

**Lincoln University**  
***INTERIM DRAFT***  
**Title IX Sexual Misconduct, Sexual Harassment**  
**and Sexual Violence Prevention Policy**  
**August 14, 2020**

**Notification**

Lincoln University is required by the federal government to update our Title IX policy by August 14, 2020, and this document serves as a draft interim policy that is in effect as of the August 14, 2020. Recent administrative changes at Lincoln have caused several of the required Title IX administrative positions to be vacant at the present time. The unfilled positions will be filled within the next 30-45 days. In the meantime, should Lincoln receive a Title IX complaint, the Title IX Coordinator will process the complaint following the procedures indicated within this policy. Positions that are currently unfilled, will be filled on an interim basis to process a complaint either internally or using a qualified external source. Internal personnel will receive the required Title IX training as specified by statute to complete their tasks and responsibilities as indicated by this policy. There will be no delays in the processing of any complaints due to positions being unfilled.

**Introduction**

Lincoln University strives to promote an inclusive learning, working, and social environment where everyone in the university community can interact with each other respectfully, professionally, and fairly. Lincoln is committed to maintaining a workplace and academic environment free of unlawful discrimination, harassment, and sexual misconduct, as these behaviors may create a risk to health, safety or wellbeing, cause serious emotional distress, loss of productivity and morale, and potential legal risks. As an institution of higher education that receives federal student financial aid, our efforts are supported by federal regulations pertaining to educational institutions in the form of Title IX of the Higher Education Act of 1972, the Clery Act, Title VII of the Civil Rights Act of 1964, and the Violence Against Women Act (VAWA).

Scope:

1. The Policy is designed to comply with regulations and law set forth in Title IX of the Higher Education Act of 1972. Other legal regulations compliment and overlap in some areas with regulations set forth in the Clery Act, Title VII of the Civil Rights Act of 1964, the Violence Against Women Act, and California law.
2. This Policy applies to the prohibited conduct described in this policy and includes acts communicated physically, verbally, in print, electronically or through other means by or against students and employees including those who are in assignments that are full-time, part-time, probationary, non-career status, adjunct, and temporary.

3. This Policy does not apply to protected speech, reasonable criticisms of work, fair and justified feedback, evaluations, or disciplinary actions deemed unfounded by Lincoln's Human Resources Department. This Policy applies only to behavior that a reasonable person would view as violating the rights of another.

Lincoln University will respond promptly to all complaints of unlawful discrimination, harassment, and sexual misconduct. When necessary, the university will institute discipline against the offending individual, which may result in a range of sanctions.

## **Confidentiality and Reporting**

Lincoln University shall protect the privacy and confidentiality of reporting individuals and individuals who are alleged to have discriminated or harassed, to the extent allowed by law and Title IX. However, once a university official has actual knowledge of allegations that may be serious enough to constitute a violation of this Policy, the university's legal obligations require it to investigate under the procedures described below. If an individual requests complete confidentiality and does not want such an investigation, he or she should consult with individuals who by law have special professional status, such as mental health counselors, physicians, clergy, or private attorneys.

Title IX also does not allow Lincoln University to issue a "gag" order to any students involved in a Title IX complaint. Lincoln University's employment and volunteer policies apply to all faculty and staff members when it comes to confidential or sensitive communication.

Except as provided below, any employee or volunteer (volunteer status is defined in Lincoln University's Volunteer policy) who knows, or has reason to know, of allegations or acts that violate this policy shall promptly inform the Title IX Coordinator. These employees are required to disclose all information including the names of the parties, even where the person has requested that their name remain confidential. The Title IX Coordinator will determine whether confidentiality is appropriate given the circumstances of each such incident.

Complainants are encouraged to speak to University representatives and officials, such as the Title IX Coordinator, faculty, Human Resources, the Oakland Police Department or the Alameda Police Department (Summerhouse apartment complex is located in Alameda so Alameda PD needs to be contacted instead of the Oakland police department if the incident occurred at Summerhouse) to make reports of incidents of sexual misconduct. Complainants have the right, and can expect, to have complaints taken seriously by the University when reported, and to have those incidents investigated and properly resolved through the procedures outlined in this policy. Investigations by law enforcement are independent from Lincoln University. Reporting still affords privacy within the Lincoln University administration to the reporter, and only a small group of officials who need to know will be informed. Information will be shared as necessary with investigators, witnesses, and the respondent. The circle of people with this knowledge within the administrative staff will be kept as tight as possible to preserve a complainant's rights and privacy.

If a victim of sexual misconduct would like the details of an incident to be kept confidential, they may speak with mental health counselors, off-campus rape crisis counselors, domestic violence resources, private agencies, private attorneys, and/or members of the clergy/chaplains who will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Students may access counseling resources through Student Services and/or their health insurance provider.

Complainants can report incidents directly to the Oakland police department if the incident occurred in Oakland, or the Alameda police department if the incident occurred at the Summerhouse apartment complex where Lincoln oversees the leasing of apartments to students.

**Responsibilities of employees:** Any university employee, faculty/instructor, volunteer, staff, administrator or person working on behalf of an officially sanctioned university office, event or activity, including teaching assistants or assistants to the instructor (“responsible employees”), receiving notice of suspected or potential sexual misconduct is required to file a report with the Title IX Coordinator or a Deputy Title IX Coordinator within one (1) business day of receiving the notice, unless that notice was communicated to an official who can provide professional confidentiality (*see* “Confidentiality” above).

University officers, assistant provosts, deans, directors, department chairs, or supervisors who become aware of specific allegations of discrimination or harassment must report the allegations promptly to the Title IX Coordinator and to Human Resources if the alleged offender is an employee. Should the allegations involve the Title IX Coordinator or the Director of Human Resources, allegations involving the Title IX Coordinator will be reported to the Deputy Title IX Coordinator, and allegations involving the Director of Human resources shall be reported to the Title IX Coordinator.

**Title IX Coordinator:**

Dr. Michael Guerra, Administrative Vice President  
[mguerra@lincolnuca.edu](mailto:mguerra@lincolnuca.edu)  
510-628-8031

**Deputy Title IX Coordinator:**

Dr. Marshall Burak, Provost  
[mburak@lincolnuca.edu](mailto:mburak@lincolnuca.edu)  
510-254-3749

**Director Human Resources:**

At present time, this position is unfilled, and the role/function is assigned by the President to the Office of the President. The Secretary to the President serves as a contact for the human resources department so they can be contacted if the president is unavailable.

Dr. Mikhail Brodsky, President  
[president@lincolnuca.edu](mailto:president@lincolnuca.edu)  
510-208-2803

Mr. Rod Ciocho, Secretary to the President  
[rciocho@lincolnuca.edu](mailto:rciocho@lincolnuca.edu)  
510-587-9779

## **Inclusion of Select Required Title IX Policy Definitions**

The most relevant definitions are included in this section. These definitions along with other Title IX regulations were used to construct this policy to comply with Title IX requirements.

**Complainant:** Means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Respondent:** Means an individual who has been reported to but the perpetrator of conduct they could constitute sexual harassment.

**Standard of Evidence:** Lincoln University uses the *Preponderance of Evidence* legal standard for resolving all formal employee, staff, and student Title IX complaints [106.45(b)(1)(vii) and 106.45(b)(7)(i)]. This means that the party with the burden of proof convinces a fact finder that there is a greater than 50% chance that the claim is true.

**Formal Complaint:** Means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of the filing a form complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complainant may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the title IX Coordinator under Section 106.8(a), and by any additional method designated by the recipient.

**Determination of Responsibility:** Title IX Section 106.45(b)(7)(ii) Means there is a written determination regarding responsibility that must include: Identification of the allegations, a description of the procedural steps from the initiation of the process onward. It also means findings of fact support the determination of responsibility, there is an application of the student code of conduct and employee polices to the facts. There is also a statement of the result of each allegation and rationale that includes a determination of responsibility, sanctions, and remedies provide to the complainant. There is also a notice of the appealed process and procedure.

**Informal Resolution:** Means at any time after the filing of a formal complaint, but before reaching a determination regarding responsibility for allegations, an institution may facilitate an informal resolution process like mediation (that does not include a full investigation and adjudication [106.45(b)(9)]. A written notice is still required along with a right to withdraw prior to a resolution, and there must be voluntary written consent of parties.

**Sexual Harassment:** Means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of

the recipient on an individual's participation in unwelcome sexual conduct.

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program, or activity.
3. Conduct on the basis of sex that satisfies one or more of the following:
4. Sexual assault as defined in 20 United States Code 1092(f)(6)(A)(v)
5. Dating violence as defined in 34 United States Code 12291(a)(10)
6. Domestic violence as defined in 34 United States Code 12291(a)(8)
7. Stalking as defined in 34 United States Code 12291(a)(30)

**Jurisdiction:** Title IX Section 106.44 covers all students, faculty, and staff. The incident must be part of an "educational program or activity" and "against a person in the United States."

**Dismissal:** Title IX Section 106.45(b)(3)(i)-(iii) requires dismissal if:

1. The conduct does not constitute sexual harassment.
2. Did not occur in the institution's program or activity.
3. Dis not occur against a person in the United States.
4. Optional dismissal if: Complainant withdraws from the process, Respondent is no longer enrolled/employed, or there is insufficient evidence available to make a determination.

**Training:** All individuals involved with the Title IX process [Title IX Coordinator, Investigator(s), Adjudicator(s), Appellate Decision-Maker(s)] must be impartial and must receive at least annual training concerning information regarding relevancy determination, Title IX updates, evidence collection, issue areas, general skills needed (including asking appropriate questions) and anti-bias. These individuals should also be provided in-service training throughout the year.

## **Prohibited Conduct**

### **Discrimination:**

Discrimination constitutes any unlawful distinction, preference, or detriment to an individual as compared to others that is based on one of the characteristics protected by federal law, state law or university policy. Those protected characteristics include race, sex (such as gender, gender identity, marital status, and pregnancy), age, color, national origin (including ethnicity), religion, disability, sexual orientation, political affiliation, veteran status, military service member status, genetic information, or relationship to other university constituents – except where sex, age, or ability represent bona fide educational or occupational qualifications or where marital status is a statutorily established eligibility criterion for State funded employee benefit programs.

Conduct based on a protected characteristic as defined above will constitute discrimination when it is sufficiently serious to unreasonably interfere with or limit:

1. An employee's or applicant for employment's access to employment or conditions and benefits of employment;
2. A student's or applicant for admission's ability to participate in, access, or benefit from

educational programs, services, or activities;

3. An authorized volunteer's ability to participate in volunteer activity; or
4. A guest's or visitor's ability to participate in, access, or benefit from the University's programs.
5. Unlawful Harassment
6. Unlawful harassment can take the form of a variety of actions founded on one of the characteristics protected by federal law, state law or university policy. Those protected characteristics include race, sex (such as gender, gender identity, marital status, and pregnancy), age, color, national origin (including ethnicity), religion, disability, sexual orientation, political affiliation, veteran status, military service member status, genetic information, or relationship to other university constituents – except where sex, age, or ability represent bona fide educational or occupational qualifications or where marital status is a statutorily established eligibility criterion for State funded employee benefit programs.
7. Unlawful harassment is a form of discrimination and can consist of:
  - a. Quid pro quo harassment, which consists of unwelcome conduct based on a protected characteristic when:
    1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, employment decisions, academic standing or receipt of a needed or legitimately requested university service or benefit; or
    2. Submission to, or rejection of, such conduct by an individual is used as a basis for decisions affecting such individual in matters of employment, employment decisions, academic decisions (such as grades) or receipt of a needed or legitimately requested university service or benefit.
8. Hostile environment harassment, which consists of unwelcome conduct based on a protected characteristic when:
9. Such conduct is so severe, pervasive, and objectively offensive as to create an intimidating, hostile or offensive working, learning or living environment. Hostile environment harassment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct and its severity. A single, serious incident may be sufficient to constitute hostile environment harassment.
10. Sexual Harassment is a form of sexual misconduct and is defined as any unwelcome conduct of a sexual nature. It may include, but is not limited to:
  - a. unwelcome sexual advances;

- b. requests for sexual favors; and/or
  - c. other verbal, non-verbal, or physical conduct of a sexual nature.
11. Sexual harassment may occur in a single incident, as well as in persistent behaviors. Both men and women are protected from sexual harassment, and sexual harassment is prohibited regardless of the sex of the harasser. This form of harassment includes any situation in which there is harassing conduct that is sufficiently severe pervasive/persistent and patently/objectively offensive such that it alters the conditions of education or employment, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint. The determination of whether an environment is "hostile" must be based on the totality of the circumstances. These circumstances may include, but are not limited to:
- a. the frequency of the conduct
  - b. the nature and severity of the conduct
  - c. whether the conduct was physically threatening
  - d. whether the conduct was humiliating
  - e. the effect of the conduct on the alleged victim's mental or emotional state
  - f. whether the conduct was directed at more than one person
  - g. whether the conduct arose in the context of other discriminatory conduct
  - h. whether the conduct unreasonably interfered with the alleged victim's educational or work performance
  - i. whether the statement falls under an existing exception to the First Amendment, such as true threats and intimidation
  - j. whether the speech or conduct deserves the protections of academic freedom

## **Sexual Misconduct**

### Definition of Terms

*Acts of gender-based discrimination, harassment, and sexual misconduct, including dating violence, domestic violence, and stalking, will not be tolerated at Lincoln University.* In order to provide a safe campus community within which all members are valued and respected, policies and procedures for addressing gender-based/sexual misconduct have been established in accordance with Title IX, VAWA, and other regulatory requirements and are detailed herein.

State law defines various violent and/or non-consensual sexual acts as crimes. Additionally, Lincoln University has defined categories of sexual misconduct, as stated below, for which disciplinary action under this policy may be imposed. Generally speaking, Lincoln University considers Non-Consensual Sexual Intercourse violations to be the most serious, and therefore typically imposes the most severe sanctions for employees or students who commit such offenses. However, Lincoln University reserves the right to impose any level of sanction, ranging from a written warning up to and including suspension, expulsion, or termination, for any act of sexual misconduct or other gender-based offenses, including intimate partner or relationship (dating/domestic) violence, non-consensual sexual contact and stalking based on the facts and circumstances of the particular grievance. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, gender, sexual orientation and/or gender

identity of those involved. Sexual misconduct occurs when sexual acts are attempted or committed without consent and/or by force, threat, coercion, or pressure, or through the use of the victim's mental or physical helplessness, of which the assailant was aware or should have been aware.

### **Consent:**

The definition of consent is central to the recognition of both sexual assault and sexual misconduct. Lincoln University defines consent as mutually voluntary permission to engage in sexual activity demonstrated by clear actions and/or words. This decision must be made freely, consciously, knowingly and actively by all participants, as shown by the totality of the circumstances.

1. Intoxication is not an excuse for failure to obtain consent.
2. Silence, passivity, acquiescence, or lack of active resistance does not constitute or imply consent on its own.
3. Previous participation in sexual activity, however recent, does not indicate current consent to participate, and consent to one form of sexual activity does not imply consent to another form of sexual activity.
4. Consent can be withdrawn at any time.
5. Consent has *not* been obtained in situations where the individual:
  - a. is forced, coerced (defined as an unreasonable amount of pressure), manipulated, or has reasonable fear as the result of a threat (such as, the individual or another will be injured if the victim does not submit to the act); or
  - b. is incapacitated by alcohol, other drugs, sleep, etc.
  - c. Because consent must be given consciously, sexual activity is prohibited with someone one knows to be, or should know to be, incapacitated. Incapacitation means the individual cannot make rational, reasonable and informed decisions; or
  - d. has a mental or physical disability which inhibits or precludes his/her ability to give knowing consent.
6. **In California, a minor (meaning a person under the age of 18 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 18 years old may be a crime, as well as a violation of this policy, even if the minor willingly engaged in the act.**
7. Violations include:
  - a. **Non-Consensual Sexual Intercourse** is defined as any sexual penetration or intercourse (anal, oral or vaginal), however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation by mouth to genital contact or genital to mouth contact.
  - b. **Non-Consensual Sexual Contact** is defined as any intentional sexual touching, however slight, with any object by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another individual, or any other bodily contact in a sexual manner.



8. **Sexual Exploitation** refers to a situation in which a person takes non- consensual or abusive sexual advantage of another, in situations in which the conduct does not fall within the definitions of Sexual Harassment, Non-consensual Sexual Intercourse or Non-consensual Sexual Contact. Examples of sexual exploitation include, but are not limited to:
  - a. Taking pictures or video or audio recording another in a sexual act, or in any other private 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);
  - b. Prostituting another employee or student;
  - c. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted infections (STI) and without informing the other person of the infection;
  - d. Administering alcohol or drugs (such as “date rape” drugs) to another person without his or her knowledge or consent.
9. **Sexual Voyeurism** (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed);
  - a. Taking pictures or video or audio recording another in a sexual act, or in any other private 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);
  - b. Prostituting another employee or student;
  - c. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted infections (STI) and without informing the other person of the infection;
  - d. Administering alcohol or drugs (such as “date rape” drugs) to another person without his or her knowledge or consent.
10. **Dating Violence:** Dating violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party'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.
11. **Domestic Violence:** Domestic violence is defined as a felony or misdemeanor crime of abuse or violence committed by:
  - a. A current or former spouse of the victim;
  - b. A person with whom the victim shares a child in common; and/or
  - c. A person who is cohabitating with or has cohabitated with the victim as a spouse.
  - d. Dating and domestic violence include, but are not limited to, sexual or physical abuse or the threat of such abuse.
12. **Stalking:** Stalking is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to feel fear for his or her safety or the safety of others or suffer substantial emotional distress. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. “Course of conduct” is defined as a pattern of two or more acts over a period of time, however short, that evidence a continuity of purpose. Stalking behaviors include, but are not limited to, the following behaviors if they occur when it is known or reasonably should have been known that such

behavior or one's presence is unwanted by a recipient:

- a. non-consensual communication including in-person communication, telephone calls, voice messages, text messages, email messages, social networking site postings, instant messages, postings of pictures or information on Web sites, written letters, gifts, or any other communications that are undesired and/or place another person in fear;
- b. following, pursuing, waiting, or showing up uninvited at a workplace, place of residence, classroom, or other locations frequented by a victim; or
- c. surveillance and other types of observation, whether by physical proximity or electronic means.

13. **Intimidation:** Intimidation is defined as implied threats or acts that cause a reasonable fear of harm in another and includes, but is not limited to:

- a. Threatening to commit a harmful or sexual act upon another person;
- b. Stalking; or
- c. Cyber-stalking.

14. Other civil rights offenses, when the act is based upon gender or sex Other offenses include, but are not limited to:

- a. Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class. Discrimination can also involve treating an individual less favorably because of his or her connection with an organization or group that is generally associated with people of a certain protected class.
- b. Hazing, defined as acts, performed voluntarily or involuntarily, likely to cause physical or psychological harm or social ostracism to any person within the Lincoln community, when related to the admission, initiation, pledging, joining or any other group- affiliation activity on the basis of actual or perceived membership in a protected class. Hazing is also illegal under California law.
- c. Bullying, defined as repeated and/or severe aggressive behavior that is likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class.

15. Violation of any other Lincoln University rules, when such violation is motivated by the actual or perceived membership of the victim on the basis of sex or gender or in a protected class may be pursued using this policy.

16. **Retaliation:** Retaliation against any person complaining of unlawful discrimination or sexual misconduct or against any person who is a witness to any prohibited conduct is strictly prohibited. Retaliation also qualifies as a violation of this Policy and is grounds for appropriate disciplinary action. Retaliation is defined as any form, direct or indirect, including through third parties, of intimidation, threat, harassment, reprisal, interference, restraint, coercion or any other type of discrimination in response to an individual's complaint or participation in investigation or conduct processes.

17. Public awareness events such as "Take Back the Night" or other forums at which students

disclose experiences with sexual violence are not considered notice to the school for the purpose of triggering an individual investigation unless the victim initiates a complaint with an appropriate campus official.

18. Research involving human subjects (which requires approval by Lincoln University's Institutional Review Board for the Protection of Human Subjects) may ask subjects to provide personal information in a confidential setting. Information about an incident covered under this Policy may be disclosed by a research subject as part of participation in that research after potential participants are advised by the researchers that incidents that fall under this Policy will be reported to the Title IX Coordinator. If the disclosed information fall under this Policy, the researchers will notify the Title IX Coordinator in writing.

## **Reporting and Resolution**

### **Lincoln University Title IX Coordinator:**

Dr. Michael Guerra, Administrative Vice-President  
[mguerra@lincolnuca.edu](mailto:mguerra@lincolnuca.edu)  
510-628-8031  
401 15<sup>th</sup> Street, Room 301  
Oakland, CA 94612

### **Reporting:**

The university encourages prompt reporting of all perceived violations of this Policy, regardless of who the alleged offender may be.

In addition to violating university policy, some instances of sexual misconduct may also constitute criminal activity. Victims are encouraged to inform law enforcement authorities about instances of sexual misconduct. The chances of a successful law enforcement investigation or of successfully obtaining a civil or criminal protective order through the court system are greatly enhanced if evidence is collected and maintained by law enforcement immediately following the crime. Victims experiencing these forms of sexual misconduct are similarly strongly encouraged to seek medical attention. Victims are encouraged not to bathe, douche, brush their teeth, drink, change clothing or even comb their hair before seeking medical attention. It is only natural to want to do so, but doing so may destroy physical evidence that could be needed later if charges are pursued. Even if one bathes or washes, evidence can still be collected at the hospital, preferably within 72 hours of an assault. If clothes are removed in that time frame, they should be placed in a brown paper bag and brought to the hospital or to law enforcement, depending upon which resource the victim has chosen to utilize. Evidence collection is not essential for pursuing assistance through any campus process, but there are still good reasons to maintain evidence and obtain medical treatment, such as to address the possibility of pregnancy, detect and prevent sexually transmitted infections, and to treat any physical injuries. Evidence collection and emergency treatment is available 24 hours a day at the

local emergency rooms. The California law covers most, if not all, medical costs related to rape. Law enforcement will be called to the hospital, but a victim is not obligated to talk to them.

Victims may inform law enforcement officers without making a criminal or university complaint. If a victim wishes to pursue criminal charges, they may contact their local police department, or use emergency 911. Victims who make a criminal complaint may simultaneously pursue a university complaint. The university can assist victims in making a complaint to law enforcement officials. The university can also assist victims with obtaining a court ordered protective order as well.

### **University Complaint Process**

1. Complaints against students: Employees and students seeking to make a complaint of sexual misconduct by a Lincoln University student should contact the university's Title IX Coordinator and/or the Oakland or Alameda (Summerhouse apartment complex) police department.
2. Complaints against employees: Allegations of sexual misconduct against a university employee should be reported to the Title IX Coordinator, the Oakland or Alameda police department, and Lincoln University's Human Resources department.

Optional Informal or Initial Actions; Interim Measures: Depending on the type or severity of offense, initial actions may include the following:

1. Telling the alleged offender his or her behavior is unwelcome and must stop.
2. Asking for an apology and a commitment that the behavior will stop.
3. Sending a copy of this policy to the alleged offender.
4. Writing to the alleged offender regarding the conduct, pointing out the effects of such behavior, and explaining the behavior change desired.
5. Having the pertinent supervisor counsel the alleged offender about appropriate behaviors and conduct expectations.
6. Requesting a fact-finding investigation.
7. Some of these initial actions will never be appropriate for allegations of sexual misconduct. Additionally, the university may provide interim measures to ensure that there is no interference with the educational or employment opportunities of the complaining party. These interim measures may include, but are not limited to, an institutional order of no contact, no trespass order, parking accommodation, transportation assistance or security escorts, and changes in academic or relocation of workspace, among other options. The complaining party may also receive services in connection to community resources such as the Rape Crisis Center and the Domestic Violence Shelter and Services. Under Title IX, the University is legally obligated to take prompt and remedial measures to end sex-based harassment, even if the affected individual does not make a complaint or otherwise request action to be taken.

In deciding whether to pursue informal means, including mediation, the complaining individual is encouraged to seek the assistance of the Title IX Coordinator, Student Services Director, or Human Resources Director, as appropriate. These offices are available to assist the complaining

party in crafting the message to send to the offending individual, as well as recommending other informal mechanisms and setting up mediation. Whichever office the affected individual elects to discuss his/her concerns with, the issue of confidentiality should be addressed before specific facts or identities are disclosed due to the university's legal obligations to investigate all allegations that may constitute harassment as defined in this Policy.

## **Formal Resolution of Complaints against Employees**

### **Initiating a Formal Complaint:**

If the offending behavior continues after the initial response above, or if the severity of the behavior warrants immediate initiation of a fact-finding investigation (such as alleged instances of sexual misconduct), the complainant or witness may make a formal complaint.

A complaint must be presented within ninety (90) calendar days of the alleged incident to the appropriate office as listed above. Such office shall forward the complaint to Human Resources. If filed later than ninety calendar (90) days, the Director of Human Resources may extend the time limit based on extenuating circumstances and at his/her sole discretion.

Complainants are not required to provide a signed, written statement describing their complaint, though such documentation is strongly encouraged. If the complainant conveys the allegations verbally, the Director of Human Resources or designee shall document the complaint and have the complainant review and sign the documentation to indicate that it is accurate and complete. Upon receipt of allegations involving sexual misconduct, the Title IX Director shall be notified.

### **Personnel Investigation:**

The Director of Human Resources or designee shall determine whether the complainant's allegations fall within the scope of this Policy. If so, the Director of Human Resources or designee(s) shall investigate promptly, and all investigations will be in compliance with federal and California labor and employment laws and regulations. All proceedings will include a prompt, fair, and impartial process from the initial investigation to the final result. Proceedings should be completed within sixty (60) days of receiving a formal complaint. Reasonable extensions of time for good cause are permissible upon written notice to both parties of the delay and the reason for the delay.

The Director of Human Resources or designee shall appoint a qualified unbiased investigator(s) who shall interview the complainant and the respondent. Witnesses should also be interviewed, and any relevant documentary evidence shall be reviewed. The fact investigator(s) shall take notes of all individuals who are interviewed. The fact finding team shall instruct individuals that retaliation is prohibited and is a violation of university policy and the law. The individuals shall also be instructed about the confidentiality and privacy parameters of the investigation. In cases involving sexual assault, dating violence, domestic violence, and stalking, the fact finding investigator will have undergone annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, as well as how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

In general, both the complainant and the respondent may be accompanied when interviewed by another member of the university community, so long as the individual does not participate in or interfere with the interview. This person's role is simply as an observer. Representation by legal counsel during the interview is prohibited, except in cases involving sexual assault, dating violence, domestic violence, and stalking, where both the complainant and respondent may be accompanied by any advisor of their choice, including legal counsel, so long as the individual does not interfere with the interview. In no case may an advisor include any individual that could serve as a witness in the process.

### **Findings and Determination:**

Upon completion of the investigation, the fact finding investigator(s) shall prepare a written report of the factual findings. The Director of Human Resources shall forward the report to the pertinent senior officer in the unit where the respondent is employed. The senior officer, in consultation with the University's General Counsel, shall make a determination of whether a policy violation has occurred. The standard of proof shall be a preponderance of the evidence, which means that there is greater than a 50% chance that the respondent is responsible for the alleged violation.

In the event that a violation of this Policy is found, the pertinent senior officer shall determine the appropriate disciplinary action, in consultation with the Director of Human Resources and General Counsel, in accordance with the appropriate disciplinary procedures pertaining to the affected individual. Any prior violations of this policy involving the respondent shall be considered in any disciplinary action.

The complainant and the respondent shall be informed within three (3) business days by the Director of Human Resources or pertinent senior officer, in writing, when a decision has been reached. Results of the investigation, the fact finding report, and any subsequent disciplinary action shall be kept confidential to the extent allowed by California Labor and Employment law and the State Human Resources Commission Personnel Records Policy, or, in the case of student-workers, the Family Educational Rights and Privacy Act ("FERPA"). The administration of any disciplinary action will be the responsibility of the pertinent senior officer in the employee's division in accordance with applicable procedures.

## **Resolution of Complaints Against Students by Students**

### **Intake Meeting:**

The purpose of the intake meeting (in person or by phone/other media) is for a representative of the University to offer information about this policy and resources available. Additionally, the intake meeting is an opportunity to begin to gather further information on the behavior being reported. In most, but not all, cases the Title IX Coordinator will also reach out to the person whose conduct has been reported (hereinafter referred to as "respondent") to conduct an intake meeting.

During the intake meeting, the complainant will be asked to consider the options afforded by this policy, as well as identify interim measures and remedies the University should consider to promptly assist with the matter. At the intake meetings, the following will also be discussed:

1. The right to report the incident(s) to local law enforcement agencies;
2. The right to receive medical treatment and the importance of preservation of evidence;
3. The University's processes to consider all reports of incidents of possible sexual misconduct and the inability of the University to guarantee complete confidentiality;
4. The University's policy against retaliation of any person making a report, or participating in an investigation, or adjudication, of an incident under this policy;
5. The possibility for Informal Action;
6. The possibility for Formal Resolution and of a live hearing conducted by an adjudicator;
7. The inability for the university to issue a gag order per Title IX;
8. The use of an advisor or support person at University proceedings;
9. The case being resolved by a trained and unbiased adjudicator;
10. The University's advising of the community of a potential threat, where appropriate in the judgment of the University.

### **Initial Assessment:**

The Title IX Coordinator will make an initial assessment of whether there is a report of prohibited conduct under this policy. The Title IX Coordinator will also assess whether informal action or formal resolution is appropriate. In doing so, the Title IX Coordinator will consider the nature of the report, the safety of the individuals involved and of the campus community, and any expressed preferences for resolution. The Title IX Coordinator may gather information in the course of making a decision. If a formal complaint was made, the Title IX Coordinator will initiate the university's investigative process.

### **Early Preventative Measures (includes Remedial Actions and Interim Measures) and Timely Warnings:**

The Title IX Coordinator will determine if any early preventative measures (including remedial action and interim measures), and/or warning to the community is warranted.

These measures can include housing and class modifications; directives to stay away from persons, a facility, or the entire campus; conduct directives; offers of services; and other measures prior to a final outcome. The intent is to facilitate continued access to educational programs and activities, to prevent further reports of, or acts of, harassment or misconduct, or simply to "keep the peace."

These are implemented when, in the judgment of the Title IX Coordinator and/or Director of the Student Services and/or Human Resources, the safety or well-being of any member(s) of the campus community can be better assured.

Remedial Actions may include, but are not limited to:

1. Referral to counseling and health services
2. Referral to Employee Assistance Program (EAP – for employees)
3. Education to the community
4. Altering housing assignments of the respondent and/or complainant

### **Interim Measures may include, but are not limited to:**

1. **Interim Suspension** (for students and/or organization). During an interim suspension, a student/organization's access to University housing and/or University campuses/facilities/events may be denied or limited. This measure may include restricting access to classes and/or all other University activities and privileges for which the student/organization might otherwise be eligible. Alternative coursework options may be pursued to ensure as minimal an impact as possible on the affected student. Violation of an interim suspension under this policy will be grounds for expulsion.
2. **Administrative leave** (for employees)
3. Others as appropriate

### **Timely Warnings and/or Emergency Notifications:**

University administrators will issue timely warnings and/or emergency notifications for incidents that pose a serious, or ongoing, threat to the campus community. When possible, as determined by the University, the University will make effort to not disclose personally identifying information, while still providing enough information for community members to make decisions in light of the potential danger.

### **Possible Informal Outcomes:**

1. **No Further Action:** If a complainant requests no further action, the Title IX Coordinator shall determine whether the situation nonetheless warrants action by the University to mitigate potential risk to the campus community. When possible, the requests of the complainant will be honored. Situations where action may be pursued without the participation of the complainant may include:
  - a. The safety and wellness of the community;
  - b. The nature of the allegation and if there are multiple respondents involved;
  - c. The nature of the allegation and if there was an element of significant physical harm, or threat of harm (e.g., use of a weapon);
  - d. The nature of the allegation and if there are multiple reports with a shared alleged respondent, or a location where multiple incidents have been reported.
2. **Informal Action:** Informal Action is intended to resolve the report at the earliest stage possible. Informal Action does not include extensive investigation, or a determination of fault, or validity of a report. The goal through Informal Action is to achieve a resolution that may be acceptable to both the complainant and respondent, and to provide an opportunity for education. Requests for Informal Action, while permitted, may limit the University's ability to understand what happened and implement appropriate response.
  - a. Examples of Informal Action include, but are not limited to:
    - i. Discussions with the parties involved (individually or jointly)
    - ii. Holding an educational meeting with the respondent
    - iii. Referring the parties to different resources.



At the conclusion of an Informal Action, the parties will be asked to agree to an “Informal Resolution Document,” which will outline the actions taken and agreements made. If either or both parties do not agree to the document, the matter will be referred back to the Title IX Coordinator who will decide whether to refer the matter for formal resolution. If both parties agree to the document, there will be no opportunity for appeal, and no opportunity to pursue a formal resolution process at a later time. Depending on what the informal resolution includes, information resulting from the document may or may not be something included on a student’s conduct record. Additionally, it may or may not involve an acknowledgement of responsibility for the behavior alleged.

***\*\*\*Informal Action is not appropriate and will not be used for incidents the University believes could lead to a severe disciplinary sanction result (e.g., suspension, removal from a program or activity, termination of employment, or expulsion). In these cases, the matter will most often proceed to the formal resolution process.\*\*\****

3. **Formal Resolution:** If a matter is not resolved using the options detailed above, the Title IX Coordinator will move the matter to a formal resolution process, and will appoint an investigator(s) to conduct a fact-finding investigation and select an adjudicator to hear the complaint and resolve it.

### **Without Complainant Participation:**

When moving forward without the participation of the complainant, attempts to keep the complainant’s identity confidential from the respondent will be made; however, depending on the investigation and allegations brought forth, this may not be feasible, and the University will inform the complainant of the limitations to confidentiality.

When a complainant requests no further action, this does not preclude the options to review and request resources, the need for a live hearing, and/or remedial actions. If necessary for the health and safety of students and staff at Lincoln, the Title IX Coordinator may require the investigation to continue without the complainant’s participation. Additionally, a complainant may come back at any time in the future to request a resolution process (i.e., informal action or formal resolution) under this policy. There may be limitations to formal resolution, however, if the respondent is no longer within the jurisdiction of the University’s disciplinary codes/policies.

## **Formal Investigations Involving Only Students**

If a formal student(s) against student(s) complaint is filed with the Title IX Coordinator, Lincoln University is required under Title IX to investigate and adjudicate the complaint. Investigations will generally include interviewing relevant parties and witnesses, collection of available evidence, and identification of sources of expert information, if/when necessary, etc. The investigator(s) will conduct the investigation in a manner deemed appropriate in light of the circumstances of the case.

When concurrent criminal and/or civil proceedings are occurring for the same incident, the University is not required to postpone its process in order for the criminal and/or civil matter(s)

to be resolved. The University will use its discretion if/when a request is made to delay the investigation, and will communicate any delays to both the complainant and respondent.

**Investigation:** The University uses trained Title IX investigators to investigate reported incidents related to sex and gender-based harassment and discrimination, including non-consensual sexual contact and non-consensual sexual intercourse. The Title IX Coordinator will assign a trained and unbiased investigator(s) and adjudicator.

**A Notice of Investigation letter** will be sent by the Title IX Coordinator to both the complainant and respondent outlining the reported behavior which is being investigated. This letter will include the name(s) of the investigator(s), how scheduling the interviews will be done, and a written notice of each parties' rights and responsibilities in the process. The written notice will include:

1. A summary of the reported conduct that potentially violated the Lincoln University Policy and, where applicable, other student conduct policy;
2. the identities of the parties involved;
3. the date, time, and location of the reported incident(s) (to the extent known);
4. the specific provisions of Lincoln University Policy and/or any other student conduct policy potentially violated;
5. a statement that the investigative report, when issued, will make factual findings and a preliminary determination regarding whether there has been a violation of the Lincoln University Policy and/or other student conduct policy;
6. a statement that the parties will each have an opportunity during the investigation to propose questions for the investigator to ask of the other party and witnesses during a live hearing presided over by an adjudicator;
7. a statement that the factual findings and preliminary determination will be based on a Preponderance of Evidence standard;
8. a summary of the resolution process, including the possible hearing, and the expected timeline;
9. an admonition against Retaliation; and
10. a summary of rights and resources available to the Complainant and Respondent.

At any point during the investigation, the Title IX Coordinator may amend the notice to add additional charges identified during the investigation. Any amended notice should include all the information described above. If the additional charges identified during the investigation include, then the Title IX Coordinator will notify the parties that the case will now proceed per the University's procedures.

### **Investigative Process:**

The investigator(s) will interview the complainant, respondent, any relevant witnesses, and collect relevant evidence (e.g., pictures or communication records). Investigators conduct interviews in a manner that tries to protect the safety of individuals and promote accountability.

The investigator(s) will coordinate with the complainant, respondent, and witnesses to set up interviews. At the conclusion of the interviews with the parties, the investigator(s) will verify the

information they received is an accurate reflection of that party’s interview, and will compile the details of the investigation into a “Draft Investigation Report,” summarizing the information gathered.

### **Draft Investigation Report:**

This report will be available for review and comment by both the complainant and respondent. It will generally include:

1. A description of the incident;
2. Factual agreements and disputes;
3. Summaries of the interviews conducted; and
4. Summaries of other information (relevant evidence gathered, such as communication records or photos).

The complainant and respondent will have the opportunity to respond to the information in the report with further information; but only as it pertains to factual disputes, or clarifying their own information. Parties are unable to change the information provided by other parties; rather, they may respond to the information. Responses may be made in writing or in person at a meeting with the investigator(s). If either the complainant or respondent is reminded of further evidence they have, they may provide this to the investigator(s).

### **Final Investigation Report and Outcome:**

After the “Draft Investigation Report” has been reviewed by the parties, the investigator(s) will compile any additional details submitted by the parties into the “Final Investigation Report” and share this report with the Title IX Coordinator and Adjudicator.

The Title IX Coordinator and/or Adjudicator will make a determination of whether or not they believe the matter requires a live hearing. If either the Title IX Coordinator or Adjudicator believe a live hearing is warranted, one will be scheduled by the Title IX Coordinator. If the Title IX Coordinator and Adjudicator both determine the matter does not require a live hearing, the Title IX Coordinator (or designee) will issue an Outcome Letter that sets forth the determination of the adjudicator or decision-maker of whether or not the respondent is responsible for violation of policy using a preponderance of the evidence standard. When there is a finding of responsibility, sanctions will also be determined. The outcome will be communicated in writing to both the complainant and respondent.

Following the issuance of the Outcome Letter, the complainant and respondent will have five (5) business days from the date of the communication of the outcome to either:

1. Accept the outcome; *OR*
2. Do not accept the outcome and submit an appeal (*see Appeal section*); *OR*
3. Request a Live Hearing.

If both parties accept the outcome, there will be no option for an appeal process on any grounds. This outcome then becomes the final determination of the University. If the respondent is found

responsible, the sanctions will go into effect. Findings of responsibility and sanctions are disclosable

### **Live Hearings:**

In cases where the Title IX Coordinator and/or Adjudicator make a judgment that (a) severe disciplinary sanction of the respondent could result and(b) the facts at issue are in conflict and require an assessment of the credibility of a witness or witnesses, the Title IX Coordinator will issue a Notice of Live Hearing letter to both the complainant and respondent. A live hearing can also be requested by either the Complainant and/or the Respondent. Live hearings include the right to cross-examination by the Advisors of either party, but do not allow the Complainant and Responded to cross-examine each other.

*“Severe disciplinary sanction”* includes such action as suspension, expulsion, termination from employment or internship, or probation including major restriction(s) of a student or employee’s engagement in the programs and activities of the University.

A credibility determination is required when there is a conflict in evidence that is material to the determination such that the fact-finder should personally observe the testimony from a witness in order to assess the credibility of such testimony.

Whether the matter will proceed to a live hearing is determined on a case-by-case basis by the Title IX Coordinator and Adjudicator, or upon request by either the Respondent or Complainant or both. A matter may be referred to the hearing process even where severe disciplinary sanction is not a likely outcome if the Title IX Coordinator believes a hearing is appropriate.

A trained Title IX **Adjudicator** will oversee the live hearing who will find facts and make credibility assessments. Adjudicators receive annual training on how to conduct hearings that protect the safety of individuals and promotes accountability, training on sexual harassment and discrimination, and how to apply the standard of evidence to the information provided from the Final Investigation Report and live hearing testimony.

If there is a hearing, the Adjudicator and Title IX Coordinator will meet with each party beforehand to educate them about the process and answer questions, among other purposes. The Adjudicator will then notify both parties of the hearing officer’s decision on the scope of the issues to be addressed at the hearing and the expected witnesses, and provide copies of the evidence that the Adjudicator will consider. After the hearing, the parties will receive the Adjudicator’s determination of whether the respondent violated policies and, if so, any sanction imposed. They will also receive information on their appeal options. If either party chooses to appeal, both students will be notified of the appeal and then the results of the appeal.

### **Complainant and Respondent (The Parties):**

1. The parties cannot waive the right to a live hearing.
2. The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party. 85 Fed. Reg. 30026, 30361.

For example, A verbal or written statement constituting part or all of the sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>

3. Lincoln University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party’s participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
4. If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a “statement” by that party.
5. The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party’s absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).

#### **The Decision-Maker/Hearing Board:**

1. The hearing body will consist of an Adjudicator.
2. No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.
3. No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
4. The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
5. The parties will have an opportunity to raise any objections regarding a decision-maker’s actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### **Notice of Hearing:**

When a case moves to a live hearing, the Complainant and Respondent will be notified in writing of the date/time/location of the hearing and will have at least five (5) business days advance notice of the hearing. The Complainant and Respondent will have access to the Final Investigation Report and all evidence the Adjudicator had access to prior to the hearing.

#### **Review of Evidence:**

The Complainant and Respondent are each given an opportunity to review the information which the Adjudicator will have access to, which shall include the Final Investigation Report, witness statements, statements made by the complainant and respondent, and any other evidence and information that will be presented to the Adjudicator.

The review shall be facilitated by the Title IX Coordinator's office. Copying and taking photographs of the evidence reviewed is strictly prohibited. Individual requests for copies or the manner for review of evidence on record will be considered by the Title IX Coordinator on a case-by-case basis.

Complainants and Respondents are shall maintain the privacy of the report and information contained within, with the exception of sharing the report with the advisor of their choice, who may be supporting the Complainant and Respondent in the response to the report and preparation for the hearing.

Investigative documents may be redacted for privacy and confidentiality purposes consistent with federal and state law.

### **Pre-Hearing Submissions:**

Both the Complainant and the Respondent may, after receiving notice of the hearing, provide the Adjudicator with a list of witnesses whom they wish to call at the hearing, and with copies of any documentation they would like the Adjudicator to consider. Pre-hearing submissions must be submitted no later than 72 hours prior to the scheduled hearing, unless otherwise permitted by the Adjudicator or Title IX Coordinator.

Both the Complainant and the Respondent may also submit questions to be asked of the other party by the Adjudicator at the hearing.

The Adjudicator has the right to deny the use of any additional documentation or witnesses that the Adjudicator deems inappropriate or irrelevant.

### **Advisor of choice:**

1. The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
2. The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
3. The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, Lincoln University will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
4. The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
5. The advisor is not prohibited from being a witness in the matter.
6. If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
7. If neither a party nor their advisor appear at the hearing, the Lincoln University will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg.

### **Hearing Procedures:**

Hearings are closed proceedings and are required to be recorded. Participants who may be present during the hearing include:

1. Adjudicator
2. Complainant (with Advisor selected by Complainant or appointed by Title IX Coordinator)
3. Respondent (with Advisor selected by Respondent or appointed by Title IX Coordinator)
4. Witnesses (when called by the Adjudicator and only for the duration of their testimony)
5. Investigators (when called by the Adjudicator and only for the duration of their testimony)
6. Title IX Coordinator (may be present to observe and/or answer policy-related questions)
7. University Counsel
8. Provost or his/her designee
9. A court reporter

In some cases, the Adjudicator may have subject matter experts provide information (when called by the Adjudicator and to answer questions by the Adjudicator)

On the day of the hearing, the complainant and respondent, along with their respective advisor, will be located in separate rooms. The rooms will be equipped with the ability to listen/see the hearing room where the Adjudicator is located. Throughout the duration of the hearing, the complainant and respondent may access the audio and/or video, with the exception of the closed deliberations of the Adjudicator, during times when there is a break, or other extenuating circumstances.

If both the complainant and respondent mutually agree to be present in the hearing room at the same time, this will be taken into consideration by the Title IX Coordinator, and barring any concerns, the parties, and their respective advisor, will be allowed to be in the hearing room for the entirety of the hearing (other than the exceptions outlined above).

The hearing will generally proceed in the following order:

1. Opening communication by the Adjudicator
2. Complainant Statement
3. Questions to the Complainant by the Adjudicator
4. Questions to the Complainant by the Respondent\*
5. Respondent Statement
6. Questions to the Respondent by the Adjudicator
7. Questions to the Respondent by the Complainant\*
8. Witness Statements (if/when applicable)
9. Questions to Witnesses by the Adjudicator (if/when applicable)
10. Questions to Witnesses by the Complainant and Respondent\* (if/when applicable)
11. Final Questions to the Complainant and/or Respondent
12. Closing Statement by the Complainant

13. Closing Statement by the Respondent
14. Closed Deliberations by the Adjudicator

*\*Question asking by the Complainant and Respondent:* Absent advance written consent by the Adjudicator, only Adjudicator of Advisors to the Complainant and Respondent may ask questions of the complainant, respondent, and witnesses. The complainant and respondent may submit questions in writing to the Adjudicator. During the hearing, the Adjudicator will pause to allow the complainant/respondent to submit questions for the Adjudicator to consider asking the other party(s). The Adjudicator has the discretion to ask, rephrase, or decline to ask questions submitted that are not in accordance with this policy. If questions are rephrased or declined, the Adjudicator will document the reason on record at the time of the hearing.

Questions regarding the sexual history of either party will not be considered, except information regarding history between the complainant and respondent to assist with context of the nature of the relationship.

Questions regarding unrelated disciplinary conduct known to either the complainant or respondent may not be considered.

If the hearing was recorded digitally and not by a court transcriber, the recording will be transcribed for the record. The recording of the hearing will be available for review by the parties within 5 business days, unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice.

### **Outcome of the Hearing:**

At the conclusion of the hearing, the Adjudicator will dismiss the parties and inform the parties that an outcome will be communicated in writing within five (5) business days from the day of the hearing. The Outcome Letter will include the name of the respondent, the violation for which the respondent was or was not found responsible, the essential information on which the findings were based, and the determined sanction(s), if any.

There are no presumptions. A preponderance of the evidence establishes the findings of the hearing Adjudicator.

### **Sanctions:**

Any student respondent found responsible for violating the Sexual Misconduct Policy will be subject to sanction(s) ranging from a warning to expulsion, depending on the severity of the incident, and taking into account any previous Student Conduct Code violations. Psychological and/or behavioral counseling may be required for students found responsible for a violation of this policy.

Any employee found responsible for violating the Sexual Misconduct Policy will be subject to sanction(s) ranging from warning to loss of employment, depending on the severity of the incident and taking into account any previous applicable action taken by Human Resources.



In considering an appropriate sanction(s), decision-makers shall consider all of the evidence presented during the investigation and hearing (when applicable), and may also consider the following:

1. Impact statements provided by the complainant and respondent – which will not be a part of the determination if policy was violated
2. What is reasonable, appropriate, and fair given the facts of the case and the determination of responsibility, including, but not limited to:
3. What factors contributed to the absence of consent (e.g., coercion, force, incapacitation)?
4. What motivated the respondent's behavior (e.g., negligence, intentional, reckless, biased)?
5. What is the impact on the complainant?
6. What is the impact on others and the Lincoln community?
7. What is the respondent's disciplinary history?
8. Are the sanctions consistent with those imposed for similar offenses at the University?
9. Are there any aggravating or mitigating circumstances?

### **Acceptance of Responsibility:**

The Respondent may choose to admit responsibility for all or part of the alleged policy violations at any point in the process. If so, the Title IX Coordinator will render a finding of responsibility for violation of the policy for the admitted conduct, and will confer with the Director of Human Resources for employee sanctioning.

If the sanction/responsive action is accepted by both the complainant and respondent, the Title IX Coordinator and Director of Human Resources will implement it, and act promptly and effectively to remedy the effects of the admitted conduct upon the complainant and the community. If either party does not accept the sanction/responsive action, they may submit a request for appeal as described in the appeals section.

### **Advisors:**

All participants in the Sexual Misconduct investigation process may have the assistance of an advisor of their choosing at any of the meetings and/or proceedings associated with resolution. If the advisor is an attorney, they are permitted to act only as an advisor during this administrative process. Students are expected to ask and respond to questions on their own behalf, without representation by their advisor. The advisor may consult with the advisee quietly or in writing, or outside the meeting during breaks, but may not speak on behalf of the advisee to the investigators. Advisors are allowed to ask cross-examination questions on behalf of the party they represent.

### **Withdrawal While Charges Pending (for students):**

Should a student who has a complaint pending for a violation of the Sexual Misconduct Policy decide to leave the University and not participate in the investigation, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not

be permitted to return to the Lincoln University unless all sanctions have been satisfied. A hold may be placed on the student's account to prohibit re-enrollment and the release of transcripts.

### **Conflicts of Interest:**

When designating individuals to perform roles under the procedures identified in this policy, the University seeks to avoid any conflicts of interest and to appoint neutral individuals. If any party becomes aware of a conflict of interest, or bias, of an individual who is participating in the procedures identified above, that party should inform the Title IX Coordinator immediately. The Title IX Coordinator will assess the information and determine if the concern may be addressed or if replacement is required. The Title IX Coordinator will communicate to both parties if a replacement occurs and provide the new name(s) and role(s) of any new individuals in the process.

## **Appeal Procedures**

The grounds for appealing a decision reached pursuant to the procedures indicated within this Policy, the University Catalog, and all employee handbooks

The grounds for appealing the decision reached pursuant to the procedures under the Policy by either the complainant or the respondent, may be for only these reasons:

1. The behavior is ongoing;
2. The remedy was not implemented;
3. Material procedural irregularities occurred during the investigation; or
4. New evidence has been discovered that had not been available during the investigation and that may have a substantial impact on the outcome of the investigation.

Dissatisfaction with the university's decision from the formal resolution procedures is not grounds for an appeal.

Parties seeking to appeal the decision on approved grounds must file a written appeal statement within thirty (30) calendar days after notice of the decision. Appeal statements must include a copy of the original complaint, a summary of efforts to resolve the behavior, and the grounds for the appeal.

Respondents against whom disciplinary action has been taken must follow the appeal procedures in accordance with university policy for appealing disciplinary action.

The President of Lincoln University or the Chairperson of the Board of trustees who is unaffiliated with the investigation, or designee, shall review the appeal with General Counsel. Should the President or Chairperson have a conflict of interest or be the subject of the complaint the appeal shall be reviewed by the Board or Trustees' Chair of the Human Resources committee or their designee with assistance by General Counsel. The decision must be in writing and sent to the appellant as soon as practicable in a matter that ensures receipt. This decision cannot be appealed.

## Record Keeping

The Office of Human Resources shall retain all investigation records of employees in a confidential file. The Office of Title IX and Clery Compliance shall retain all investigation records of students for at least seven years.

## Training Documentation

Title IX requires the individuals serving in the following positions and/or roles complete training that covers information regarding relevancy determination, Title IX updates, evidence collection, issues areas, general skills needed (including asking appropriate questions, and anti-bias: Title IX Coordinator, Investigator(s), Adjudicator(s), Appellate Decision-Maker(s). Training documentation along with training materials have to be posted on the university's website and available for public review.

### **Title IX Coordinator: Dr. Michael Guerra**

<b>Date Completed</b>	<b>Training Title/Description</b>	<b>Training Provider</b>	<b>Completion Certificate (Y/N)</b>	<b>Training Materials Attached (Yes/No)</b>
August 5, 2020	Title IX Investigator & Adjudicator Training	PaperClip Communications	Yes	Yes
June 24, 2020	New Title IX Regulations: Nine Key Takeaways for Fall Planning	Vector Solutions: Safe Colleges	No	No
June 3, 2020	Keeping Focus: Reviewing Clery Act Requirements in Light of New Title IX Regulations	Clery Center	No	No

### **Deputy Title IX Coordinator: Dr. Marshall Burak**

<b>Date Completed</b>	<b>Training Title/Description</b>	<b>Training Provider</b>	<b>Completion Certificate (Y/N)</b>	<b>Training Materials Attached (Yes/No)</b>

**Staff member responsible for reviewing and updating this policy:** Dr. Michael Guerra  
**Last Revised:** August 17, 2020