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Policy Owner:

Board of Trustees

Policy Administrator:

Title IX Coordinator, Human Resources

Affected Parties:

Students

Employees

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Equal Opportunity, Non-Discrimination, and Non-Harassment¹

THE LANGUAGE USED IN THE LANDER POLICY FOR ADMINISTRATION AND STAFF DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND LANDER UNIVERSITY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. LANDER RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT. LANDER UNIVERSITY'S OFFICE OF HUMAN RESOURCES HAS THE AUTHORITY TO INTERPRET THE UNIVERSITY'S HUMAN RESOURCES POLICIES.

I Summary

Lander University is committed to providing a workplace and educational environment, as well as other benefits, programs, and, activities that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Lander University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Lander University values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the grievance process during what is often a difficult time for all those involved.

II Terms

A. 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.

B. Complainant

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

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- C. **Formal Complaint**
A document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that Lander University investigate the allegation.
- D. **Confidential Resource**
An employee who is not a Responsible Employee/Mandated Reporter (defined below) of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- E. **Day**
A business day when Lander University is in normal operation.
- F. **Education Program or Activity**
Locations, events, or circumstances where Lander University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Lander University.
- G. **Final Determination**
A conclusion by the preponderance of evidence that the alleged conduct occurred and whether it did or did not violate Policy.
- H. **Finding**
A conclusion by the preponderance of evidence that the conduct did or did not occur as alleged.
- I. **Formal Grievance Process**
A method of formal resolution designated by Lander University to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.
- J. **Grievance Process Pool**
Also referred to as “the Pool,” and includes any Investigators, Hearing Officers, Appeal Officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- K. **Hearing Decision-Maker or Panel**
Refers to those who have decision-making and sanctioning authority within Lander University’s Formal Grievance process.
- L. **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 evidence, and compiling this information into an investigation report and file of directly related evidence.
- M. **Responsible Employee (or Mandated Reporter)**



An employee of Lander University mandated by Policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.²

N. Notice

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.

O. Official with Authority (OWA)

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

P. Parties

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

Q. Preponderance of Evidence

Whether it is more likely than not that the Respondent violated the Policy as alleged.

R. 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 program.

S. Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

T. Resolution

The result of an informal or Formal Grievance Process.

U. Sanction

A consequence imposed by Lander University on a Respondent who is found to have violated this Policy.

V. Sexual Harassment

The umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.

W. Title VI

Title VI, 42 U.S.C. § 2000d et seq., was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

X. Title VII

Title VII prohibits employment discrimination based on race, color, religion, sex and national origin. This law makes it illegal to discriminate against someone 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

² Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in accordance with this Policy.



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.

Y. Title IX

Title IX of the Education Amendments of 1972. Title IX protects people from discrimination based on sex in education 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."

Z. 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.

AA. Title IX Team

The Title IX Coordinator, deputy Title IX coordinators, and any member of the Grievance Process Pool.

III Scope

The core purpose of this Policy is the prohibition of all forms of discrimination and harassment. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, sexual misconduct, dating violence or domestic violence. When an alleged violation of this anti-discrimination Policy is reported, the allegations are subject to resolution in accordance with Lander University's process. 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, students,³ student organizations, faculty, administrators, staff, and third parties such 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.

IV Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator. Lander University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect. During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as

³ For the purpose of this Policy, Lander University defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with Lander University.



to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

V Designated Administrators and External Resources

A. Title IX Coordinator And Deputy Staff

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 discrimination, harassment, and retaliation prohibited under this Policy. The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions in accordance with this Policy and accompanying procedures. The Title IX Coordinator is responsible for conducting ongoing training and outreach for all employees, (administrators, faculty and staff) board members and students. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Vice President for Student Affairs or the Director of Human Resources). Concerns of bias or a potential conflict of interest by any other Title IX Team member should be brought to the attention of the Title IX Coordinator. Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Vice President for Student Affairs or the Director of Human Resources. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

The Deputy Title IX Coordinator for Students shall ensure this Policy is distributed to all new students and is responsible for conducting ongoing training and outreach of all students. The Deputy Title IX coordinator for students also assists with resolutions and procedures in accordance with this Policy.

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



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

All complaints received by deputy coordinators are required to be communicated promptly to the Title IX Coordinator.

A list of designated administrators may be accessed at www.lander.edu/titleix.

B. Disability Services

Lander University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities. Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by Lander University, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

Lander University is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of Lander University. All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of Disability Services, who coordinates services for students with disabilities. The Director of Disability Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).

Additional information regarding student-related disability services and pertinent staff contact information may be accessed at <https://www.lander.edu/student-life/wellness-center/disability-services>.

Pursuant to the ADA, Lander University will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to Lander University. An employee with a disability is responsible for submitting a request for an accommodation to the Director of Disability Services and providing necessary documentation. The Director of Disability Services will coordinate with the Office of Human Resources to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

Additional information regarding employee-related disability services and pertinent staff contact information may be accessed at <https://www.lander.edu/about/human-resources/forms-resources/americans-disabilities-act>.

C. External Resources

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
Facsimile: (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
By e-mail to education@usdoj.gov
By telephone at (202) 514-4092 or 1-877-292-3804 (toll-free)
By fax at (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
Phone: 1-800-669-4000
Fax: 864-241-4416
TTY: 1-800-669-6820

VI Policy on Nondiscrimination

Lander University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education. Lander University does not discriminate against any employee, applicant for employment, student, or applicant for admission.

Lander 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, etc.) in employment, educational programs and activities, admissions and financial aid. This includes a prohibition against sexual harassment and sexual violence as mandated by Title IX of the Education Amendments.

This policy of Non-Discrimination is intended to meet Lander University's responsibilities under Titles VI and VII of the Civil Rights Act 1964, the Pregnancy Discrimination Act of 1978, Title IX of the Education Amendments of 1972, Sections 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967, the Age Discrimination Act of 1975, the Vietnam Veterans Readjustment Assistance Act of 1974, the Genetic Information Nondiscrimination Act of 2008, the Violence Against Women Act, the SC Pregnancy Accommodations Act and applicable provisions of the South Carolina Human Affairs Law or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or



participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the Lander University community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the Lander University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of Lander University Policy on nondiscrimination.

When brought to the attention of Lander University, any such discrimination will be promptly and fairly addressed and remedied by Lander University in accordance with the appropriate grievance process.

VII Notice/Complaints of Discrimination, Harassment, and/or Retaliation

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a Policy violation by a Respondent and requesting that Lander University investigate the allegation(s). A complaint may be filed with the Title IX Coordinator 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 by a Complainant" means a document or electronic submission (such as 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 notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure the submission is filed out correctly. If an individual is submitting a complaint on behalf of another party, the Title IX Coordinator will determine if the impacted individual wishes to file a formal complaint. Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

A. Verbal and/or Written Notice

File a complaint with, or give verbal notice to the Title IX Coordinator and/or deputy staff. 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, listed for the Title IX Coordinator or any other official listed.

B. Online Reporting Forms

Title IX Complaints: Reports covered under Title IX jurisdiction may be filed online, using the reporting form posted at www.lander.edu/titleix. The Title IX Coordinator and pertinent members of the Title IX Team are responsible for the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited by applicable University policies.

Discrimination and/or Bias Complaints Outside of Title IX Jurisdiction: Discrimination or bias incidents outside of Title IX jurisdiction may be filed online, using the reporting form posted at <https://www.lander.edu/about/statement-non-discrimination>.



C. Reporting to a Supervisor

Parties may opt to report issues of discrimination, harassment, and/or retaliation directly to their immediate supervisor. Upon notice, the supervisor must immediately report this information to the Title IX Coordinator. (Reference Responsible Employee Section below.)

VIII Federal Timely Warning Obligations

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

IX Amnesty for Complaints and Witnesses

Lander University community 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, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons. It is in the best interests of the University community that Complainants choose to report misconduct to Lander University officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

A. Students

Students may be hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual misconduct to speak with University officials). To encourage reporting and participation in the process, Lander University maintains a policy of offering Parties/witnesses amnesty, at its discretion, from minor policy violations in the Student Conduct Code such as underage consumption of alcohol or the use of illicit drugs (when related to the incident).

B. Employees

Employees may be hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. Lander University may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

X Responsible Employees, Mandating Reporting, and Confidential Resources

Responsible Employees and Mandating Reporting

All employees of Lander University, including Residents Assistants, with the exception of those who are designated as Confidential Resources, are Responsible Employees and must promptly share with the Title



Title IX Coordinator all known details of a report made to them in the course of their employment. Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party. Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Responsible Employees, as those details must be shared with the Title IX Coordinator. Supportive measures may be offered as the result of such disclosures without formal Lander University action.

Responsible Employees are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

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

When a Responsible Employee is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though 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, though they are encouraged to do so.

Failure of a Responsible Employee, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of Lander University Policy and can be subject to disciplinary action up to and including termination for failure to comply.

Confidential Resources

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

- On-campus licensed professional counselors.
- On-campus health service providers.
- Off-campus (non-employees):
 - Licensed professional counselors and other medical providers.
 - Local rape crisis counselors.
 - Domestic violence resources.
 - Local or state assistance agencies.
 - Clergy/Chaplains.
 - The Complainant's retained attorney(s).

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



and/or the Employee Assistance Program 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 timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client or patient.

Anonymous notice will be investigated by Lander University to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits Lander University's ability to investigate, respond, and provide remedies, depending on what information is shared. Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from Lander University.

XI Federal Statistical Reporting Obligations

In addition to campus law enforcement, students and employees are encouraged to report criminal offenses to Campus Security Authorities (CSAs). The individual reporting the crime to the CSA may remain anonymous. All Lander employees are considered to be CSAs with very limited exceptions.⁴ Any employee notified of a crime is responsible for contacting the Lander University Police Department at (864) 388-8222. Information provided by the CSA will be used for statistical purposes in Lander's Annual Security Report. The CSA is responsible for providing statistical information on crimes reported to them for inclusion in the Annual Security Report. Statistical information will also be requested from area police agencies. Campus Security Authorities have a duty to report the following for federal statistical reporting purposes (Clery Act):

- All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- VAWA⁵ -based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with campus law enforcement for publication in the Annual Security Report and daily campus crime log.

XII Reluctant Compliant

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX

⁴ Exceptions - Certain individuals who would normally be CSAs are exempt from disclosing information when acting within the scope of their license or certificate.

⁵ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.



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 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 alleged employee misconduct irrespective 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, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When 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 irrespective of their level of participation. Typically, when the 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 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 formal complaint, Lander University will attempt to honor this request to the fullest extent possible, providing the circumstances allow. Informal resolution options, supportive measures, and/or remedies to the Complainant and the community will still be offered, 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 these procedures.

XIII Supportive Measures

Lander University will offer and implement appropriate and reasonable supportive measures to the Parties upon notice of alleged harassment, discrimination, and/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 education program or activity, including measures designed to protect the safety of all Parties or Lander University's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving notice or a complaint. At the time that supportive measures are offered, Lander University will inform the Complainant, in writing, 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 Title IX Coordinator works with the Complainant to



ensure that their wishes are 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.⁶
- 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 student or employee conduct processes for enforcement.

XIV Emergency Removals

Lander University can act to remove a student Respondent entirely or partially from its education 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 Team⁷ using its standard objective violence risk assessment procedures.

⁶ Clery Center "Timely Warning Guide": http://ncsam.clerycenter.org/wp-content/uploads/NCSAM18_Timely-Warning-Guide.pdf

⁷ In order to encourage an environment of increased safety, 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 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 University community.



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 to meet with the Vice President for Student Affairs or other appropriate officials 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 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 given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

Specific to 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.

Nothing in this subpart precludes the University from placing a non-student employee Respondent on administrative leave during the pendency of a grievance process that complies with § 106.45. This provision may not be construed to modify 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 other appropriate officials, 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.

At the discretion of the appropriate official, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the Parties.

XV Promptness

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



XVI Privacy

Every effort is made by Lander University to preserve the privacy of reports.⁸ Lander University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Lander University reserves the right to determine which officials have a legitimate educational interest in being informed about incidents that fall within this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA). Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: the Vice President for Student Affairs, General Counsel, Director of Human Resources, the Chief of Police, and the CARE Team. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the Parties. The circle of people with this knowledge will be kept as tight 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 articulable health and/or safety risk, but will usually consult with the student first before doing so.

XVII Jurisdiction

This Policy applies to the education program 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 Lander University's community in order for its policies to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Lander University's educational program. Lander University may also extend jurisdiction to off-campus and/or to online conduct when it is determined that the conduct affects a substantial Lander University interest.

⁸ 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 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.



Regardless of where the conduct occurred, Lander University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial 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 or is not a member of the Lander University community, the Title IX Coordinator or other appropriate officials will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Further, even when the Respondent is not a member of Lander University's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, Lander University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Lander University property and/or events.

All vendors serving Lander University through third-party contracts are subject to the policies and procedures of their employers.

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 discrimination in an externship, study abroad program, or other environment external to Lander University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

XVIII Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to Lander University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or even unattainable. Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate. When notice/complaint is affected by 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 notice/complaint.⁹

⁹ Lander University will attempt to obtain consent from the impacted Parties and/or seek the advice of General Counsel.



XIX Online Harassment and Misconduct

The policies of Lander University are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Lander University's education program and activities or use Lander University networks, technology, or equipment. While Lander University may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Lander University, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Lander University community.

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of Lander University's control (e.g., not on Lander University networks, websites, or between Lander University email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program¹⁰ 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 speech by employees, whether online or in person, may be regulated by Lander University when such speech is made in an employee's official or work-related capacity.

XX Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Lander University's harassment Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by 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, though supportive measures will be offered to those impacted.

Discriminatory harassment constitutes a form of discrimination that is prohibited by Lander University Policy. ***Discriminatory Harassment*** is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by Policy or law.

Lander University does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Lander University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." ***A hostile environment*** is one that unreasonably

¹⁰ "Title IX of the Education Amendments of 1972 is a federal law that prohibits discrimination on the basis of sex in educational programs or activities."



interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.¹¹ This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive. When discriminatory harassment rises to the level of creating a hostile environment, Lander University may also impose sanctions on the Respondent through application of the appropriate grievance process.

Lander University reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under Lander University Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms. For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Director of Human Resources (<https://www.lander.edu/about/human-resources>), and students should contact the Director of Student Conduct (<https://www.lander.edu/student-life/student-conduct>).

XXI Sexual Harassment

The 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. Lander University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well. 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. Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Sexual harassment includes conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:

A. **Quid Pro Quo**

An employee of Lander University that conditions the provision of an aid, benefit, or service of the University based on an individual's participation in unwelcome sexual conduct; and/or

B. **Sexual Harassment/Unwelcome Conduct**

Unwelcome conduct determined by a reasonable person to be so severe, and pervasive, and, objectively offensive, that it effectively denies a person equal access to Lander University's education program or activity.¹²

C. **Hostile Environment**

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

¹¹ This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994.

¹² Unwelcome conduct is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.



D. Sexual Assault

Sex Offenses, Forcible: Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.

- Forcible Rape: 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.
- Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Sexual Assault with an Object: The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- Forcible Fondling: The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age¹³ or because of temporary or permanent mental or physical incapacity.

Sex Offenses, Non-forcible:

- Incest: Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by South Carolina state law.
- Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent in accordance with South Carolina state law.

E. Dating 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 Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, 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.

F. Domestic Violence

Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of South Carolina, or by any other person against an adult or youth Complainant who is protected

¹³ Per South Carolina state law.



from that person's acts under the domestic or family violence laws of South Carolina.¹⁴

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

XXII Consensual Relationships

Sexual harassment and/or the assignment or suggestion of rewards and punishments on the basis of sex or sexuality have no place in the work of the University and are prohibited. For the protection of the University community, no employee shall enter into a sexual or romantic relationship (consensual or otherwise) with a student, staff member, or faculty member when the work of one is directly evaluated or supervised by the other. In cases where there is a pre-existing sexual or romantic relationship, effective steps, including initial disclosure by the direct evaluators or supervisors to their unit heads, must be taken to ensure unbiased evaluation or supervision of the student, staff member, or other faculty member. If complaints occur and are substantiated, employees will be subject to disciplinary action, up to and including termination or non-renewal of contract. All complaints will be adjudicated with due process for all Parties in accordance with the applicable university policies, federal, state, and local laws.

Complainants are protected from retaliatory acts and are not to be discouraged from reporting in good faith any concerns regarding sexual harassment or favoritism. However, malicious or frivolous claims of harassment or favoritism are prohibited, and, if substantiated, will result in disciplinary action against the complainant. Disciplinary actions may include termination, non-renewal of contract, probation, suspension, expulsion, or other appropriate action.

Students serving as teaching assistants and resident assistants are also professionally responsible for students, and therefore fall under this Policy. Students found in violation of this Policy will be subject to sanctions as outlined herein, and if appropriate, sanctions delineated in the Student Code of Conduct.

Lander University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy.

¹⁴ To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.



XXIII Force, Coercion, Consent, and Incapacitation¹⁵

In accordance with the offenses outlined within this Policy, the following definitions apply.

A. Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

B. Coercion

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

C. Consent

Consent is knowing and 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 (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether its Policy has been violated. The existence

¹⁵ As applicable to sex offenses, South Carolina does not specifically define "consent." Criminal prosecutions for sex offenses in South Carolina differ from definitions used by the University to address policy violations. The following South Carolina Code of Laws definitions have been included for Clery/VAWA Sec. 304 compliance purposes. "Aggravated force" means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon. S.C. Code Ann. § 16-3-651(c). "Aggravated coercion" means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person. S.C. Code Ann. § 16-3-651(b). "Mentally defective" means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct. S.C. Code Ann. § 16-3-651(e). "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause. S.C. Code Ann. § 16-3-651(f). "Physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act. S.C. Code Ann. § 16-3-651(g).



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.

D. Incapacitation

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent. It is a defense to a sexual assault Policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

XXIV Other Civil Rights Offenses

Violation of any other Lander University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities. Sanctions for Civil Rights Offenses range from reprimand through expulsion/termination from the university.

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, Lander University additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant’s actual or perceived membership in a protected class.

A. Sexual Exploitation

Taking non-consensual or abusive sexual advantage of another for their 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:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed).
- Invasion of sexual privacy.
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of revenge pornography.
- Prostituting another person.



- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection.
 - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.
 - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections.
 - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
 - Knowingly soliciting a minor for sexual activity.
 - Engaging in sex trafficking.
 - Creation, possession, or dissemination of child pornography.
- B. Harm to Others/Intimidation
Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person. Implied threats or acts that cause an unreasonable fear of harm in another.
- C. Discrimination
Actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.
- D. Hazing
Acts likely to cause physical or psychological harm or social ostracism to any person within the Lander University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (Hazing is further defined within the Student Code of Conduct.16)
- E. Bullying
Repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally and is not speech or conduct otherwise protected by the First Amendment.

XXV Retaliation

Protected activity under this Policy includes reporting an incident that may implicate this Policy, participating in the 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 Title IX Coordinator and will be promptly investigated. Lander University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation. It is prohibited for Lander University or any member of Lander University's community are 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

¹⁶ Hazing is further defined in the [Lander University Student Handbook](#) and can be found in the Code of Conduct section.



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.

Charges against an individual for Code of Conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or 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 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.

XXVI Resolution Process

False Allegations and Evidence

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination. Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline in accordance with this Policy.

Disabilities Accommodations in the Resolution Process

Lander University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Lander University's resolution process.

Anyone needing such accommodations or support should contact the Director of Disability Services or the Director of Human Resources, as applicable. The appropriate official will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

Procedures

Lander University will act on any formal or informal notice/complaint of violation of the Policy on Equal Opportunity, Non-Discrimination, and Non-Harassment that is received by the Title IX Coordinator¹⁷ or any other Official with Authority by applying these procedures.

The procedures below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other

¹⁷ Anywhere this procedure indicates "Title IX Coordinator," Lander University may substitute a trained designee.



allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures as outlined in otherwise pertinent, published policies.

A. Rights of The Parties

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to Lander University officials.
- The right to timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated Policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by Lander University officials.
- The right to have Lander University policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by Lander University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.

B. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, Lander University initiates a prompt initial assessment to determine the necessary steps to follow. Lander University will initiate at least one of three responses.

- Offering supportive measures because the Complainant does not want to proceed formally; and/or
- An informal resolution; and/or
- A Formal Grievance Process including an investigation and a hearing.

The investigation and grievance process will determine whether or not the Policy has been violated. If so, Lander University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, the potential recurrence, or the effects.

C. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator¹⁸ engages in an initial assessment, which is typically one to five business days in duration. The steps of an initial assessment can include:

¹⁸ If circumstances require, there will be another person designated to oversee the process below, particularly when an allegation is made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.



- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
- If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.

Additionally, The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.

- If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
- If an informal resolution option is preferred by the Complainant, the Title IX Coordinator will assess whether the complaint is suitable for informal resolution, and which informal mechanism may best serve the situation, as applicable. The Title IX Coordinator may also seek to determine if the Respondent is willing to engage in informal resolution.
- If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX. If so, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address an incident, and/or a pattern of alleged misconduct, and/or a culture/climate issue, based on the nature of the complaint.
- If not, the Title IX Coordinator determines that Title IX does not apply and will “dismiss” that aspect of the complaint, if any. As appropriate, the Title IX Coordinator will assess which policies apply and which resolution process is suitable. Please note that dismissing a complaint under Title IX is merely procedural, and does not limit Lander University’s authority to address a complaint with an appropriate process and remedies.

D. Violence Risk Assessment

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA)¹⁹ should be conducted by the CARE Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;

¹⁹ A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology. VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or CARE Team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the CARE Team.



- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors (e.g. befriending one with the goal of ‘grooming’ them to accept inappropriate behavior);
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notations; and/or
- Whether a Clery Act Timely Warning, trespass order, and/or a persona-non-grata²⁰ is needed.

Threat assessment is the process of evaluating the action-ability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

E. Dismissal (Mandatory²¹ and Discretionary)

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

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy hereinabove, even if proved; and/or
- The conduct did not occur in an educational program or activity controlled by Lander University (including buildings or property controlled by recognized student organizations), and/or Lander University does not have control of the Respondent; and/or
- The conduct did not occur against a person in the United States; and/or
- At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of Lander University.

Lander University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

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

Upon any dismissal, Lander University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties. This dismissal decision is appealable by any

²⁰ For the purposes of this rule, "persona non grata" means that an individual is no longer permitted to be present on specified university property or facilities.

²¹ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.



party under the procedures for appeal. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. It is also important to note that a Complainant that decides to withdraw a complaint may later request to reinstate it.

F. Counterclaims

Lander University is obligated to ensure that the grievance process is not abused for retaliatory purposes. Lander University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted. Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this Policy.

G. Advisors

Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The Parties may choose Advisors from inside or outside of the Lander University community. The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the Parties choose an Advisor from the Pool available from Lander University, the Advisor will be trained by Lander University and be familiar with the University's resolution process. If the Parties choose an Advisor from outside the Pool of those identified by Lander University, the Advisor may not have been trained by the University and may not be familiar with Lander University's policies and procedures. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

Advisors in Hearings/Lander University-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the Parties' Advisors. The Parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, Lander University will appoint a trained Advisor for the limited purpose of conducting any cross-examination. A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, Lander University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the Parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

Advisor's Role

The Parties may be accompanied by their Advisor in all meetings and interviews at which the Parties are entitled to be present, including intake and interviews. Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Lander University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor that



is an attorney, but the other party does not have access to an attorney, Lander University is not obligated to provide an attorney.

Pre-Interview Meetings

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

Advisor Violations of Lander University Policy

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

The Parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation. Any Advisor who oversteps their role as defined by this Policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

Privacy and Sharing Information with the Advisor

Lander University expects that the Parties may wish to have Lander University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the Parties participate more meaningfully in the resolution process. Before information can be released directly to an Advisor, involved Parties must provide acknowledged consent. Advisors are expected to maintain the privacy of the records shared with them. Pursuant to FERPA, these records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Lander University. Lander University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by privacy expectations as set forth.

Expectations of an Advisor

Lander University generally expects an Advisor to adjust their schedule to attend meetings when planned; however, the scheduling adjustments may be made to accommodate an Advisor's inability to attend, as long as doing so does not cause an unreasonable delay. Lander University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies that are readily available and convenient.

Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor



throughout. The Parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators, or as soon as possible if a more expeditious meeting is necessary or desired. Parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

H. Confidentiality During the Resolution Process

Resolution proceedings are confidential. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Lander University Policy. While there is an expectation of privacy around what Investigators share with Parties during interviews, the Parties have discretion to share their own knowledge and evidence with others if they so choose. Lander University encourages Parties to discuss this with their Advisors before doing so.

I. Informal Resolution

Informal Resolution can include three different approaches:

- When the Parties agree to resolve the matter through an alternate resolution mechanism, including mediation, restorative practices, etc.;
- When the Respondent accepts responsibility for violating Policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, Lander University will provide the Parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Lander University. Lander University will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding. Parties will never be pressured to participate in Informal Resolution.

J. Alternate Resolution

Alternate Resolution is an informal process, including mediation or restorative practices, etc., by which a mutually agreed upon resolution of an allegation is reached. All Parties must consent to the use of Alternate Resolution. The Title IX Coordinator may consider the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for involved Parties:

- The Parties' amenability to Alternate Resolution;



- Likelihood of potential resolution, taking into account any power dynamics between the Parties;
- The Parties' motivation to participate;
- Civility of the Parties;
- Violence risk assessment;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the Parties;
- Rationality of the Parties;
- Goals of the Parties; and/or
- Adequate resources to invest in Alternate Resolution (time, staff, etc.).

The ultimate determination of whether Alternate Resolution is a viable option will be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution reached. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

K. Acceptance of Responsibility

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

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all Parties are able to agree on responsibility, sanctions, and/or remedies. If so, in consultation with other appropriate administrator(s), any such agreed-upon sanctions and/or remedies will be implemented accordingly. Any result is not subject to appeal once all Parties indicate their written assent to all agreed upon terms of resolution. When the Parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

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

L. Negotiated Resolution

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

M. Grievance Process Pool

The Formal Grievance Process relies on a Pool of administrators, faculty, and/or staff to carry out the process. External, trained third-party neutral professionals may also be used to serve in pool roles. Members of the Pool can serve in any of the following roles, at the direction of the Title IX Coordinator:



- To provide appropriate intake of and initial guidance pertaining to complaints.
- To act as an Advisor to the Parties.
- To serve in a facilitation role in informal resolution or Alternate Resolution.
- To perform or assist with initial assessment.
- To investigate complaints.
- To serve as a hearing facilitator (process administrator, no decision-making role).
- To serve as a Decision-maker regarding the complaint.
- To serve as an Appeal Decision-maker.

The Title IX Coordinator appoints the Pool, which acts with independence and impartiality. While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, Lander University can also designate standing roles for individuals in the Pool. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles. In accordance with federal regulations, Pool members will be trained²² annually.

N. Formal Grievance Process: Notice of Investigation and Allegations

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

- A meaningful summary of all of allegations;
- The identity of the involved Parties (if known);
- The precise misconduct being alleged;
- The date and location of the alleged incident(s) (if known);
- The specific policies implicated;
- A description of the applicable procedures;
- A statement of the potential sanctions/responsive actions that could result;
- A statement that Lander University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination;
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period;
- A statement about Lander University’s Policy on retaliation;
- Information about the privacy of the process;
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor;
- A statement informing the Parties that Lander University’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process;

²² Training materials will be updated annually and made available to the public on the Lander University’s website.



- Detail on how the party may request disability accommodations during the interview process;
- A link to the applicable policies and procedures, to include the afforded rights to participating Parties;
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have; and
- An instruction to preserve any evidence that is directly related to the allegations.

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

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the Parties as indicated in official Lander University records, or emailed to the Parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

O. Resolution Timeline

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

P. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

Q. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised to the Vice President for Student Affairs or the Director of Human Resources.

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



reported misconduct unless and until the Respondent is determined to be responsible for a Policy violation by the applicable standard of proof.

R. Investigation Process

Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. Lander University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the investigation. Lander University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or accommodations for disabilities or health conditions. Lander University will communicate in writing the anticipated duration of the delay and reason to the Parties and provide the Parties with status updates if necessary. Lander University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Lander University will implement supportive measures as deemed appropriate. Lander University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant Parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. Involved Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant.
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures.
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated.
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential Policy violation.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the Parties.
- Meet with the Complainant to finalize their interview/statement, if necessary.
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations. Notice should inform the Parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party.



- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings.
- Make good faith efforts to notify the Parties of any meeting or interview involving the other party, in advance when possible.
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the Parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors (if so desired by the Parties) with a list of witnesses whose information will be used to render a finding.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors (if so desired by the Parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which Lander University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The Parties may elect to waive the full ten days.
- The Investigator(s) may elect to respond in writing in the investigation report to the Parties' submitted responses and/or to share the responses between the Parties for additional responses
- The Investigator(s) will incorporate relevant elements of the Parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all Parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The Parties are also provided with a file of any directly related evidence that was not included in the report.

Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the Parties) who are employees of Lander University are expected to cooperate with and participate in Lander University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may warrant disciplinary action up to and including termination.

While in-person interviews for Parties and all potential witnesses are ideal, circumstances may



require individuals to be interviewed remotely. Microsoft Teams, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. Lander University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Though not preferred, witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s). If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

Recording of Interviews

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

Evidentiary Considerations in the Investigation

The investigation does not consider:

- Incidents not directly related to the possible violation, unless they evidence a pattern;
- The character of the Parties; or
- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

S. Referral For A Hearing

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

The Title IX Coordinator will select an appropriate Decision-makers from the Pool depending on whether the Respondent is an employee or a student. Allegations involving student-employees will be directed to the appropriate Decision-makers depending on the context of the alleged misconduct. At the discretion of the Hearing Chair, formal proceedings may be fully facilitated via a secure, virtual platform.

Hearing Decision-maker Composition

Lander University will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator. The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the resolution process in



the event that a substitute is needed for any reason. Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter. The Title IX Coordinator may not serve as a Decision-maker or Chair in the hearing, but may serve as an administrative facilitator of the hearing as long as their previous role(s) in the matter does not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

Hearing Notice

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the Parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is imperative and supersedes all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the Parties located in separate rooms using technology that enables the Decision-maker(s) and Parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing. Should Parties decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution.
- Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and Lander University will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.²³
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.

²³ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.



- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- A statement that Parties cannot bring mobile phones/devices into the hearing.

Alternative Hearing Participation Options

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

Extenuating Circumstances

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by Lander University and remain within the 60-90 business day goal for resolution. If the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

Withdrawal or Resignation While Charges Pending

Students: If a student has an allegation pending for violation of the Policy on Equal Opportunity, Non-Discrimination, and Non-Harassment, Lander University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma. Should a student Respondent permanently withdraw from Lander University, the resolution process ends, as Lander University no longer has disciplinary jurisdiction over the withdrawn student. Lander University will, however, continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to Lander University. Such exclusion applies to all campuses of Lander University. The records retained by the Deputy Title IX Coordinator for Students will reflect this status. A hold will be placed on the student record, which will prevent their ability to be readmitted. They may also be barred from Lander University property and/or events. If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Lander University unless and until all sanctions have been satisfied. During the resolution process, Lander University may put a hold on a responding student's transcript or place a notation on a responding student's transcript and/or a disciplinary certification to indicate that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Lander University no longer has disciplinary jurisdiction over the resigned employee. Lander University will, however, continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged



harassment or discrimination. The employee who resigns with unresolved allegations pending is not eligible for rehire with Lander University, and the records retained by the Deputy Title IX Coordinator for Employees will reflect this status. All Lander University responses to future inquiries regarding employment references for that individual may include that the former employee resigned during a pending disciplinary matter.

Pre-Hearing Preparation and Meetings

The Chair, after any necessary consultation with the Parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the Parties at least ten (10) business days prior to the hearing.

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

The Parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all Parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the Parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

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

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



The Chair, only with full agreement of the Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report is not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the Parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with General Counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

Pre-hearing meetings may be recorded when permission is granted by the applicable Parties.

T. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider:

- Incidents not directly related to the possible violation, unless they evidence a pattern;
- The character of the Parties; or
- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process. The Parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence, or in other words, whether it is more likely than not that the Respondent violated the Policy as alleged.

U. Hearing Procedures

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Policy on Equal Opportunity, Non-Discrimination and Non-Harassment.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the Parties (or two (2) organizational representatives when an organization is the Respondent), Advisors to the Parties, any called witnesses, the Title IX Coordinator (as applicable), and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide



information will respond to questions on their own behalf. The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the Parties and will then be excused.

Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

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

The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge. The Chair and/or hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the Parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various Parties/witnesses as they wait; flow of Parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the Parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations. Neither the Parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and Parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the Parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The Parties/witnesses will submit to questioning by the Decision-maker(s) and then by the Parties through their Advisors (“cross-examination”). All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the Parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.



The Chair may explore arguments regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance. The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal.

The Chair may consult with General Counsel on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question. If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with General Counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered. If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-maker(s), as distinguished from questions posed by Advisors through cross-examination.²⁴ Advisors are, however, encouraged to cross-examine based on questions posed by any Decision-maker(s) to ensure there are no questions about what is or is not admissible.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all Parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with Lander University's established rules of decorum for the hearing, Lander University may require the party to use a different Advisor. If a Lander University-provided Advisor refuses to comply with the rules of decorum, Lander University

²⁴ While this is noted in the preamble to the 2020 Title IX regulations, Advisor cross-examination following a question posed by any Decision-maker(s) will help ensure the rights of Parties are strictly enforced and minimize confusion about admissible evidence.



may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

Recording Hearings

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

The Decision-maker(s), the Parties, their Advisors, and other participants of Lander University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without being expressly authorized by Title IX Coordinator.

Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the Policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

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

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

The Decision-maker(s) will review the statements and any pertinent conduct history and will recommend the appropriate sanction(s). The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and as applicable, any recommended sanctions/measures. This information must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties.

Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the Parties and their Advisors within five business days of receiving the Decision-maker(s)' deliberation statement.

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

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant Policy section, and will contain a description of the procedural steps taken by Lander



University from the receipt of the misconduct report to the determination, including any and all notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged Policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant Policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent Lander University is permitted to share such information under state or federal law; any sanctions issued which Lander University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Lander University's educational or employment program or activity, to the extent Lander University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent). The Notice of Outcome will also include information on when the results are considered by Lander University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

V. Sanctions And Other Remedies

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

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- Previous allegations or allegations involving similar conduct;
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation;
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation;
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community;
- The impact on the Parties; and/or
- Any other information deemed relevant by the Decision-maker(s).

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested. The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

Student Sanctions

The following are the usual sanctions that may be imposed upon students singly or in combination.

- **Expulsion:** Dismissal from the university without the ability to apply for re-admittance.
- **Suspension:** Denial of enrollment, attendance and other privileges at the university for a specified period of time; permission to apply for admission upon termination of the period may be granted with or without conditions/ restrictions. Students may be required to complete a period of disciplinary probation upon their return to the university. NOTE: Any student suspended or expelled for disciplinary reasons must vacate the campus within the period of time specified in the notice of suspension. The student may not return to campus or university



property during the term of the suspension without prior written permission by the Vice President for Student Affairs, or designee.

- **Disciplinary Probation:** A period of review and observation during which a student is under an official warning that subsequent violations of university rules, regulations or policies are likely to result in a more severe sanction, including suspension or expulsion from the university. While on disciplinary probation, a student is considered not to be in good standing and may face specific limitations on his/her/their behavior and/or university privileges (see conditions/restrictions).
- **Residential Probation:** A formal notice that a resident's behavior is not in conformance with community standards. Students are expected to reflect upon their decisions and be mindful of how their choices and actions impact themselves, others, and the residential community. Further violations are likely to result in more stringent disciplinary action. Residential probation may be accompanied by various conditions/restrictions, including, but not limited to, fines, educational sanctions, or loss of visitation.
- **Conditions/Restrictions:** Limitations upon a student's behavior and/or university privileges for a period of time, or an active obligation to complete a specified activity; this sanction may include, but is not limited to, restricted access to the campus or parts of campus, denial of the right to represent the university in any way, denial of the privilege to live within a university residence, a denial of parking privileges, no contact directives, required workshop attendance and/or participation in public service. Further, a student may be restricted from certain leadership positions and/or seeking to run for, or to hold, an elected student office.
- **Written Warning:** An official reprimand that makes the misconduct a matter of record in university files; any further misconduct could result in further disciplinary action.
- **Housing Sanctions:** These sanctions include written warning; visitation restrictions; fines; other conditions; probation; relocation; and housing contract cancellation, whether a temporary or permanent loss of residential privileges.
- **Revocation of Admission and/or Degree:** Admission to the university may be revoked for fraud, misrepresentation, or other violation of university standards in obtaining admission. A degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of university standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Withholding Degree:** The University may withhold awarding a degree otherwise earned until the completion of the process set forth in this student code of conduct, including the completion of all sanctions imposed, if any.
- Other measures may be taken if deemed appropriate by the hearing authority.

Groups/Student Organization Sanctions

The following are the usual sanctions that may be imposed upon groups/student organizations singly or in combination.

- **Written Warning:** An official placing the group or organization on notice that any further misconduct could result in disciplinary action, to include any combination of the consequences as referenced below.



- **Organizational Probation:** A designated period of time during which the registered or sponsored student organization is required to comply with specified terms and conditions to address the behavior that led to the violation. During the probationary period, certain conditions/restrictions may apply. Further violations may result in deactivation of the organization.
- **Discretionary Sanctions:** Educational programs, service to the university, or other related discretionary assignments.
- **Conditions/Restrictions:** Limitations upon, or loss of, an organization's privileges for a period of time, or an active obligation to complete a specified activity.
- **Deactivation:** Loss of all privileges, including university recognition, for a specified period of time.
- Other measures may be taken if deemed appropriate by the hearing authority.

Employee Sanctions

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

- Corrective action or warning.
- Required counseling.
- Required training.
- Demotion.
- Suspension with or without pay.
- Revocation of tenure.
- Termination.
- **Other Actions:** In addition to or in place of the above sanctions, Lander University may assign any other sanctions as deemed appropriate.

Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator, or designee, may implement additional long-term remedies or actions with respect to the Parties and/or the campus community that are intended to stop the harassment, 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 to the individual and/or the community.
- 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.

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



the Title IX Coordinator, or designee, will address any remedies owed by Lander University to the Respondent to ensure 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 privacy does not impair Lander University's ability to provide these services.

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

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal authority). 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. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator, or designee.

W. Appeals

Any party may file a request for appeal, which should be submitted in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome. A three-member appeal panel chosen from the Pool will be designated by the Title IX Coordinator. No appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. A voting Chair of the Appeal panel will be designated. The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

Grounds for Appeal

Appeals are limited to the following grounds:

- Procedural Error(s): A procedural irregularity affected the outcome of the matter.
- New Evidence: New evidence has been discovered that was not reasonably available at the time on the determination of responsibility or dismissal.
- Conflict of Interest: A conflict of interest on the part of a Title IX Coordinator, an investigator that compiled the evidence, or a decision maker, and the conflict of interest affected the outcome.

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

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

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a



response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses within three (3) business days, which will be circulated for review and comment by all Parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Panel, and the Panel will render a decision in no more than seven (7) business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence standard.

Notice of Appeal Outcome

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

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

Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above. If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation. Lander University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

Appeal Considerations

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



- The Appeal Chair/Panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- In rare cases where a procedural error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- In cases in which the appeal results in reinstatement to Lander University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

X. Recordkeeping

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's education program or activity;
- 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 Lander University's 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's education program or activity; and if no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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