



LP 5.27

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Policy Owner:
Board of Trustees

Policy Administrator:
Title IX Coordinator

Affected Parties:
Employees
Students

Sexual Harassment and Sexual Violence (LP5.27)

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1 Summary

Lander University adheres to applicable federal and state laws and regulations prohibiting discrimination in public institutions of higher education. The University is committed to a policy of equal opportunity for all persons and does not discriminate on the basis of race, color, religion, sex, sexual orientation, gender, gender identity, gender expression, pregnancy, childbirth or related medical conditions, national origin, age, disability, veteran's status, genetic information, or protected activity (e.g., opposition to prohibited discrimination or participation in any complaint process) in employment, educational programs and activities, admissions or financial aid. This includes a prohibition against sexual harassment and sexual violence as mandated by Title IX of the Education Amendments.

This policy is intended to meet Lander University's responsibilities under the provisions as required by the Title IX Regulations and Violence Against Women Act (VAWA). Sexual harassment, including sexual violence, is a form of discrimination and is illegal. When brought to the attention of Lander University, acts of sexual harassment will be promptly and fairly addressed and remedied by Lander University in accordance with the established resolution process.

2 Scope and Jurisdiction

The core purpose of this policy is the prohibition of all forms of sexual harassment including sex-based discrimination; sexual assault; stalking; sexual exploitation; dating violence; domestic violence; and retaliation. When the respondent is a member of the Lander University community, a grievance process may be available regardless of the status of the complainant, who may or may not be a member of the Lander University community. This community includes, but is not limited to, students¹, student organizations, faculty, administrators, staff, and such third parties as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

Any online postings or other electronic communications by students (e.g., cyber-bullying, cyber-stalking, cyber-harassment) occurring completely outside of Lander University's control (e.g., not on Lander University networks, websites, or between Lander University email accounts) will be subject to this policy only when such online conduct can be shown to cause a substantial in-program disruption. Otherwise, such communications may be considered speech protected by the First Amendment. Supportive measures for complainants will be provided, but protected speech cannot legally be subjected to discipline. Off-campus harassing

¹ For the purpose of this policy, Lander University defines "student" as any individual who has accepted an offer of admission, who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with Lander University.

speech by a Lander University employee, whether online or in person, may be regulated by Lander University when such speech is made in the employee's official or work-related capacity.

Lander University's policy does not prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matter protected by free speech (First Amendment) and academic freedom. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of Lander University policy, although supportive measures will be offered to those impacted.

This policy applies to the educational programs and activities of Lander University regarding conduct that takes place on the campus or on property owned or controlled by Lander University, at Lander University-sponsored events, or in buildings owned or controlled by recognized student organizations. The respondent must be a member of the Lander University community in order for its policies to apply.

This policy can also be applicable to occurrences of off-campus misconduct that effectively deprive a person of access to Lander University educational programs. Lander University may also extend jurisdiction to off-campus and/or online conduct when it is determined that the conduct affects a substantial Lander University interest.

Regardless of the location of the alleged misconduct, Lander University will address a notice/complaint to determine whether the misconduct occurred in the context of an employment or educational program or activity and/or whether it has continuing effects on campus or in an off-campus sponsored program or activity. A substantial Lander University interest includes:

- 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;
- Any situation in which it is determined that the respondent poses an immediate threat to the physical health or safety of any student or other individual;
- 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
- Any situation that is detrimental to the educational interests or mission of Lander University.

If the respondent is unknown to or is not a member of the Lander University community, the Title IX coordinator will assist the complainant in identifying campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the complainant would like to file a police report. Further, even when the respondent is not a

member of the Lander University community, supportive measures, remedies, and resources may be available to the complainant. In addition, Lander University may take other actions, as appropriate, to protect the complainant against third parties (e.g., by barring individuals from Lander University property and/or events).

When the respondent is enrolled in or employed by another institution, the Title IX coordinator can assist the complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies. Similarly, the Title IX coordinator may be able to advocate for a student or employee complainant who experiences alleged discrimination in an externship, study-abroad program, or other environment external to Lander University where sexual harassment or non-discrimination policies and procedures of the facilitating or host organization may give recourse to the complainant.

3 Retaliation

Lander University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation. Therefore, Lander University or any member of the Lander University community is prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure. Protected activities under this policy include reporting an incident that may be covered by this policy, participating in a grievance process, supporting a complainant or respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this policy. Acts of alleged retaliation should be reported immediately to the appropriate designated administrator as referenced below.

Administratively charging an individual for a Student Code of Conduct violation that does not involve sex discrimination or sexual harassment, but arises out of the same facts or circumstances as a report or complaint of sex discrimination or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a Student Code of Conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

4 Designated Administrators and External Resources

4.1 Title IX Coordinator and Deputy Staff

4.1.1 Title IX Coordinator

The Title IX coordinator has the primary responsibility for coordinating Lander University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sex-based harassment, sex-based discrimination, and retaliation prohibited by Title IX. Regarding such matters, the Title IX coordinator acts with independence and authority free from bias and conflicts of interests. The Title IX coordinator is responsible for conducting ongoing training and outreach for all employees (including administrators, faculty, and staff), Board of Trustees members, and students. The members of the Title IX Team are vetted and trained to ensure that 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 allegation involving bias or conflict of interest on the part of the Title IX coordinator, students should contact the vice president for student affairs and employees should contact the director of human resources. Any allegation of bias or a potential conflict of interest on the part of any other Title IX Team member should be brought to the attention of the Title IX coordinator. Any allegation of misconduct or discrimination on the part of any other Title IX Team member should be reported to the Title IX coordinator.

4.1.2 Deputy Title IX Coordinator for Students

The deputy Title IX coordinator for students shall ensure that this policy is distributed to all new students and is responsible for conducting ongoing training for and outreach to all students. The deputy Title IX coordinator for students also assists with resolutions and procedures in accordance with this policy.

4.1.3 Deputy Title IX Coordinator for Employees

The deputy Title IX coordinator for employees shall ensure that this policy is distributed to all new employees and is responsible for conducting ongoing training for and outreach to all employees. The deputy Title IX coordinator for employees also assists with resolutions and procedures in accordance with this policy.

4.1.4 Deputy Title IX Coordinator for Athletics

The deputy Title IX coordinator for athletics shall ensure that this policy is distributed to all athletes and is responsible for conducting ongoing training for and outreach to all athletes. The deputy Title IX coordinator for athletics also assists with resolutions and procedures in accordance with this policy.

4.1.5 Complaints

All complaints received by deputy coordinators must be communicated promptly to the Title IX coordinator. A list of Title IX staff may be accessed at www.lander.edu/titleix.

Inquiries may also be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Fax: (202) 453-6012
TDD: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

U.S. Department of Justice Civil Rights Division
950 Pennsylvania Avenue, N.W.
Educational Opportunities Section, PHB
Washington, D.C. 20530
Email: education@usdoj.gov
Telephone: (202) 514-4092 or 1-877-292-3804 (toll-free)
Fax: (202) 514-8337

For complaints involving employees: Equal Employment Opportunity Commission (EEOC)

Greenville, SC Local Office
Location: 301 N. Main Street, Suite 1402, Greenville, SC
29601-9916
Telephone: 1-800-669-4000
Fax: 864-241-4416
TTY: 1-800-669-6820

5 Notice/Complaint Process for Sex-Based Harassment, Sex-Based Discrimination, and Retaliation

Lander University strongly encourages all employees and students to report incidents of alleged sex-based harassment, sex-based discrimination, and retaliation. The University encourages reports to be made as soon as possible to enable the University to more effectively investigate the allegations. A formal complaint is a document filed/signed by a complainant, or in some instances the Title IX coordinator, alleging sexual harassment or discrimination based on sex or in retaliation for engaging in a protected activity against a respondent and requesting that Lander University investigate the allegation. The University will respond to and investigate allegations, and it will take steps to prevent retaliation against any person making a complaint or participating in the investigation process. Further, the University will provide fair treatment for any person against whom an allegation is made. Described below are options for reporting sex-based harassment, sex-based discrimination, and retaliation. A criminal complaint can be made simultaneously with a University complaint to the Title IX Coordinator, as applicable.

A complaint may be filed in person, by mail, or by electronic mail by using the contact information in the section immediately above or as described in this section. As used in this paragraph, the phrase “document filed/signed by a complainant” means a document or electronic submission (e.g., by electronic mail or through an online portal provided for this purpose by Lander University) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the complaint. If an individual is submitting a complaint on behalf of another party, the impacted individual will be contacted to determine if they wish to file a formal complaint.

All allegations will be acted upon promptly by Lander University once it has received notice or a formal complaint. Complaints can take sixty-to-ninety (60-90) business days to resolve. Although exceptional and extenuating circumstances can cause additional time to a resolution, Lander University will avoid all undue delays within its control. At any time that the general timeframes for resolution outlined in Lander University procedures will be delayed, Lander University will provide notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

5.1 Student Respondent

If the formal complaint is against a student and meets the requirements of Title IX, then the complaint will be resolved in accordance with the Title IX resolution procedures. If it is determined that the complaint does not meet the requirements of Title IX, the Title IX coordinator will dismiss the matter for the purposes of Title IX. However, the alleged conduct may still be addressed pursuant to the Student Code of Conduct procedures.

5.2 Employee (Faculty or Staff) Respondent

If the formal complaint is against an employee and meets the requirements of Title IX, then the complaint will be resolved in accordance with the Title IX resolution procedures. If it is determined that the complaint does not meet the requirements of Title IX, the Title IX coordinator will dismiss the matter for the purposes of Title IX. However, the alleged conduct may still be addressed pursuant to the [employee resolution procedures](#).²

5.3 Non-Student or Non-Employee Respondent

If the formal complaint is against a non-student or non-employee, then supportive measures will be offered to the complainant (see Supportive Measures section, below).

An allegation of sex-based harassment, sex-based discrimination, and retaliation may be made using any of the following options:

6 Complaint Options

6.1 Verbal and/or Written Notice

File a complaint with or give verbal notice to the Title IX coordinator or deputy Title IX coordinators. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address or by mail to the office address posted at www.lander.edu/titleix

6.2 Online Reporting Form

A report of sexual harassment may be filed online, using the reporting form posted at www.lander.edu/titleix.

6.3 Reporting to a Supervisor

A party may opt to report an allegation of sex-based harassment, sex-based discrimination, or retaliation directly to their immediate supervisor. Upon notice, the supervisor must immediately report this information to the Title IX coordinator or deputy Title IX coordinators. (Reference “Responsible Employee Section,” below.)

6.4 Anonymous Notice

An anonymous notice will be investigated by Lander University to the extent possible, both to assess the underlying allegation(s) and to

² Procedures URL: <https://www.lander.edu/sites/default/files/Documents/About/Leadership/Policies/Title IX Resolution Procedures.pdf>

determine if supportive measures or remedies can be provided. However, an anonymous notice typically limits Lander University's ability to investigate, respond, and provide remedies, depending on what information is shared.

6.5 Criminal Complaint

The Lander University Police Department (LUPD) or, if the incident occurred elsewhere, other appropriate law enforcement agency will receive and investigate reports of alleged discrimination, harassment, and sexual violence that may constitute a crime. Criminal acts include sexual assault, sexual battery, and other forms of sexual violence. Lander University encourages a complainant to meet with police officers as soon as possible so officers may gather information in a timely manner. The Title IX Coordinator will assist any student or employee with notifying local police if they so desire.

7 Privacy and Confidentiality

Every effort is made by Lander University to preserve the privacy of reports³. Lander University will not unnecessarily share the identity of any individual who has made a complaint of sex-based harassment, sex-based discrimination, or retaliation. Further, Lander University will strive to uphold the privacy and confidentiality of complainants, respondents, and witnesses throughout the resolution process. Information will only be shared as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; or FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106.

Lander University reserves the right to determine which officials have a legitimate educational interest in being informed about incidents that fall within this policy,

³ For the purpose of this policy, privacy and confidentiality have distinct meanings. Privacy means that information related to a complaint will be shared with a limited number of Lander University employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the recipient's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"). The privacy of employee records will be protected in accordance with Human Resources policies. Confidentiality exists in the context of laws that protect certain relationships, including those with persons who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Lander University has designated individuals who have the ability to have privileged communications as "confidential resources". When information is shared by a complainant with a confidential resource, the confidential resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by confidential resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

pursuant to the Family Educational Rights and Privacy Act (FERPA). Only a small group of officials who need to know will typically be informed of the complaint, including, but not limited to, the vice president for student affairs, general counsel, director of human resources, chief of police, and CARE Team. Information will be shared, as necessary, with investigators, hearing panel members/decision-makers, witnesses, and the parties. The number of people with this knowledge will be kept as small as possible to preserve the parties' rights and privacy. Lander University may contact parents/guardians to inform them of situations in which there is a significant and imminent health and/or safety risk; it will usually consult with the student prior to doing so.

8 Reluctant Complainant

If a complainant believes that they have experienced sex-based harassment, sex-based discrimination, or retaliation but does not wish their name to be shared, an investigation to take place, or a formal complaint to be pursued, they may make such a request to the Title IX coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. The Title IX coordinator has ultimate discretion over whether Lander University proceeds when the complainant does not wish to do so, and the Title IX coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. The Title IX coordinator's decision should be based on the results of the violence risk assessment that show a compelling risk to health and/or safety that requires Lander University to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Lander University may be compelled to act on an allegation of misconduct by an employee regardless of a complainant's wishes. The Title IX coordinator must also consider the effect that non-participation by the complainant may have on the availability of evidence and Lander University's ability to pursue a formal grievance process fairly and effectively. When the Title IX coordinator executes the written complaint, the coordinator does not become the complainant; the complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When Lander University proceeds, the complainant (or their advisor) may have as much or as little involvement in the process as they wish. The complainant retains all rights of a complainant under this policy regardless of their level of participation. Typically, when a complainant chooses not to participate, the advisor may be appointed as proxy for the complainant throughout the process, acting to ensure and protect the rights of the complainant.

Note that Lander University's ability to remedy and respond to a notice may be limited if the complainant does not want Lander University to proceed with an investigation and/or grievance process. While balancing Lander University's

obligation to protect its community, the goal is to provide the complainant with as much control over the process as possible. In cases where the complainant requests confidentiality and does not wish to proceed with a formal complaint, Lander University will attempt to honor this request to the fullest extent possible, providing that the circumstances allow. Informal resolution options, supportive measures, and/or remedies will still be offered to the complainant and the community, even if no formal action ensues. If the complainant elects to take no action, they can opt to file a formal complaint at a later date. Upon making a formal complaint, a complainant has the right, and can expect, to have allegations taken seriously by Lander University, and to have the incidents investigated and properly resolved through the grievance procedures.

9 Time Limits on Reporting

There is no time limitation on providing notice of a complaint. However, if the respondent is no longer subject to Lander University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be limited or difficult. Acting on a notice/complaint significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate. When a notice/complaint is affected by significant time delay, Lander University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the notice/complaint.⁴

10 Federal Timely Warning Obligations

A party reporting an allegation of sexual misconduct (e.g., sexual assault, domestic violence, dating violence, and/or stalking) should be aware that, under the federal Clery Act, Lander University must issue timely warnings for incidents reported that pose a serious or continuing threat of bodily harm or danger to members of the Lander University community. Lander University will ensure that a complainant's name and other identifying information are not disclosed, while still providing enough information for community members to make safety decisions in light of potential danger.

11 Amnesty for Complainants and Witnesses

Lander University encourages the reporting of misconduct and crimes by complainants and witnesses. Complainants or witnesses are sometimes hesitant to report to Lander University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies

⁴ Lander University will attempt to obtain consent from the impacted parties and/or seek the advice of its general counsel.

(e.g., regarding underage drinking or the use of illicit drugs at the time of the incident). Respondents may hesitate to be forthcoming during the process for the same reasons. It is in the best interests of the Lander University community that complainants choose to report any allegations of misconduct and crimes to Lander University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

11.1 Students

Students may be hesitant to assist others for various reasons (e.g., an underage student who has been drinking or using marijuana might hesitate to assist an individual who has experienced sexual misconduct to speak with Lander University officials). To encourage reporting and participation in the process, Lander University may, at its discretion, offer parties and/or witnesses amnesty for any minor policy violations of the Student Code of Conduct (e.g., underage consumption of alcohol or the use of illicit drugs) related to an incident.

11.2 Employees

Employees may be hesitant to report any allegations of harassment or discrimination for various reasons. To encourage reporting and participation in the process, Lander University may, at its discretion, offer employee complainants amnesty for any (typically minor) policy violations related to an incident. Amnesty may also be granted to respondents and witnesses on a case-by-case basis.

12 Responsible Employees, Mandated Reporting, and Confidential Resources

12.1 Responsible Employees and Mandated Reporting

All employees of Lander University (including resident assistants), with the exception of those who are designated as confidential resources, are responsible employees who must promptly share with the Title IX coordinator, deputy Title IX coordinators, or other appropriate officials all known details of a sex-based harassment, sex-based discrimination, or retaliation report made to them during the course of their employment. Employees must also promptly share all details of behaviors under this policy that they observed or had knowledge of, even if not reported to them by a complainant or third-party. Complainants should carefully consider whether they share personally identifiable details as those details must be reported. Supportive measures may be offered as the result of such disclosures without formal Lander University action.

Responsible employees are expected to report suspected discrimination or harassment to appropriate officials immediately, with some limited

exceptions. In order to make informed choices, it is important for complainants to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources (see Confidential Resources, below) may maintain confidentiality and are not required to report suspected discrimination or harassment; such resources may offer options and information without any obligation to inform an outside agency or Lander University official unless a complainant has requested that the information be shared.

If a complainant expects a formal action in response to their allegation, reporting to any responsible employee can connect them with resources to report an allegation of a crime and/or policy violation. Responsible employees will immediately provide reports to the Title IX coordinator or deputy coordinators and the police, if desired by the complainant), who will take action when an incident is reported to them.

In the event that a responsible employee is or has been engaged in harassment or other violations of this policy, they still have a duty to report their own behavior, although Lander University is technically not on notice when a harasser is also a responsible employee unless the harasser does in fact report themselves. A responsible employee who is a target of harassment or other misconduct under this policy is not required to report their own experience, although they are encouraged to do so.

Failure of a responsible employee, as described above in this section, to report an allegation sex-based harassment, sex-based discrimination, or retaliation of which they become aware is a violation of Lander University policy, and the responsible employee can be subject to disciplinary action up to and including termination for failure to comply.

12.2 On-Campus Confidential Resources

If a complainant wishes the details of an incident to remain confidential, the complainant may speak with on-campus licensed professional counselors and on-campus health service providers working within the Wellness Center (864-388-8885). Campus counselors and/or Employee Assistance Program staff are available to help free of charge and may be consulted on an emergency basis during normal business hours. Lander University employees who are confidential resources will submit timely anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

12.3 Off-Campus Confidential Resources

If a complainant wishes the details of an incident to remain confidential, the complainant may speak with off-campus licensed professional counselors and other medical providers; local rape crisis counselors;

domestic violence resources; local or state assistance agencies; clergy or chaplains; and/or the complainant's retained attorney(s).

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

13 Supportive Measures

Lander University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sex-based harassment, sex-based discrimination, or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Lander University's educational programs or activities, including measures designed to protect the safety of all parties or Lander University's educational environment and/or to deter sex-based harassment, sex-based discrimination, or retaliation.

Supportive measures will be made available to the parties upon receiving notice of a complaint. At the time that supportive measures are offered, Lander University will inform the complainant that they may file a formal complaint with Lander University either at that time or in the future, if they have not done so already. The complainant's wishes will be taken into account with respect to the supportive measures that are planned and implemented.

Lander University will maintain the privacy of the supportive measures, provided that privacy does not impair Lander University's ability to provide the supportive measures. Lander University will act to ensure as minimal an academic impact on the parties as possible. Lander University will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services.
- Referral to the Employee Assistance Program.
- Referral to community-based service providers.
- Visa and immigration assistance.
- Student financial aid counseling.
- Education to the community or community subgroup(s).
- Altering campus housing assignment(s).
- Altering work arrangements for employees or student-employees.
- Safety planning.
- Providing campus safety escorts.
- Providing transportation accommodations.
- Implementing contact limitations (no contact orders) between the parties.

- Academic support, extensions of deadlines, or other course/program-related adjustments.
- Trespass notices, etc.
- Timely warnings.⁵
- Class schedule modifications, withdrawals, or leaves of absence.
- Increased security and monitoring of certain areas of the campus.
- Any other actions deemed appropriate by the Title IX coordinator.

Violations of no contact orders will be referred to appropriate Lander University student or employee conduct processes for enforcement.

14 Emergency Removals

14.1 Students

Lander University can act to remove a student respondent entirely or partially from its educational program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the CARE Team using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student, or representatives from a student organization, will be given notice of the action and the option to request a meeting with the vice president for student affairs or other appropriate official(s) prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A complainant and their advisor may be permitted to participate in this meeting if the Title IX coordinator determines that it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A respondent may be accompanied by an advisor of their choice when meeting with the appropriate official for the show cause meeting. The respondent will be afforded access to a written summary of the basis for

⁵ Clery Center "Timely Warning Guide": http://ncsam.clerycenter.org/wp-content/uploads/NCSAM18_Timely-Warning-Guide.pdf

the emergency removal prior to the meeting to allow for adequate preparation.

Regarding the status of students, the vice president for student affairs has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

14.2 Employees

Nothing in this subpart precludes Lander University from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45 and the applicable University policy. This provision may not be construed as modifying any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

Lander University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the vice president for student affairs or the director of human resources, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

Alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

15 Providing False Information

Lander University will act on any formal or informal notice/complaint of violation of this policy that is received by the Title IX coordinator or deputy coordinators by applying the appropriate procedures. Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith, but that are ultimately shown to be erroneous or do not result in a policy violation determination. Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official investigating can be subject to discipline in accordance with this policy.

16 Definition and Prohibition of Sexual Harassment

Lander University prohibits discrimination on the basis of sex, including sexual harassment and sexual violence. The University prohibits, and will not tolerate, sexual harassment. The US Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of South Carolina regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

16.1 For the purposes of Title IX, sexual harassment includes the following three types of misconduct based on sex:

16.1.1 Any instance of quid pro quo harassment by a Lander University employee conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sex. [Note: Quid pro quo offenses are not evaluated for severity, pervasiveness, offensiveness, or denial of equal educational access because the misconduct is sufficiently severe to deprive a person of equal access].

16.1.2 Any unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal educational access to a Lander University education program or activity.

16.1.3 Any instance of sexual assault (as defined in 20 USC 1092(f)(6)(A)(v)), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (as defined in 34 USC 1229(a)(8,10 or 30)).

16.2 For the purposes of Title VII, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

16.2.1 Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

16.2.2 Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

16.2.3 Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile environment.

17 Definition and Prohibition of Sexual Violence

Sexual violence consists of sexual acts perpetrated against a person's will or where a person is incapable of giving consent. The University prohibits, and will not tolerate, sexual violence. Sexual violence, including VAWA offenses, are as follows:

17.1 Sexual Assault and/or Battery:

Any attempted or actual act of nonconsensual sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any other object into the oral, genital or anal openings of another person's body. This includes forcible or non-forcible sex offenses under the uniform crime reporting system of the Federal Bureau of Investigation:

17.1.1 Rape

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the complainant;

17.1.2 Fondling

The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the complainant including instances where the complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacitation;

17.1.3 Incest

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and

17.1.4 Statutory Rape

Sexual intercourse with a person who is under the statutory age of consent. (In South Carolina the legal age of statutory consent is 16. However, individuals as young as 14 years old are able to consent to have sex with a partner who is 18 years old or younger.)

17.2 Dating/Relationship Violence

Violence, on the basis of sex, committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the person who is the recipient of the violent act(s). The existence of such a relationship shall be determined based on the recipient's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons

involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

17.3 Domestic Violence

Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the person who is the recipient of the violent act(s), by a person with whom the recipient shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the recipient as a spouse or intimate partner, or by a person similarly situated to a spouse of the recipient under the domestic or family violence laws of South Carolina, or by any other person against an adult or youthful recipient who is protected from that person's acts under the domestic or family violence laws of South Carolina.

17.4 Stalking

Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety, or the safety of others or to suffer substantial emotional distress. For the purposes of this definition, "course of conduct" means two or more acts, including, but not limited to, acts in which the transgressor directly, indirectly, or through third-parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the person who is the object of the stalking. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

17.5 Sexual Coercion

The act of using pressure through threats, force, or alcohol or drugs in an attempt to have sexual contact with a person against their will.

17.6 Nonconsensual Contact

Any other nonconsensual conduct of a sexual nature including, but not limited to, touching, fondling, kissing, groping, or indecent exposure.

17.7 Sexual Exploitation

Taking non-consensual or abusive sexual advantage of another person for one's own benefit or for the benefit of anyone other than the person being

exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of sexual exploitation include, but are not limited to: sex-based cyber-harassment; peeping or other voyeurism; forcing others to view sexual activity; non-consensual photographing or videoing or audio taping of sexual activity; causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity; engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection; misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections; forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity; knowingly soliciting a minor for sexual activity; engaging in sex trafficking; or creation, possession, or dissemination of child pornography.

18 Consent

18.1 Definition

Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time. Consent to some sexual contact (e.g., kissing, fondling) cannot be presumed to be consent for other sexual activity (e.g., intercourse). A current or previous intimate relationship is not sufficient to constitute consent. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Lander University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or

similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

18.2 Inability to Consent

Various factors may limit or negate a person's ability to consent to a sexual act. These include, but are not limited to, incapacitation (defined below) intellectual or other disability, or fear due to threats or force. In order to find a lack of consent under one of these circumstances, there must be both a finding that the complainant was unable to consent and a finding that the respondent knew or had reason to know the complainant was unable to consent. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. Incapacitation occurs when a person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (i.e., to understand the "who, what, when, where, why, or how" of sexual interaction).

18.3 Incapacitation

Incapacitation is the physical and/or mental inability to make informed, rational judgments and decisions. It may be permanent or temporary. Someone who is asleep or unconscious is incapacitated. Someone can also be incapacitated by alcohol or other substances. Where alcohol or other substances are involved, incapacitation is determined by how the substance impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. Incapacitation is a state beyond intoxication, and a person is not incapacitated merely because of drinking or drug use. Intoxication of the respondent is not an excuse for failure to obtain consent or failure to know of the complainant's inability to consent.

18.4 Mutual Incapacitation

If there is evidence or an assertion that both participants in a specific sexual act may have been incapacitated at the time it occurred, the university will examine the conduct of both persons in its investigation. If either or both persons initiated and engaged in sexual activity with someone who was incapacitated, the university will impose sanctions based on all circumstances. The gender of any person will not be a factor in the selection of sanctions. Once the university has completed its investigation and adjudication of an incident (including appeals), no participant may later raise a claim of their own incapacitation.

19 Potential Sanctions and Other Remedies

- 19.1 Persons found to be in violation of this policy will be subject to prompt and appropriate corrective action, up to and including dismissal or termination from the University, or in the case of visitors, exclusion from University property and/or programs.
- 19.1.1 In cases involving violations by students, sanctions will be determined in accordance with the Student Code of Conduct. Possible sanctions include but are not limited to reprimand, disciplinary probation, eviction from university housing, suspension, dismissal, and notations on transcripts.
- 19.1.2 In cases involving violations by faculty or staff, sanctions may include but are not limited to oral or written reprimand, reassignment, demotion, suspension or termination of employment, and/or removal from campus.
- 19.1.3 In cases involving violations by visitors or other third parties the University will impose sanctions appropriate to the circumstances and its enforcement abilities.
- 19.2 Following the conclusion of the appropriate grievance process, sanctions will be implemented as soon as feasible, either upon the outcome of any appeal or the expiration of the time period to appeal in the absence of a request for an appeal, as applicable. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by external authorities. Factors considered when determining a sanction/responsive action may include, but are not limited to:
- The nature, severity of, and circumstances surrounding the policy violation(s);
 - The respondent's disciplinary history;
 - Previous allegations or allegations involving similar conduct;
 - The need for sanctions/responsive actions to bring an end to the sex-based harassment, sex-based discrimination, or retaliation;
 - The need for sanctions/responsive actions to prevent the future recurrence of sex-based harassment, sex-based discrimination, or retaliation;
 - The need to remedy the effects of sex-based harassment, sex-based discrimination, or retaliation on the complainant and the Lander University community;
 - The impact on the parties; and/or
 - Any other information deemed relevant by the decision-maker.
- 19.3 Following the conclusion of the resolution process, and in addition to any sanctions implemented, additional long-term remedies or actions with respect to the parties and/or the Lander University community may be implemented to stop sex-based harassment, sex-based

discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services.
- Referral to the Employee Assistance Program.
- Education and training.
- Permanent alteration of housing assignments.
- Permanent alteration of work arrangements for employees.
- Provision of campus safety escorts.
- Training.
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

19.4 Certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, any remedies owed by Lander University to the respondent will be addressed to ensure that there is no effective denial of educational access. Lander University will maintain the confidentiality, to the maximum extent possible, of any long-term remedies/actions/measures, provided that privacy does not impair Lander University's ability to provide these services.

19.5 All respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final decision-maker and/or the appeal authority, as applicable. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Lander University and notations on an official transcript.

20 Recordkeeping

20.1 Lander University will maintain the following records for a period of at least seven (7) years:

- Each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- Any disciplinary sanctions imposed on the respondent;
- Any remedies provided to the complainant designed to restore or preserve equal access to Lander University education programs or activities;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom;

- All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. Lander University will make these training materials publicly available on the Lander University website; and
- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including: the basis for all conclusions that the response was not deliberately indifferent; any measures designed to restore or preserve equal access to Lander University education programs or activities; and, if no supportive measures were provided to the complainant, documentation of the reasons that such a response was not clearly unreasonable in light of the known circumstances.

20.2 Lander University will also maintain any and all records in accordance with state and federal laws.

21 Terms

21.1 Advisor

A person chosen by a party or appointed by the institution 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, as applicable.

21.2 CARE Team

Lander University's Collaboration, Assessment, Response, and Evaluation Team (CARE) Team seeks to identify, assess, and respond to behavior that may pose a threat of harm to Lander University students, employees, or invitees. The CARE Team addresses critical psychological, emotional, physical, behavioral, or other well-being concerns through review of reported incidents, and provides recommendations to ensure the safety of the Lander University community.

21.3 Complainant

An individual who alleges or is alleged to have been the victim of conduct that could constitute harassment or discrimination based on a protected class or retaliation for engaging in a protected activity.

21.4 Confidential Resource

An employee who is not a responsible employee/mandated reporter (defined below) of notice of sex-based harassment, sex-based discrimination, and retaliation (regardless of Clery Act Campus Security Authority status).

21.5 Education Program or Activity

Locations, events, or circumstances for which Lander University exercises substantial control over both the respondent and the context in which the sexual harassment or discrimination is alleged to have occurred, including any building owned or controlled by a student organization that is officially recognized by Lander University.

21.6 Finding

A conclusion based on the preponderance of evidence that the conduct did or did not occur, as alleged.

21.7 Formal Complaint

A document filed/signed by a complainant or the Title IX coordinator alleging harassment or discrimination based on a protected class or in retaliation for engaging in a protected activity against a respondent and requesting that Lander University investigate the allegation.

21.8 Formal Grievance Process

A method of formal resolution designated by Lander University to address conduct that falls within the policies included below and/or complies with the requirements of 34 CFR Part 106.45.

21.9 Hearing Decision-Maker or Panel

Person or persons who have decision-making and sanctioning authority within Lander University's formal grievance process.

21.10 Hostile Environment

An environment that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.

21.11 Investigator

The person or persons charged by Lander University with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the information, and compiling this information into an investigation report and file of directly related evidence.

21.12 Responsible Employee (or Mandated Reporter)

An employee of Lander University mandated by this policy to share knowledge, notice, and/or reports of sex-based harassment, sex-based discrimination, and retaliation with the Title IX coordinator.

21.13 Notice

When an employee, student, or third-party informs the Title IX coordinator or other official with authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

21.14 Official with Authority (OWA)

An employee of Lander University explicitly vested with the responsibility to implement corrective measures.

21.15 Parties

Complainant(s) and respondent(s), collectively.

21.16 Remedies

Post-finding actions directed to the complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Lander University's educational programs.

21.17 Respondent

An individual who has been reported to have engaged in conduct that could constitute sex-based harassment or sex-based discrimination based on a protected class or retaliation for engaging in a protected activity.

21.18 Resolution

The result of an informal or formal grievance process.

21.19 Sanction

A consequence imposed by Lander University on a respondent who has been found to have violated this policy.

21.20 Title VII

A federal law that prohibits employment discrimination based on race, color, religion, sex, and national origin. This law makes it illegal to discriminate against a person on the basis of race, color, religion, national origin, or sex. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

21.21 Title IX of the Education Amendments of 1972

A federal law that protects people from discrimination, based on sex, in educational programs or activities that receive federal financial assistance. Title IX states that: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

21.22 Title IX Coordinator

An official designated by Lander University to ensure compliance with Title IX and Lander University’s Title IX program. References to the coordinator throughout this policy may also encompass a designee (or deputy Title IX coordinator) of the coordinator for specific tasks.

21.23 Title IX Team

The Title IX coordinator, deputy Title IX coordinators, and any member of the grievance process pool.

21.24 Violence Against Women Act

Congress enacted the Violence Against Women Act (VAWA) in 1994 to provide a national response to domestic violence, dating violence, sexual assault, and stalking. The 2013 Congressional reauthorization of the Act included amendments to the Clery Act [20 U.S.C. 1092(f)] requiring colleges and universities receiving federal funds to include in their Clery Act Annual Security and Fire Safety Reports(ASR) policy statements concerning institutional educational programs and campaigns related to dating violence, domestic violence, sexual assault, and stalking, as well as policy statements concerning institutional procedures in cases of these forms of misconduct. Regulations implementing the Clery Act amendments were adopted in October 2014, 79 Fed. Reg. No. 202, p.62752, 62783; 34C.F.R. 668.46(b)(11); 34 C.F.R.668.46(j); 34 C.F.R. 668.46(k)

22 Policy Updates

Lander University, subject to approval from the Board of Trustees, reserves the right to make changes to this document, as necessary; once those changes are posted online, they are in effect. If government laws or regulations change, or court decisions alter, the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings. This document does not create legally enforceable protections beyond the protection of the background state and federal laws that frame such policies and codes, generally.

23 Attributions and Citations

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24 Policy Revision History

- Originally drafted as the *Equal Opportunity, Non-discrimination, and Non-Harassment (LP5.27)* policy to meet new federal Title IX guidelines and to incorporate anti-discrimination, anti-harassment policies and procedures in one omnibus policy on 8/11/2020.
- Provisionally approved by internal stakeholders on 8/28/2020.
- Approved by Board of Trustees on 9/15/2021 with suggestion that the policy be reworked into smaller policies and separate procedures where possible by the next board meeting in December 2020.
- Policy reworked into *Sexual Harassment and Sexual Violence* policy with procedures split out into a separate document (referenced within this policy) and approved by the Board of Trustees on 12/14/2020. See also *Non-Discrimination and Anti-Harassment (LP5.27)* policy, the other policy “child” from the original omnibus policy originally published in August 2020.
- At the suggestion of the Title IX Coordinator, the policy structure was updated on 7/12/2021 (no changes to content). Created new section 6, “Complaint Options,” to be the heading over previously numbered sections 5.3.1 through 5.3.5, (now 6.1 through 6.5), which needed to be pulled out from section 5 into its own dedicated section.