TITLE IX SEXUAL HARASSMENT POLICY

Effective Date: February 10, 2025

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I. INTRODUCTION, SCOPE AND PURPOSE

Lindenwood University (the "university" or "Lindenwood University") is committed to maintaining an environment that is free from sexual discrimination, sexual and gender-based harassment and violence, relationship violence, stalking and retaliation. The university does not discriminate on the basis of sex in matters of education, extracurricular activities, programs, athletics, admissions, housing, services, financial aid, or in the context of employment (collectively, the "programs and employment").

Consistent with the University's Non-Discrimination Notice and the U.S. Department of Education's implementing regulations for Title IX of the Education Amendments of 1972 ("Title IX") (34 C.F.R. § 106), the University prohibits Sexual Harassment that occurs within its education programs or activities.

For purposes of this policy, Sexual Harassment includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

This policy prohibits Sexual Harassment meeting specific definitions according to the Title IX regulations. The University also prohibits other sexual misconduct, not falling under specific Title IX regulatory definitions. Such conduct may include Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking that occurs outside of the University's Education Programs or Activities or outside the United States; or unwelcome conduct that does not rise to

- **A.** "Quid Pro Quo Sexual Harassment" is an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual contact.
- **B.** "Hostile Environment Sexual Harassment" is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University's Education Programs or Activities.
- **C.** "Sexual Assault" includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape.²
 - 1. "Rape" is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is "carnal knowledge" if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
 - 2. "Sodomy" is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - **3.** "Sexual Assault with an Object" is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An "object" or "instrument" is anything used by the offender other than the offender's genitalia.
 - **4.** "Fondling" is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where

² The University's definition of "Sexual Assault" is mandated by federal regulations implementing Title IX of the Education Amendments of 1972. Those regulations require the University to adopt a definition of "Sexual Assault" that incorporates various forcible and non-forcible sex crimes as defined by the FBI's Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

"Confidential."

- When an individual is physically forced to participate. Force is the use or threat of physical violence and/or imposing on someone physically in order to gain sexual access. There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. Any sexual activity that is forced is by definition without consent.
- When an individual is intimidated, threatened (perceived or otherwise), isolated, or confined. Such intimidation could involve the use or threat of a weapon.
- When an individual is coerced or unreasonably pressured to participate in sexual activity. When someone makes clear that they do not want to engage in sexual activity, wants something to stop, or does not want to go past a certain point of sexual interaction – continued pressure past that point can be considered coercive behavior. When evaluating coercive behavior, factors such as the frequency, duration, location (isolation of recipient of unwanted contact), and intensity of coercive behaviors will be considered. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity.

"Incapacitation." A person violates this Policy if they have sexual contact with someone they know, or should know, to be mentally incapacitated or to have reached the degree of intoxication that results in incapacitation.

An individual who is incapacitated cannot communicate consent to sexual activity. Incapacitation is the inability, temporarily or permanently, to give consent or communicate unwillingness, because an individual is mentally and/or physically helpless, unable, unconscious, asleep or unaware that the sexual activity is occurring.

Evaluating incapacitation requires an assessment of how the consumption of drugs and/or alcohol affects an individual's decision-making ability, awareness of consequences, ability to make informed judgments, capacity to appreciate the nature and quality of the act, or level of consciousness.

Warning signs that a person may be so impaired by alcohol and/or drugs that they no longer have the capacity to give consent may include, but is not limited to

- Difficulty walking, stumbling, or falling down;
- Being unable to stand or walk without assistance;
- Slurred speech or inability to communicate clearly;
- Inability to focus or confusion about what is happening;
- Vomiting; or
- Combativeness, emotional volatility, or other marked change in demeanor.

• Implicitly or explicitly threatening physical conduct or any combination of these behaviors toward an individual person.

V. <u>TITLE IX COORDINATOR</u>

The university has designated a Title IX coordinator to oversee all reports of sexual misconduct at the university and to facilitate the university's compliance with Title IX.

The Title IX coordinator may delegate certain responsibilities to the Title IX deputy coordinator(s) or others, as appropriate. The University's deputy Title IX coordinator, if any, is responsible for assisting the Title IX coordinator.

Questions about the applicability of this policy or the university's compliance with Title IX can be directed to the university's Title IX coordinator, or the Office for Civil Rights:

- <u>Title IX Coordinator.</u> Paula R. Stewart, MS., Evans Commons, Room 3030, 209 S. Kingshighway, St. Charles, MO 63301, Ph: 636.255.225, <u>pstewart@lindenwood.edu</u>
- <u>Office for Civil Rights, Kansas City Office, U.S. Department of Education.</u> One Petticoat Lane, 1010 Walnut Street, Suite 320, Kansas City, MO 64106, Ph: 816.268.0550, <u>OCR.KansasCity@ed.gov</u>.

VI. REPORTING SEXUAL HARASSMENT AND SEXUAL MISCONDUCT

The university encourages all university members to promptly report all incidents of Sexual Harassment as soon as possible in order to maximize the university's ability to respond promptly and effectively. The university does not, however, limit the time frame for reporting.

After receiving a report under "Reporting Sexual Harassment," the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls, or could fall within the scope of this policy (see "Scope"); and
- Whether the conduct, as reported, constitutes, or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute Sexual Harassment, even if investigated, the Title Coordinator will close the matter under this Policy. The Title IX Coordinator will evaluate the conduct as possible violations of other university policies contained in the Student Handbook or Employee Guidebook. The Title IX Coordinator will consult with the Associate Vice President for Student Affairs and/or the Vice President of Human Resources (or their designees) to determine a course of action consistent with other universities policies.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant.

If a report is not closed as a result of the preliminary assessment and the Complainant's identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (see "Supportive Measures"); to discuss and consider the Complainant's wishes with respect to Supportive Measures; to inform the Complainant about the availability of Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. The Complainant

to a place of safety. In addition, to preserve evidence, do not (a) wash, clean, or change clothes, (b) shower, (c) use sanitary products, (d) use the restroom, (e) touch anything that the accused party may have touched, and/or (f) cover up injuries, if any, with make-up, lotions, or creams.

- The Title IX coordinator will make notifications to appropriate university officials, and, where possible, limit the information provided to such officials by taking the Complainant's preferences into consideration (consistent with the section on privacy and confidentiality). Including informing Public Safety consistent with the University's Clery Act obligations.
- The Complainant will be given the option to file a criminal report with the St. Charles Police Department or another appropriate jurisdiction. A reporting party's decision not to notify the police at the time of the initial report does not preclude the reporting party from filing a criminal report at a later date, provided the conduct is within Missouri's applicable statute of limitations.
- The reporting contact and/or Title IX coordinator will provide the reporting party a copy of available resources both on and off campus, including coordinating with a campus or off-campus counselor.
- The Title IX Coordinator will review the processes and procedures contained in Lindenwood's Title IX Sexual Harassment Policy, including whether the Complainant wishes to file a Formal Complaint.
- If the Complainant files a Formal Complaint, the Title IX coordinator shall provide written notice to the Complainant and the Respondent. The notice shall contain the following:
 - f a statement of allegations with sufficient detail; and
 - f that the Complainant and the Respondent have a right to an advisor of their choosing throughout the process. The university will appoint an advisor at the end of the investigation phase if the party does not have an advisor of choice; and
 - f

VII. REQUESTS FOR ANONYMITY OR THAT NO REPORT BE PURSUED

Recognizing that sexual misconduct can include criminal acts that violate the security of the entire campus community, there may be instances where the university has a responsibility to investigate or disclose

- Whether the circumstances suggest there is an increased risk of future acts of sexual misconduct; and
- Whether the university possesses other means to obtain relevant information (e.g., security cameras, witnesses, physical evidence, etc.).

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the University will commence an investigation and proceed to adjudicate the matter. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party's level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

VIII. PRIVACY AND CONFIDENTIALITY

data about outcomes and sanctions. In addition, if a report of a violation of this policy discloses a serious and continuing threat to the campus community as defined in the Clery Act, the university will issue a timely warning notification to the community to protect the health or safety of the community.

At no time will the university release the name of the Complainant to the general public without the express consent of the Complainant or as otherwise permitted or required by law.

IX. <u>SUPPORTIVE MEASURES</u>

After a report of Sexual Harassment, the university will offer reasonable and appropriate measures to facilitate a Complainant's or a Respondent's continued access to university programs and employment. The

It is the responsibility of the investigator – not the parties – to gather relevant evidence, to the extent possible. The investigator will conduct a fair and reliable fact-gathering process in light of the circumstances. The investigator will be responsible for interviewing the Complainant and the Respondent, interviewing potential witnesses, collecting relevant documentation and physical evidence, creating a timeline (to the extent possible), and preparing a written report documenting the complete investigation.

The Complainant and Respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information during the formal investigation process. Witnesses must have observed the acts in question or have information relevant to the incident and cannot participate solely to speak about an individual's character.

The investigator will determine the relevance of any proffered information, and will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait, including honesty.

Medical and counseling records of a Complainant or Respondent are privileged and confidential records that individuals are not required to disclose. However, these records may contain relevant and material information and a party may voluntarily choose to share such records with the investigator. Any records provided by a party becomes part of the file and may be available to review by the opposing party, if deemed relevant to the formal investigation.

A Complainant's prior sexual history will nto di 1d(A)a(par) (H)6 (hu 13.18.028 TwM.8 TwM.8 TwM)2 (y)4 tigathal ao rs

The investigator will seek to finalize the investigative report within 35 business days of receiving the Complainant's report, but this timeframe may be extended due to the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for university breaks or vacations, and/or to address other legitimate reasons.

C. Right to an Advisor

From the point a Formal Complaint is made, and until an investigation, determination, and appeal are complete, the Complainant and the Respondent may have an advisor of their choice present at any meeting related to the investigation or disciplinary proceeding. An advisor of choice may include an attorney retained by a party at their own expense. Any party accompanied by such an advisor may be required to execute an appropriate FERPA waiver.

A. Party's Written Response to Investigation Report

A party's written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified

- The parties, hearing advisors and witnesses will agree to the Rules of Decorum;
- The hearing officer will ask questions of the parties;
- The Complainant's advisor will ask questions of the Respondent;
- The Respondent's advisor will ask questions of the Complainant;
- Any witnesses present will answer questions of the hearing officer, Complainant's advisor; and the Respondent's advisor, in this order (the hearing officer shall determine in which order the witnesses' will be called for questioning);
- The Complainant will make a closing statement;
- The Respondent will make a closing statement.

Either party is not permitted to question the other party or any witness.

The Complainant and Respondent's closing statements shall be directed to the hearing officer and not at the other party. It should follow the Rules of Decorum. At any time, the hearing officer may stop either party during their closing statement if he, she, or they feel the statement is directed at the other party or does not follow the Rules of Decorum.

The hearing officer cannot draw an inference about the determination regarding responsibility based solely on the party's or witness's absence from the live hearing or refusal to answer any questions during the live hearing.

Within 10 university business days from the date of the live hearing's conclusion, the hearing officer shall make a determination as to whether, based on the preponderance of the evidence standard, the Respondent committed an act or acts of sexual misconduct in violation of this policy. A determination letter will be provided via the party's Lindenwood email account, the party's personal email account or via hand-delivery. The determination letter will be sent to each party, simultaneously, containing the following:

- Summary of the allegations of sexual harassment and the specific prohibited conduct; and
- Summary of the procedural steps taken from the time the university received the Formal Complaint, including notifications to the parties, interviews; and
- Findings of fact supporting the determination; and
- A statement regarding determination of responsibility as to each allegation; and
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- The nature and violence of the conduct at issue;
- The impact of the conduct on the Complainant;
- The impact of the conduct on the university community;
- Prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the university or elsewhere, and any criminal convictions or arrests;
- How the university has previously sanctioned similar conduct;
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the Complainant or the Respondent by notifying the Title IX Coordinator in writing of such conflict and the factual basis for any alleged conflict.

The grounds for appeal may only be one or more of the following:

- A. Procedural irregularity that affected the outcome of the matter;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- C. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The other party will have an opportunity to review the appeal and may submit a written response to the appeal to the appeal officer within three university business days following the appeal being sent to that party. The appeal officer may, in the appeal officer's discretion, provide both parties with an opportunity to speak to the merits of the appeal in person, through videoconference, or over the phone.

Except in extraordinary circumstances, appeals will be resolved by the appeal officer within seven university business days following receipt of the request for appeal, but only after the other party has had three university business days to respond. The Appeals Officer shall issue a written decision describing the result of the appeal and the rationale, with simultaneous, written notice to both parties. The written decision shall be provided to each party simultaneously via their Lindenwood student email account or personal email account.

The decision of the Appeal Officer is a final determination.

XIV. INFORMAL RESOLUTION

At any time after the parties are provided written notice of the Formal Complaint, and prior to reaching a final determination, the university may facilitate an informal resolution that does not involve a full investigation and determination. This process is not available if the Respondent is a non-student employee accused of committing Sexual Harassment against a student. Before beginning any informal resolution process, the university shall obtain the Complainant and Respondent's voluntary, written consent to the informal resolution. Additionally, the university shall provide written notices to the Complainant and Respondent containing the following:

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The records that will be maintained or could be shared.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the University, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to the University. Informal resolution pursuant to this Section are not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized. Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) days. If an informal resolution process does not result in a resolution within twenty-one (21) days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

XV. <u>TIMEFRAME</u>

Except for good cause, the university will attempt to resolve a Formal Complaint, including the investigation, hearing and appeal process, between 65-75 university business days following receipt of a report. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness, fairness, and impartiality. The university may extend this timeframe for good cause and will communicate any delay in the process in writing to the parties, including an updated timeframe for completion and the reason(s) for the delay. Good cause may exist for a variety of factors, including but not limited to the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for university breaks or vacations, and/or to address other legitimate reasons.

XVI. DISMISSAL OF A COMPLAINT

The university may dismiss a Formal Complaint of Sexual Harassment if at any time:

- the Complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw; or
- the Respondent is no longer enrolled or employed by the school; or
- specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

Upon dismissal of a Formal Complaint, the university shall send written notification of the dismissal to the Complainant and Respondent simultaneously.

XVII. <u>RESOURCES</u>

Anonymous reports can also be submitted on the university website at: <u>http://www.lindenwood.edu/student-life/campus-security/reporting-crime/</u>. Sexual misconduct submitted through the anonymous website will be shared with the Title IX coordinator.

B. <u>Confidential Resources</u>

The university resources that afford complete confidentiality (assuming no other conditions require mandatory disclosure, suspected child abuse or neglect or imminent risk of harm to self or others) are

• Disclosure to a licensed- (v)4 (L6 (o)10 (ns)4 (el10 (or)(andat)2 (h t)2 (h)1010 (Sandat)u)6 (de)10 (nt C2 (i)6 (o)

- Alternatives to Living in Violent Environments (ALIVE), (314) 993-2777 (24hour access/crisis line)
- Safe Connections, (314) 531-2003 (text/call crisis hotline), (314) 646-7500 (counseling and support services)
- Additional National Online Confidential Resources
- a. National Sexual Violence Resource Center, <u>https://www.nsvrc.org/</u>
- b. Rape, Abuse, & Incest National Network (RAINN), 24 hours hotline (800)656-HOPE (4673) or https://www.rainn.org/
- c. National Domestic Violence Hotline, <u>https://www.thehotline.org/</u>, (800)799-7233 or (800)799-3224(TTY) <u>Campus Resources (private, but not confidential)</u>

C. Campus Non-Confidential Resources

The following campus departments can provide resources, guidance and assistance to students. These departments are required to share all reports of Sexual Misconduct with the Title IX Coordinator.

- <u>Associate Vice President, Student Affairs,</u> Dr. Heather Black., Evans Commons, Room 3040, hblack@lindenwood.edu
- <u>Dean of Student/Dir of Residential Life</u>, Dr. Ryan McDonnell, Evans Commons Room 3010, (636) 949-4312, rmcdonnell@lindenwood.edu
- Public Safety. 1905 A First Capitol Dr., St. Charles, MO, (636) 949-4911

D. Staff and Faculty Resources

The university is concerned with the well-being of its staff members, its faculty, and their families. An Employee Assistance Program (EAP) is a benefit set up by Lindenwood to provide employees assistance for themselves and their immediate family members in dealing with personal concerns. Assessment, short-term counseling, and referral services are available for concerns such as domestic violence, anxiety, marital

bystander intervention to prevent harm or intervene in risky situations, (e) recognition of signs of abusive behavior and how to avoid potential attacks, and (f) ongoing prevention and awareness campaigns.

The investigators, advisors, appeal, and hearing officers will be trained at least annually by the Title IX coordinator and/or outside sources on issues relating to sexual harassment; including the definition and scope of the school's education program or activity, serving impartially, issues of relevance to create an investigative report and during questioning at the live hearing, using technology at live hearings. The training materials will be posted to the university's website at www.lindenwood.edu/student-life/title-ix.

XIX. <u>RECORDKEEPING</u>

Throughout all stages of the investigation and adjudication, the Title IX Coordinator is responsible for maintaining documentation of all proceedings conducted under this policy.

The University will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in the University's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published,