendations. Phone or audio-only appearance does not substitute for video or in-person appearance.

The setting of the hearing, whether in person or via video, will be designed with privacy and accessibility in mind. Either party can request reasonable disability accommodations to allow full participation. The parties will be notified in advance of the conduct expectations, and will acknowledge agreement with the expectations at the start of the hearing.

The parties will not be required to be physically present in the same room. The adjudicator will allow reasonable time for the parties to travel between locations, as needed, without requiring the parties to wait or pass in a shared physical space.

C. Conduct Expectations

The adjudicator has responsibility over conduct during the hearing. An advisor or support person may be asked to leave the hearing if they fail to correct behavior after a warning by the adjudicator. A necessary party or witness who is asked to leave the hearing due to their conduct, will be invited back to the hearing by the adjudicator at the time, date, or location determined by the adjudicator. The adjudicator will keep a written record of any delays or changes to the hearing. The adjudicator or their designee will enforce the following expectations of conduct during the hearing:

1. The hearing will not be recorded by any party, advisor, or participant. The only recording of the hearing will be made by the College.
2. The hearing is private; the privacy of participants and information will be maintained.
3. The adjudicator will assure that reasonable breaks and meal times are observed. Upon request of the party, the adjudicator will grant additional reasonable breaks during the hearing.
4. An advisor may ask a party or witness only one question at a time; a compound question will be rephrased in the form of separate questions.
5. An advisor will not ask questions that are inflammatory, argumentative, or relate to character evidence or non-relevant sexual history.
6. An advisor will not ask questions containing an accusation, for example, "Isn't that true?" or "Didn't you?"
7. An advisor will not ask repetitive questions – those that do not ask for new information or clarification, but would require repetition of prior answers.
8. There will be no interruption or objection while a party or witness is answering a question.
9. The party or witness answering questions must be visible and audible, either in person or via video, to the adjudicator and to the other party and their advisor.
10. No new evidence will be considered at the hearing. All evidence, including witnesses, must be provided to the investigator prior to Evidence Review. If new evidence arises that could not reasonably have been discovered prior to the hearing, the adjudicator will determine an appropriate period of time for the parties to review the new evidence prior to proceeding.
11. The adjudicator is the final arbiter of how the hearing will proceed. The adjudicator will note, on the record, the reasoning for any decision.

Sexual Misconduct Policy, Section X: Sanctions

A student found in violation of this policy may receive sanctions that include, but are not limited to, those set forth below. Sanctions may be issued individually or in combination. The Reporting Party and Respondent will each have the opportunity to present a statement about the impact of the situation and/or requested sanctions. These statements will be considered only if the Respondent has been found responsible for one or more violations.

Students found responsible for violating the Sexual Misconduct Policy may face sanctions up to and including expulsion. The appropriate sanctions will be determined by considering the following:

- the severity, nature, and impact of the violation,
- the Respondent's prior conduct history,
- the Respondent's ethical development,
- the on-going risk to the involved individuals and the College community, and
- the educational mission of the institution.

Sanctions may also take into full consideration the following factors: (1) the Respondent's prior conduct history; (2) how the College has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the Reporting Party; (5) the impact of the conduct on the community or its members; (6) whether the Respondent has accepted responsibility for their actions; (7) whether the Respondent is reasonably likely to engage in the conduct in the future; (8) the need to deter similar conduct by others; and (9) any other mitigating or aggravating circumstances, including the College's values.

Where formal resolution or hearing determines that conduct was motivated by bias, insofar as a Reporting Party was selected on the basis of their race, color, ethnicity, national origin, religion, age, disability or other protected class, the sanction imposed may be increased as a result of this motivation.

The Assistant Dean of Student Rights and Responsibilities and Title IX Coordinator will review sanction recommendations and take reasonable steps to foster consistency for similar violations and circumstances.

Sanctions that may be imposed under this policy include:

Formal Warning: Notice, in writing, that continuation or repetition of prohibited conduct may be cause for additional disciplinary action.

Disciplinary Probation: Exclusion from participation in privileged activities for a specified period of time (privileged activities may include, but are not limited to, elected or appointed ASOC offices, student research, athletics, some student employment, and study abroad). Additional restrictions or conditions may also be imposed. Violations of the terms of disciplinary probation or any other College policy violations may result in further disciplinary action.

Restitution: Repayment to the College or to an affected party for damages resulting from a violation of this Code. To enforce this sanction, the College reserves the right to withhold its transcripts and degrees or to deny a student participation in graduation ceremonies and privileged events.

Removal from Campus Housing: Students may be removed from College housing and/or barred from applying for campus housing due to disciplinary violations of this Code.

Suspension: Exclusion from College premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the student's conduct file. Conditions for readmission may be specified in the suspension notice, including completion of any outstanding disciplinary outcomes, and meeting with staff to set expectations for the student's return to campus. Duration of suspension can range from the remainder of a semester to multiple academic years, as deemed appropriate by the conduct authority hearing the case.

Disciplinary Dismissal: Permanent termination of student status and exclusion from College premises, privileges, and activities. This action will be permanently recorded on the student's academic transcript.

Revocation of Admission and/or Degree: Admission to, or a degree awarded by, the College may be revoked for fraud, misrepresentation in obtaining the degree or violation of College policies, the Code of Conduct or for other serious violations committed by a student prior to enrollment or graduation.

Withholding Degree: The College may withhold awarding a degree otherwise earned until the completion of the process set forth in this Code, including the completion of all sanctions imposed, if any.

Other sanctions may be imposed instead of, or in addition to, those specified here. Service, education, or research projects may also be assigned. More than one of the sanctions listed above may be imposed for any single violation.

Sexual Misconduct Policy,

Section XI: Training Required

Any person involved in outreach, intake, investigation, resolution, or adjudication of sexual misconduct under this policy will receive appropriate training. Training will include:

1. The definitions of prohibited conduct.
2. Dynamics of interpersonal, sexual, and relationship violence.
3. The prevalence of prohibited conduct nationally, in the state, and at the College, to the extent relevant data exists.
4. Trauma-informed best practices for serving students, including trauma-informed principles of support for survivors.
5. Best practices for addressing bias and increasing accessibility for students through the use of an anti-oppression framework.
6. Identifying and resolving any conflict of interest.
7. Best practices for equitable and impartial investigations.
8. For investigators, additional training on how to conduct effective and trauma-informed interviews, issues of relevance, allowable evidence, and investigative best practices.

9. For adjudicators or hearing officers, additional training on issues of relevance, allowable evidence and questions, role of an advisor, hearing procedures, and writing findings of fact and policy.

Trainings will also include principles of providing culturally responsive processes and procedures, recognize and account for the unique needs of individuals who identify as gender nonconforming, gender nonbinary, transgender, bisexual, lesbian, gay, or other queer identity, and not rely on gender or sex stereotypes. Student government and advisory group members will have ongoing opportunities for input into the definitions and principles of anti-oppressive and culturally responsive training.

The materials used for training under this policy will be regularly posted and updated.

Sexual Misconduct Policy, Section XII: Records Retention

Report and Conduct Records

The Title IX Coordinator will oversee retention of records of all reports and complaints, regardless of whether there was a formal investigation or resolution. Records of reports and complaints will be maintained for a minimum period of seven (7) years.

Findings of responsibility in matters resolved through formal resolution are part of a student's conduct record and an employee's personnel record. Such records shall be used in reviewing any further conduct, or developing sanctions, and shall remain a part of a student's conduct record or an employee's personnel record. These records will be maintained indefinitely.

When a student is permanently separated from Lewis & Clark through a disciplinary dismissal, this is noted on the student's academic transcript. The conduct files of students who have been suspended or dismissed for disciplinary reasons are maintained by the Office of Student Rights and

Responsibilities indefinitely. Conduct files of students who have not been disciplinarily suspended or dismissed are maintained by the Office of Student Rights and Responsibilities for no fewer than seven (7) years from the date of the incident. Further questions about record retention should be directed to the Office of Student Rights and Responsibilities

Training Records

Materials used in training Title IX Deputy Coordinators, investigators, and adjudicators, can be found [here](#).