



LAKE FOREST
COLLEGE

Policy and Procedures for Sexual Misconduct Complaints

POLICY STATEMENT

This policy sets forth important information regarding the College's education, prevention and response initiatives regarding sexual misconduct.

Sexual misconduct, including sexual discrimination, harassment, non-consensual sexual intercourse and/or contact, exploitation, and interpersonal violence, such as stalking, and dating and domestic violence, will not be tolerated at Lake Forest College. The College cares deeply about the health, safety, and well-being of all members of the College community and is committed to fostering a community that promotes prompt reporting of all types of sexual misconduct, as well as the timely and fair resolution of sexual misconduct complaints.

This policy applies to all members of the College community, including faculty, staff, and students. All faculty, staff, and students are responsible for their actions and behavior, whether the conduct in question occurs on campus or in a different location. As such, this policy applies to both on-campus conduct and off-campus conduct that affects the College community regardless of the sex, gender, sexual orientation, gender identity, or gender expression of any of the individuals involved.

This policy also applies to vendors, independent contractors, visitors, and others who conduct business with the College or on College property. The College will take timely action to respond to all allegations of sexual misconduct to ensure the safety of the College community.

The College urges students and employees who believe they have been subject to sexual misconduct to seek immediate assistance from the on and off-campus resources set forth in this Policy.

NOTICE OF NON-DISCRIMINATION

Lake Forest College does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. Sexual misconduct, including sexual harassment as defined in this policy, is a form of sex discrimination that unjustly deprives a person of equal treatment. It is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

This policy prohibits sexual misconduct against all College community members of any gender or sexual orientation or gender expression. This policy also prohibits harassment based on gender or sexual orientation that does not involve conduct of a sexual nature. The College's broad-based non-discrimination policy can be accessed at: www.lakeforest.edu/studentlife/intercultural/institution.php

ROLE OF TITLE IX COORDINATOR

The College has a designated Title IX Coordinator to oversee its response to all reports of sexual misconduct and harassment, conduct training, and coordinate compliance with the mandates of Title IX. The Title IX Coordinator is knowledgeable and trained in the College's policies and procedures, state and federal laws that apply to sexual misconduct and harassment, and the dynamics of sexual misconduct and harassment. The Title IX Coordinator is available to meet with any individual to discuss the options for resolving a report under this policy.

Lake Forest College Title IX Coordinator:

Julie Yura

Title IX Coordinator

North Hall, second floor

847-735-6009

yura@lakeforest.edu

RESOURCES/CONTACTS

The College is committed to protecting the privacy of all individuals involved in reports of sexual misconduct or harassment. The College will balance individual privacy with its obligation to conduct a thorough review of allegations to protect the parties and broader community and maintain an environment free from harassment. Different employees on campus have different abilities to maintain an individual's confidentiality:

- Some are required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication." These employees may talk to an individual who has experienced sexual misconduct in confidence, and generally only report to the College that an incident occurred without revealing any personally identifying information. Disclosures to these employees will not trigger a College investigation into an incident against the individual's wishes.

Faculty, staff and students wishing to obtain confidential assistance without making a report to the College may do so by speaking with one of the following strictly confidential resources:

- Lake Forest College Counseling Services: off-campus 847-735-5240, on campus x5240 during business hours, or after hours by contacting Public Safety at 847-735-5555 or on campus at x5555
- Confidential and Independent Campus Conduct Hotline: 866.943.5787
- Employee EAP, UnitedHealthcare 1-888-887-4114 (for employees only)

The following off-campus organizations also provide strictly confidential assistance and additional resources:

- The Zacharias Sexual Abuse Center in Gurnee: 847-872-7799
- The Chicago Rape Crisis Hotline 888-293-2080

All of the above resources employ professionals specifically trained to work with individuals who report sexual misconduct, and have knowledge about on-and off-campus resources, services, and options. Please note that limitations of confidentiality may exist for individuals under the age of 18.

- With the exception of the confidential resources identified directly above, all other College employees, including student employees, who receive a report of sexual misconduct or harassment are required to report all the details of an incident (including the identities of both the complainant and alleged perpetrator) to the Title IX Coordinator. A report to these employees (called “responsible employees”) constitutes a report to the College – and generally obligates the College to investigate the incident and take appropriate steps to address the situation. The College encourages individuals to talk to someone identified in these groups.

The following resources may be contacted to initiate an investigation into an incident of sexual misconduct:

- The Title IX Coordinator, Julie H. Yura, yura@lakeforest.edu, 847-735-6009 or on campus x6009
- Public Safety at 847-735-5555 or on campus at x5555
- The Office of Student Affairs at 847-735-5200 or on campus at x5200
- (for employees) The Director of Human Resources, Agnes Stepek, 847-735-5036 or on campus at x5036
- If you are in immediate danger, call 911 for the Lake Forest Police Department. The non-emergency number for the Lake Forest Police Department is 847-234-2601
- Anonymous reports may be submitted by completing the form found at www.lakeforest.edu/about/ourcampus/safety/reporting.php

The privacy of all parties involved will be respected. Information related to a report of sexual misconduct or harassment will be shared only with those College employees who “need to know” to assist in the investigation and/or resolution of the complaint. All College employees

who are involved in the review, investigation, or resolution of a report have specific training regarding the safeguarding of private information.

Where the College receives a report of sexual misconduct or harassment but the reporting party requests that he or she remain confidential and/or requests that the College not pursue an investigation, the College will balance this request with its responsibility to provide a safe and non-discriminatory environment for all members of the College community. The College is required to take all reasonable steps to investigate and respond to a report, but its ability to do so may be limited by the reporting party's request. However, under compelling circumstances, including: evidence of a pattern of repetitive behavior, the use of force or threat of force, or the use of a weapon by the responding party, the College may conduct further investigation or take other appropriate measures without the reporting party's consent. Under Illinois law, the College is mandated to report any abuse of a minor (under the age of 18) to the Department of Children and Family Services. The reporting party will be informed whenever possible of any action the College takes to resolve the complaint, including further investigation and corrective or disciplinary steps.

Further information about Title IX and sex discrimination in education is available from the Office of Civil Rights at ed.gov/ocr.

PROHIBITED CONDUCT

Lake Forest College prohibits the following forms of sexual misconduct:

- a. **“Sexual Harassment.”** Sexual Harassment is unwelcome sexual advances, requests for sexual favors, or other speech or physical conduct of a sexual nature, without regard to whether the parties are of the same or different gender when: (i) submission to such conduct or communication is made, either explicitly or implicitly, a term or condition of an individual's employment, academic status or participation in College activities, or is used as the basis for employment or academic decisions affecting the individual; or (ii) such conduct or communication has the purpose or effect of substantially interfering with the individual's work, academic performance, or housing; or of creating an intimidating, hostile, or offensive working or educational environment; and (iii) in either of the preceding cases, such conduct is directed at an individual, and is severe and pervasive. Sexual Harassment also includes sexual assault or sexual violence. This includes sexual acts perpetrated against a person's will; sexual advances accompanied by actual or threatened physical violence; and sexual acts perpetrated when a person is incapable of giving consent due to the victim's use of drugs or alcohol. In evaluating any complaint of Sexual Harassment, the perceived offensiveness of a particular expression, standing alone, may not be sufficient by itself to constitute Sexual Harassment. The expression and/or conduct in question must be objectively intimidating, hostile, or offensive and interfere with a person's right to equally participate in programs and activities of the College. Some examples of sexual harassment may include:

- pressure for a dating, romantic, or intimate relationship;

- unwelcome touching, kissing, hugging, or massaging;
- pressure for or forced sexual activity;
- unnecessary references to parts of the body;
- remarks about a person's gender or sexual orientation;
- sexual innuendoes or humor;
- obscene gestures;
- sexual graffiti, pictures, or posters;
- sexually explicit profanity;
- stalking or cyber bullying that is based on gender or sex; e-mail, texting ("sexting") and Internet use that violates this policy; or
- sexual assault or violence.

- b. "Non-Consensual Sexual Intercourse (or attempts to commit the same)."** Non-consensual sexual intercourse is any penetration of the sex organs, anus, or mouth of another person when consent is not present or force is used. This includes penetration or intrusion, however slight, by an object or any part of the body, specifically including cunnilingus, fellatio, vaginal intercourse, and anal intercourse.
- c. "Non-Consensual Sexual Contact (or attempt to commit the same)."** Non-consensual sexual contact is the intentional touching or fondling a person's genitals, breasts, thighs, groin, or buttocks, or any other contact of a sexual nature (including by bodily fluids), when consent is not present or force is used. This includes contact done directly, through clothing, or with an object. It also includes causing or inducing a person, when consent is not present, to similarly touch, fondle, or contact oneself or someone.
- d. "Sexual Exploitation."** Sexual exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses in this policy. Examples of sexual exploitation include, but are not limited to, invasion of sexual privacy, prostituting another person, non-consensual video or audio-taping of sexual activity, engaging in voyeurism, knowingly transmitting a sexually transmitted disease (STD) to another without disclosing STD status, exposing one's genitals in non-consensual circumstances, and inducing another to expose their genitals. Sexually-based stalking and/or bullying may also be forms of sexual exploitation.
- e. "Dating Violence" and "Domestic Violence."** Dating violence" and "domestic violence are intimidation, harassment, physical abuse, or interference with the personal liberty of any person who is a current or former spouse, intimate partner, domestic partner, dating partner, or member of one's family or household. Dating and domestic violence can also include emotional, sexual, and financial abuse. Individuals encompassed in this definition include, but are not limited to: persons who have or have had dating or engagement relationship; persons who have had a social relationship of a romantic or intimate nature; current or former spouses, domestic partners, children, stepchildren

and other persons related by blood or by current or prior marriage; persons who share or formerly shared a common dwelling; persons who have or allegedly have a child in common; persons who share or allegedly share a relationship through a child; and personal assistants and personal caregivers for the elderly or disabled.

- f. **“Stalking.”** Stalking is a course of conduct directed at a specific person that is unwelcome and that would cause a reasonable person to fear for their safety (or the safety of a third party) or suffer other emotional distress. Conduct that can amount to stalking may include any actions directed at another person, whether done directly, indirectly, through others, via devices, or via any other methods or means (specifically including electronic means), including but not limited to:
- following a person;
 - being or remaining in close proximity to a person;
 - entering or remaining on or near a person’s property, residence, or place of employment;
 - monitoring, observing or conducting surveillance of a person;
 - threatening (directly or indirectly) a person;
 - communicating to or about a person;
 - giving gifts or objects to, or leaving items for, a person;
 - interfering with or damaging a person’s property (including pets); or
 - engaging in other unwelcome contact.

IMPORTANT DEFINITIONS

- a. **“Consent”** is expressed through affirmative, voluntary words or actions mutually understandable to all parties involved; is given for a specific sexual act at a specific time and can be withdrawn at any time; cannot be coerced or compelled by duress, threat, or force; cannot be given by someone who, for any reason, cannot understand the facts, nature, extent, or implications of the sexual situation occurring, including, but not limited to, those who are under the legal age of consent (17 years in Illinois¹), asleep, unconscious, or mentally or physically incapacitated through the effects of drugs or alcohol, or mentally impaired due to an intellectual or other disability. Consent cannot be assumed based on silence, the absence of “no” or “stop” or the existence of a prior or current relationship, or prior sexual activity.
- b. **“Coercion”** is to force a person to act based on fear of harm to self or others. Means of coercion may include, but are not limited to, pressure, threats, emotional intimidation, or the use of physical force.
- c. **“Incapacitation”** means the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, blackouts, intellectual, or other disability. Where alcohol or other drug is involved, one does not

¹ Except in cases of child abuse under the Illinois Abused and Neglected Children’s Reporting Act, where the age of consent is 18.

have to be intoxicated or drunk to be considered incapacitated. Rather, incapacitation is determined by how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. The question is whether the accused knew, or a sober, reasonable person in the position of the accused, knew or should have known, that the complainant was incapacitated. Because incapacitation may be difficult to discern, individuals should be strongly encouraged to err on the side of caution; i.e., when in doubt, assume that another person is incapacitated and therefore unable to give Effective Consent. Being intoxicated or drunk is never a defense to a complaint of Sexual Misconduct under this Policy.

RETALIATION

It is a violation of College policy to retaliate against any person making a good-faith complaint of sexual misconduct or against any person cooperating in good faith in the investigation of, including testifying as a witness to, any allegation of sexual misconduct. "Retaliation" includes but is not limited to intimidation, threats, harassment, and other adverse action threatened or taken against any such complainant or third party. Retaliation should be reported promptly to the Title IX Coordinator or the Dean of Students. Acts of Retaliation will result in disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of sexual misconduct.

REPORTING INCIDENTS OF SEXUAL MISCONDUCT

a. Initiating a Report

Reports of sexual misconduct should be reported to Julie Yura, Title IX Coordinator, yura@lakeforest.edu, 847-735-6009.

Except for College-recognized confidential resources, all College employees (including student employees), as well as non-employees with teaching or supervisory authority, with knowledge of unreported incidents of student sexual misconduct must report such information to the Title IX Coordinator. Those required to report should provide as much information as they have, such as:

- name of the involved students;
- date of alleged incident;
- date on which reporter learned of alleged incident;
- specific location where alleged incident occurred;
- time of alleged incident; and/or
- nature of the alleged incident.

b. Notification of Law Enforcement

College officials encourage Complainants to report to the Police any allegation of sexual misconduct that could rise to the level of a crime, and the College will assist individuals wishing to do so. A police report must be made before a criminal prosecution can be considered by the

local State's Attorney's Office. The chances of successful prosecution are greater if the report to the police is timely.

Complainants have the right to request that law enforcement implement emergency protective restraining orders. Complainants who receive emergency or permanent protective or restraining orders through a criminal or civil process should notify the Title IX Coordinator. The College will work with the Complainant and the person who is the subject of the restraining order to manage compliance with the order on campus.

Whether or not criminal charges are filed, the College will investigate and resolve complaints of sexual misconduct under this Policy. Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this Policy, criminal investigations or reports are not determinative of whether sexual misconduct, for purposes of this Policy, has occurred. In other words, conduct may constitute sexual misconduct under this Policy even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to investigate or prosecute.

The College's investigation of a complaint of sexual misconduct shall proceed simultaneously with any law enforcement investigation. The College may, in some circumstances, be required to defer fact-finding portion of its Title IX investigation for a limited time while the police gather evidence. In such cases, the Title IX Coordinator shall inform the parties of the need to defer its fact-finding, provide regular updates on the status of the investigation, and notify the parties when the College's fact-finding resumes. The College will also take interim measures to protect the complainant and the College community.

c. Amnesty for Sexual Misconduct Complainants and Witnesses

The College encourages reporting sexual misconduct and seeks to remove any barriers to an individual/group making a report. The College recognizes that an individual who has been drinking or using drugs at the time of the incident may be hesitant to make a report because of the potential consequences for their own conduct. An individual/group who (that) reports sexual misconduct, either as a Complainant or third party witness, will not be subject to disciplinary action by the College for their (its) own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not or do not place the health or safety of any other person at risk.

d. Request for Confidentiality

Where the College has received a report of sexual misconduct, but the Complainant requests that his/her identity remain confidential or that the College not pursue an investigation, the College must balance this request in the context of its responsibility to provide a safe and non-discriminatory environment for all College community members. The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to investigate may be limited by the request for confidentiality. Under these circumstances, the College will weigh the request for confidentiality against the following factors: the seriousness of the alleged

harassment, any potential threats to community safety, the respective ages and positions of the Complainant and the Respondent, whether there have been other harassment complaints against the Respondent, and the Respondent's right to receive information under applicable law.

At all times, the College will seek to respect the request of the Complainant, and where it cannot do so, the College will consult with the Complainant and keep him/her/them informed about the chosen course of action.

PROCEDURES FOR RESPONDING TO COMPLAINTS FOR SEXUAL MISCONDUCT

The College will respond promptly and equitably to Complainants of sexual misconduct. The College's Title IX Coordinator oversees the College's response to all complaints of sexual misconduct. This includes:

- assisting Complainants in accessing academic support, counseling, disability and health/mental health services and other interim protective services as set forth below;
- informing Complainants of the right to report crimes to local law enforcement, and providing Complainants with assistance if they choose to do so; and
- investigating Complaints, providing investigative reports to the Sexual Misconduct Hearing Board for formal resolution and/or assisting parties with the informal resolution process.

a. Initial Assessment. Upon receipt of an incident report, the Title IX Coordinator shall generate a case file for investigation and resolution. The Title IX Coordinator shall make an initial assessment as to whether or not the alleged misconduct, if true, would constitute a violation of this policy. If the Title IX Coordinator determines that the alleged misconduct, if true, would not constitute a violation of this policy, the case may be referred to the Dean of Students or other administrator for appropriate resolution under the relevant policy or may be closed with no further action taken.

b. Intake Meeting with Complainant. As soon as possible after receipt of a complaint of sexual misconduct, the Title IX Coordinator will schedule an individual intake meeting with the Complainant to provide information regarding the options available under this Policy and to identify forms of support, resources, and/or immediate interim actions or accommodations available to the Complainant.

c. Intake Meeting with the Respondent. As soon as possible after the intake meeting with the Complainant, the Title IX Coordinator will schedule an individual intake meeting with the Respondent to notify him or her of the complaint, explain the procedures enumerated in this Policy, and identify forms of support, resources, or immediate interventions available to the Respondent.

d. Advisors. The Complainant and Respondent are both entitled to bring an advisor of their choice, at their expense, to any meeting or interview in connection with an investigation

into sexual misconduct, including the intake meeting. The role of the advisor is for support only and therefore, non-participatory. In other words, the advisor may not speak for the Complainant or Respondent nor draft any statements on their behalf. The College reserves the right to proceed with a pre-arranged meeting or interview regardless of the advisor's availability.

e. Interim Actions and Accommodations. In response to complaints of alleged sexual misconduct the College will provide appropriate interim measures to support and protect the Complainant and Respondent and prevent (further) acts of misconduct, harassment or retaliation prior to the final outcome of the investigation and hearing, if any.

The College may impose a "No Contact" order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, a hearing. The College also may take any further protective action that it deems appropriate concerning the interaction of the parties pending a hearing. This may include, without limitation, directing appropriate College officials to alter students' academic schedules, College housing, and/or College employment arrangements, arranging medical and/or counseling services through on or off-campus resources and providing assistance with law enforcement reports and processes. Violation(s) of a College directive and/or protective action issued as an interim measure will result in disciplinary action.

In cases where the alleged respondent is considered a threat to persons or property or has criminal charges pending or filed, the Dean of Students may impose interim measures such as suspension, removal from housing, and/or loss of other privileges prior to or during an investigation and determination regarding the allegations of misconduct.

f. Informal Resolution. Where appropriate, the College will work to informally resolve complaints by taking immediate and corrective action designed to identify remedies to stop the sexual misconduct, address its effects, and prevent recurrence without a hearing before the Sexual Misconduct Hearing Board. Informal resolution may include the range of interim measures set forth above, as well as targeted and or broad-based training and educational programming for relevant individuals and groups, and/or any other remedy that will achieve the goals of this policy. In some circumstances, mediation or joint conflict resolution may be appropriate; however, mediation or face to face meetings shall never be used to resolve allegations of non-consensual intercourse or contact or other sexual violence. Participation in informal resolution is voluntary and either party can request to end informal resolution at any time.

g. Formal Resolution--Sexual Misconduct Hearing. A complaint of sexual misconduct against a current student, faculty, or staff member that cannot be addressed through informal resolution will be resolved through a sexual misconduct hearing.

1. Investigation.

When a complaint proceeds to formal resolution, a thorough investigation will be conducted. In most instances, the investigation shall be conducted by the Title IX Coordinator. Should the Title IX Coordinator have a conflict or it is otherwise determined appropriate, the investigation will be assigned (by the Dean of Students, in the case of a complaint against a student, or by the Director of Human Resources, in the case of a complaint against a faculty or staff member) to Public Safety or another appropriate, trained internal or external investigator.

Investigations will include one or more interviews with the Complainant, Respondent and any other identified witnesses. Investigations may also include the gathering of physical, documentary and/or other relevant evidence. Additionally, the Title IX Coordinator (or other Investigator) will allow Complainants and Respondents to draft written statements, identify and/or present statements from fact witnesses or submit any other evidence that the Title IX Coordinator (or other Investigator) deems relevant. Complainants and Respondents may have their advisors present during interviews and any other meetings that occur during the investigation.

After collecting the evidence, the Title IX Coordinator (or other Investigator) will prepare an Investigative Report summarizing and analyzing the relevant facts determined through the Investigation, referencing any supporting documentation or statements. The Investigative Report may include summaries of interviews with the Complainant, Respondent, third-party witnesses, and any other individuals with relevant information, photographs of relevant sites or physical evidence, electronic records and forensic evidence. The Title IX Coordinator (or other Investigator) may provide a summary of his/her impressions, but will not make a determination as to whether a violation occurred. The determination of whether a Policy violation occurred will be made by the Hearing Board. The Title IX Coordinator (or other Investigator) will provide the Complainant, Respondent and, if the matter proceeds to hearing, the Chair of the Sexual Misconduct Hearing Board, with a copy of the report.

2. Sexual Misconduct Hearing Board.

Hearings to address complaints of sexual misconduct alleged against a current student, faculty or staff member shall be conducted by the Sexual Misconduct Hearing Board. The Hearing Board for a particular hearing is comprised of three persons that are drawn from a pool of Sexual Misconduct Hearing Board members from the College community. All Hearing Board members will have prior experience in, and will receive annual training regarding, the dynamics of sexual misconduct, the factors relevant to a determination of credibility, the appropriate manner in which to receive and evaluate sensitive information, the manner of deliberation, and the application of the preponderance of the evidence standard, as well as the College's policies and

procedures. The Chair of the Sexual Misconduct Hearing Board shall serve as a fourth, non-voting member in all hearings.

3. Notice of Hearing.

The Chair of the Sexual Misconduct Hearing Board (or designee) will issue a written Notice of Hearing to the Complainant and the Respondent. The Notice of Hearing will identify the date, time and place of the hearing and state the names of the persons who will serve on the Hearing Board for the case. The Notice of Hearing will be sent at least seven (7) days prior to the hearing date. Any party wishing to challenge the participation of any Board member must notify the Chair, in writing, within three (3) calendar days of receipt of the Notice of Hearing, stating the specific reason(s) for the objection. Failure to do so will constitute a waiver of any objection to the composition of the Board. The Chair will determine whether the challenge has merit and reserves discretion to make changes in the Board composition at any time. The Chair and Board may seek advice from the College's attorney throughout the hearing process on questions of procedure and the College's attorney may attend the hearing; however, factual determinations will be made solely by the voting members of the Board present at the hearing.

4. Advisors to the Parties.

Both the Complainant and the Respondent may have an advisor present to support and assist them during the pre-hearing, hearing, and appeal stages of the Formal Resolution-Sexual Misconduct Hearing process. An advisor may advise the Complainant or the Respondent, but may not participate directly in the hearing. The Chair may disallow a particular advisor in cases where such advisor might be a witness or where such advisor's presence, in the Chair's sole determination, would be obstructive to the process or for other good cause. An advisor may not direct questions to the Board or witnesses at the hearing, but may consult with the person that he or she is assisting. The Chair will not allow an advisor's presence to inhibit the parties sharing of information or the conduct of the hearing.

5. Pre-Hearing Procedures

i. Meeting with Complainant and Respondent. As soon as possible after issuing the Notice of Hearing, the Chair will meet individually with Complainant and Respondent and their respective advisors to discuss the hearing process and answer any questions.

ii. Witness Lists. If the Complainant or Respondent wishes to have witnesses present at the hearing, each must submit a list of witnesses to the Chair of the Hearing Board. Generally, all witnesses must be fact witnesses and must have been previously interviewed by the Title IX Coordinator (or other Investigator) during the investigation of the complaint. Neither party will be

permitted to call character witnesses. The witness list must be submitted no later than three (3) calendar days prior to the hearing date. Should a party believe it is necessary to include a witness on his or her witness list that was not previously interviewed during the investigation, the following information is required at the time the witness list is submitted:

- names of witnesses the party intends to call;
- a written statement and/or description of what each witness observed;
- a summary of why the witness' presence is relevant to making a decision on the complaint; and
- the reason why the witness was not interviewed by the Investigator.

The Chair will determine if the additional witness will be permitted to testify on behalf of the requesting party. The Chair may also require that the Investigator interview the requested witness. The Chair will submit an approved witness list to the parties and the Hearing Board prior to the hearing. The Hearing Board may call any witness it deems to have relevant information regardless of whether the individual appears on the approved party witness list.

iii. Documentation and Evidence. Generally, the Investigative Report will contain the documentary evidence to be considered by the Hearing Board. If a Complainant or Respondent wishes to submit documentary evidence not previously provided to the Investigator, he or she must, no later than three (3) calendar days prior to the Hearing, submit to the Chair of the Hearing Board the list of documents or other evidence he or she wishes to present at hearing. He or she must also include the following information on the list of documents:

- the identification and/or description of the document or other evidence the party intends to present;
- a summary of why the document or other evidence is relevant; and
- the reason why the document or other evidence was not provided to the Investigator.

The Chair will determine if the additional documentation or other evidence should be permitted. The Chair may also require that the Investigator review the additional documentation or other evidence. If the additional documentation or evidence is approved, it will be shared with the parties and the Hearing Board prior to the hearing. The Chair will submit an approved document list to the parties and Hearing Board prior to the Hearing.

iv. Prior Sexual History, Bad Acts, or Pattern Evidence. As noted above, a current or previous dating or sexual relationship, by itself, is insufficient to constitute consent. Generally, prior sexual history of the Complainant or

Respondent will not be allowed. However, in limited circumstances, such as pattern evidence, it may be relevant in the determination of responsibility or, in the case of Respondent, assigning of a sanction. Additionally, a prior finding (post appeal rights) of responsibility for a similar act of sexual misconduct will always be deemed relevant and may be considered in making a determination as to responsibility and/or assigning of a sanction.

If either party wishes to bring forth information concerning the other party's sexual history, bad acts, or pattern evidence, such requests must be made to the Chair of the Hearing Board, who will judge the admissibility of such information.

v. Withdrawal of Complaint. Prior to a hearing before the Hearing Board, the Complainant may withdraw the sexual misconduct complaint. Withdrawal of the complaint will, in most circumstances, end the hearing process. The College reserves the right to move forward with the Complaint, even after the Complainant withdraws it, in order to protect the interests and safety of the College community.

6. Hearing Process.

The hearing will not follow a courtroom model and formal rules of evidence will not be observed.

- i. Procedural Statements.** The Chair will begin the hearing by explaining the hearing process and provide an opportunity for all parties to ask procedural questions prior to initial statements and the presentation of information. The Chair will ask each individual present to state their name and identify their role during the hearing.
- ii. Investigator Presentation.** The Investigator will present to the Hearing Board all pertinent information regarding the incident in question, including, but not limited to: the Investigative Report, written statements, documents, photographs, oral statements from the parties and witnesses, and any other items or information. The Hearing Board will then have an opportunity to ask the investigator questions. Once the Hearing Board has asked all its questions, both the Complainant and the Respondent may submit additional written questions to the Chair of the Hearing Board. If necessary, a brief break may be granted to allow both parties an opportunity to prepare and submit such requests. The Chair, in consultation with the Board, will determine which, if any, additional questions will be asked. The Chair may disallow or reframe any questions that are irrelevant or redundant. The Board will dismiss the Investigator once it has determined the questioning to be complete.

- iii. **Complainant's Presentation.** The Complainant will then be asked to present his or her own account of the events. When he or she is finished, the Hearing Board may ask the Complainant questions. Once the Hearing Board is finished questioning the Complainant, the Respondent will be permitted to submit additional written questions to the Chair of the Hearing Board. The Chair, in consultation with the Board, will determine which, if any, additional questions will be asked. The Chair may disallow or reframe any questions that are irrelevant or redundant. A similar process will be followed for each witness offered by the Complainant. The witnesses will be expected not to repeat undisputed details or non-material circumstances that would merely duplicate information contained in the investigative report or in other written materials. Once a witness other than a party is done presenting information and answering questions, he or she will be asked to leave the hearing room.

- iv. **Respondent's Presentation.** The Respondent may then present his or account of the events. The Hearing Board may ask the Respondent questions. Once the Hearing Board is finished questioning the Respondent, the Complainant will be permitted to submit additional written questions to the Chair of the Hearing Board. The Chair, in consultation with the Board, will determine which, if any, additional questions will be asked. The Chair may disallow or reframe any questions that are irrelevant or redundant. A similar process will be followed for each witness offered by the Respondent. The witnesses will be expected not to repeat undisputed details or non-material circumstances that would merely duplicate information contained in the investigative report or in other written materials. Once a witness other than a party is done presenting information and answering questions, he or she will be asked to leave the hearing room.

- v. **Closing Statements.** After Both the Complainant and Respondent have completed their presentations, each party may make a closing statement.

- vi. **Additional Information.** If at any time prior to deliberations the Board determines that unresolved issues exist that would be clarified by the presentation of additional information, the Chair may suspend the hearing and reconvene it in a timely manner to receive such additional information. A delay of hearing will not be based on the failure to produce witnesses or documents without good cause.

- vii **Participation by Closed-Circuit Technology.** Upon timely request by a party or witness, the College may be able to provide for participation by closed-circuit technology in appropriate circumstances. Appropriate circumstances include those where parties or witnesses are otherwise

unable to participate in the hearing due to health issues or a prearranged, multi-week leave from the College. The availability of participation by closed-circuit technology will be at the sole discretion of the Chair.

- viii. Recording.** The Chair will arrange for the hearing to be audio-recorded. Hearings before the Board are audio-recorded: i) for reference by the Hearing Board or Chair during deliberations; ii) for review by the President during an appeal; and iii) to serve as the official record of the hearing. The recordings are student records and will therefore be maintained pursuant to the Federal Educational Rights and Privacy Act (FERPA). The Hearing Board's deliberations are not audio-recorded. Individual parties may not record the hearing.
- ix. Deliberation and Decision.** At the conclusion of the hearing, everyone other than the Chair, the College's legal counsel (if present), and the Hearing Board members will be dismissed from the hearing room to allow the Hearing Board to deliberate in private. The Chair and the College's legal counsel may remain for deliberations but may not participate in the deliberations and may not vote. The Hearing Board must reach a decision regarding responsibility by majority vote. If the Hearing Board finds responsibility, it will deliberate regarding the appropriate sanction(s) and reach a decision by majority vote. The votes themselves will not be shared with the parties, only the decision regarding responsibility and any applicable sanction. The Hearing Board may schedule additional meetings to complete deliberations. Generally, the Hearing Board will communicate in writing the determination as to whether the a violation occurred, the rationale for that determination and the sanctions to be imposed to the Complainant and Respondent simultaneously within three (3) days from the date the Hearing Board's deliberations conclude.
- x. Sanctions.** The Hearing Board may impose whatever sanction it believes is fair and proportionate to a finding of sexual misconduct, including suspension, expulsion, or termination of employment. In recommending an appropriate sanction, the Hearing Board may consider any record of past violations of this Policy, as well as the nature and severity of such past violation(s). The sanction recommendation will be made by the Hearing Board by majority vote. A complaint of sexual misconduct may also result in broad-based remedial action by the College. Not all forms of sexual misconduct will be deemed to be equally serious offenses. Therefore, the College reserves the right to impose differing sanctions, ranging from oral warning to suspension, expulsion and/or termination. Depending on the severity of the offense, the

Hearing Board will consider the concerns and rights of both the complainant and the person accused of sexual misconduct.

- xi. Standard of Proof.** The Hearing Board will determine the Respondent's responsibility by a preponderance of the evidence standard. A preponderance of the evidence means whether the information provided at the hearing supports a finding that it is "more likely than not" that the accused violated this Policy.

7. Appeal.

Either party may make a written appeal to the College President of within five (5) calendar days following the decision of the Hearing Board. The President shall consider appeals only on the basis of: (i) procedural error; or (ii) new information that was unavailable at the time of the hearing and would substantially change the outcome of the decision. A request for appeal will be forwarded to the non-appealing party upon receipt. The non-appealing party will have five (5) days to submit a response to the request for appeal.

The President shall consider the merits of an appeal only on the basis of the two grounds for appeal set forth above and supporting information provided in the written request for appeal, any response to the request for appeal, and the record of the original hearing. If the appeal is based on procedures not having been followed in a material manner, and the President deems that information to be clear and convincing, the President can direct that a new hearing occur before new Hearing Board members. In the case of newly available information, the President can direct that the case be returned to the original Hearing Board to assess the weight and effect of the new information and render a determination after considering the new facts. The President will communicate the result of the appeal to the Complainant and Respondent simultaneously in writing. Appeal decisions are final.

8. Time Frame for Resolution.

The investigation and resolution (including appeal) of all reports will generally be completed within 60 days. However, this time frame is meant to provide guidance and the College may alter or extend time frames, with notice to the parties, as appropriate.

9. Effective Date of Sanction.

Sanctions are not effective until the resolution of any timely appeal of the decision. However, if advisable to protect the welfare of the complainant or the College community, the Board may recommend that any probation, suspension, or expulsion be effective immediately and continue in effect until such time as the College President may otherwise determine. The College President's decision may not be appealed.

10. Record Maintenance.

The hearing audio-recording, together with the documents, information and other evidence presented at the hearing, will serve as the record of the hearing proceedings and will be maintained by the Dean of Students as part of the Respondent's conduct record in the case of students and with the Director of Human Resources as part of Respondent's employment file in the case of faculty or staff.

Generally, suspension, expulsion, and withdrawal pending disciplinary action are permanently noted on a student's transcript. The conduct files of students who have been suspended or expelled from the College are maintained in the Dean of Students' office for no fewer than seven (7) years after their departure from the College. Employment records are maintained consistent with the Illinois Business Records Review Act and all other state and federal requirements.

ANNUAL REPORT

At the beginning of each academic year, the Title IX Coordinator shall report on the previous year's Complaints and responsive action under this Policy. The Title IX Coordinator shall submit the report to the College President, who shall publicize it to the College community. The report shall not mention the name of any individuals or identify details of any complaint.

POLICY APPROVAL

This policy is approved by the President of the College and reviewed at least annually for compliance with federal, state, and regional laws.

WEBSITE ADDRESS FOR THIS POLICY AND RELATED RESOURCES

lakeforest.edu/about/administration/sexualmisconduct/index.php

AMENDMENTS

This Policy may be amended, in writing, by the President or the President's designee at any time.

Effective: January 29, 2015