

### Interim Sexual Harassment Policy and Grievance Process

The Office of Institutional Compliance oversees Lincoln Memorial University (“LMU”) and J. Frank White Academy’s (“JFWA”) (collectively “the University”) compliance with federal law and handles all complaints of discrimination. The Title IX Coordinator is designated to oversee the University’s compliance with Title IX of the Education Amendments of 1972 (“Title IX”). LMU does not discriminate on the basis of sex in its education programs or activities, including admissions and employment.

Questions about Title IX and this policy may be directed to the Title IX Coordinator:

Jeana Horton, J.D.

Title IX Coordinator/Institutional Compliance Officer

Phone: (423) 869-6618

Email: [titleix@lmunet.edu](mailto:titleix@lmunet.edu) or [jeana.horton@lmunet.edu](mailto:jeana.horton@lmunet.edu)

Main Campus: D.A.R. 210, 6965 Cumberland Gap Parkway, Harrogate, TN 37752

Knoxville: Office 249, Duncan School of Law, 601 W. Summit Hill Drive, Knoxville, TN 37902

Questions about Title IX and the regulations may be directed to the United States Department of Education Office for Civil Rights:

U.S. Department of Education

Phone: 1-800-USA-LEARN (1-800-872-5327) or 1-800-421-3481

400 Maryland Avenue, SW

Washington, D.C. 20202

### Jurisdiction

This policy applies to all LMU and JFWA students, employees, faculty, staff, and contractors and all LMU education programs or activities in the United States. LMU education programs and activities includes locations, events, or circumstances over which LMU exercises substantial control over the person accused of committing sexual harassment and the context in which the sexual harassment occurs. This includes conduct that occurs on LMU campuses and/or in any building owned or controlled by a student organization that is officially recognized by the University. This policy may apply to off campus conduct outside of an LMU program or activity if the Title IX Coordinator determines the off-campus conduct has an impact on an LMU campus, program, or activity. This policy applies to reports and formal complaints submitted on or after August 14, 2020.

### Prohibited Conduct

This policy implementing Title IX of the Education Amendments of 1972 regulations prohibits sexual harassment. Sexual assault, dating violence, domestic violence, and stalking are forms of sexual harassment and are defined as follows:

- **Sexual Harassment:** conduct on the basis of sex that satisfies one or more of the following:
  1. An employee conditioning the provision of an aid, benefit, or service of the University on an individual's participating in unwelcome sexual conduct (quid pro quo);
  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 University's education program or activity.
  3. Dating violence, domestic violence, sexual assault, or stalking.
- **Dating Violence:** 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. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- **Domestic Violence:** a felony or misdemeanor crime of violence committed:
  - By a current or former spouse or intimate partner of the victim;
  - By a person with whom the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
  - By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- **Sexual Assault:** any sexual act directly against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault includes:
  - **Rape:** the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This offense includes the rape of both males and females.
  - **Fondling:** touching of the private body parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent

because of his or her age or because of his or her temporary or permanent mental incapacity.

- **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory rape:** sexual intercourse with a person who is under the statutory age of consent.

For purposes of this offense, consent and incapacitation are defined as:

- **Consent:** a clear, knowing, and voluntary mutual agreement to engage in specific sexual behavior. Consent is active and ongoing words or actions that create mutually understandable permission and willingness to engage in specific sexual behavior.
  - An individual may withdraw consent at any point during a sexual encounter.
  - Consent to one form of sexual activity is not consent for any other form of sexual activity.
  - A person who is incapacitated, or whose capacity is diminished because of drugs or alcohol, may not be able to consent.
  - Silence or non-communication is not consent.
  - A current or prior dating or sexual relationship is not consent.
  - Consent given in response to coercion, violence, or threat of violence is not consent.
  - A person who is under the age of consent, as defined by state law, cannot consent.
  - A person with a mental defect may not be able to consent.
- **Incapacitation:** a state beyond intoxication where decision-making faculties are impaired, rendering an individual incapable to consent to sexual activity. Incapacitation is an inability to make decisions and an inability to understand who, what, when, where, and how with respect to sexual activity. Signs of incapacitation can include, but are not limited to, slurred speech, bloodshot eyes, smell of alcohol on the breath, stumbling, vomiting, unusual behavior, and unconsciousness or passing out. Incapacity may depend on an individual's body weight, height, size, tolerance for alcohol and other drugs, and the amount, pace, and type of alcohol or other drugs consumed, amount of food intake prior to consumption, and propensity for blacking out.
- **Stalking:** engaging in a course of conduct directed at a specific person that would cause a reasonable person to
  - Fear for the person's safety or the safety of others; or
  - Suffer substantial emotional distress.
  - For purposes of this definition,

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by an action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Additional definitions of terms used throughout this policy include:

- **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment and who is participating in, or attempting to participate in, LMU's or JFWA's education program or activity at the time the formal complaint is filed.
- **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- **Parties:** the Complainant and Respondent.

### Mandatory Reporting Obligation

LMU employees are Mandatory Reporters; this means that if you inform an LMU employee verbally or in writing of a situation that may involve sexual harassment (including sexual assault, stalking, domestic violence, or dating violence) that occurred on an LMU campus or that involves an individual affiliated with LMU, the employee is required to report the information to the Title IX Coordinator. Employees shall report disclosures of sexual harassment made to the employee to the Title IX Coordinator immediately, within 24 hours of the disclosure. Employees must report all information related to the disclosure, including the names, location, time, date, and any other information shared with the employee. Upon receipt of the information, the Title IX Coordinator will contact the Complainant. Disclosure to a mandatory reporter does not constitute a formal complaint.

There are exceptions to this mandatory reporting obligation, including disclosures made to counselors in the LMU Office of Mental Health Counseling in the course of treatment.

### Confidential Mental Health Counseling

If a student would like to speak with an individual who does not have a mandatory reporting obligation, confidential counseling is available to students at all LMU locations free of charge through the LMU Office of Mental Health Counseling. The Office of Mental Health Counseling operates an office in Harrogate and an office in

Knoxville and provides services to all LMU students. The offices operate as the primary mental health service for undergraduate, graduate, and professional students enrolled at the University. Counseling provides an opportunity for students to explore their unique problems, difficulties and concerns with a licensed mental health professional in a safe and confidential environment. In addition, the offices offer crisis intervention and psychoeducation/training for the campus community.

**\*In the case of a medical or psychological life-threatening emergency, call 911 immediately\***

Phone: (423) 869-6277

Location: Duke Hall 202 and LMU-Knoxville

Schedule an Appointment: <https://www.lmunet.edu/counseling/index.php>

After hours calls to the LMU Office of Mental Health Counseling are forwarded to a call center staffed with professional mental health counselors who will assist callers. This service is available at any time during the weekend, holidays, and when the campus is closed for inclement weather. This service is also available to all students at off-campus sites.

### Reports to Campus Police and Security

A Complainant may report sexual assault, domestic violence, dating, or stalking to LMU Campus Police and Security and local law enforcement. Campus Police and Security can assist Complainants in contacting local law enforcement agencies. Campus Police and Security shall contact the Title IX Coordinator and share reports of sexual harassment, including sexual assault, dating violence, domestic violence, and stalking immediately, but no later than twenty-four (24) hours after receiving the report.

For more information, call (423) 869-6911 or visit <https://www.lmunet.edu/campus-police-and-security/index.php>.

All LMU students, faculty, and staff are encouraged to download the University's emergency notification system app, LiveSafe, on mobile devices. For more information, visit <https://www.lmunet.edu/campus-police-and-security/livesafe.php>.

### Off-Campus Resources

The Office of Institutional Compliance maintains a list of off-campus resources in the geographic location of each campus. For more information, visit <https://www.lmunet.edu/titleix>.

### Report

The Title IX Coordinator and Office of Institutional Compliance will respond to allegations of sexual harassment when the Coordinator has actual knowledge of an allegation. Actual knowledge means notice of sexual harassment, or allegations of sexual harassment, made to the Title IX Coordinator or any University official with authority to institute corrective measures on behalf of the University, or to any employee of J. Frank White Academy.

Any individual (including the Complainant or any other individual or third party) may report sexual harassment to the Title IX Coordinator in person, by mail, by telephone, by electronic mail, or using the form provided at <https://www.lmunet.edu/titleix>, at any time during the weekend, holidays, and when the campus is closed for inclement weather.

Upon receipt of a report, the Title IX Coordinator shall contact the Complainant via electronic mail with information about the following:

- The availability of supportive measures;
- The right to file a formal complaint;
- How to file a formal complaint;
- Formal grievance process;
- Informal grievance process; and
- Prohibition on retaliation

If a report and/or formal complaint is not sexual harassment as defined by this policy, the complaint will be dismissed by the Title IX Coordinator and the report will be forwarded to the school or department based on the Respondent’s status. The Respondent may remain subject to discipline under other codes of conduct.

Status of Respondent	Office or Department
Undergraduate student Respondent	Director of Student Conduct & Community Standards
Professional, doctoral, or graduate student Respondent	Dean of Students of the program and/or school
Employee Respondent	Chief Human Resources Officer
Third-Party Vendors or Contractor	Vice President for Finance and Administration
Clinical Preceptor	Dean of the program and/or school

Third Party vendors and contractors, clinical preceptors, and other individuals not employed by LMU but work on LMU campuses are required to acknowledge they are subject to this policy.

Supportive Measures

Supportive measures are non-disciplinary, non-punitive, individualized services offered to Complainants and Respondents as appropriate and as reasonably available without fee or charge. Supportive measures are designed to restore or preserve equal access to the University's education program, activities, and workplace to maintain the safety of the Parties and the educational environment without placing an unreasonable burden on the Parties, and to deter sexual harassment. Supportive measures are determined on a case by case basis. The Title IX Coordinator must consider the alleged victim's wishes when it comes to requests for supportive measures. Supportive measures are available before or after a formal complaint is filed, or where no formal complaint has been filed. Supportive measures are confidential and only disclosed to individuals that must know in order for the Title IX Coordinator to implement the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures may include, but are not limited to, the following:

- Confidential mental health counseling;
- No contact directive;
- Change in on-campus housing;
- Change in academic classes or schedule;
- Change in work, or work study, schedule;
- Change in work or office location;
- Increased security in specific areas of campus or at specific times;
- Security escorts around campus;
- Adjustments to academic deadlines;
- Tutoring or academic assistance; and
- Leave of absence.

### Formal Complaint

A formal complaint is a document filed by a Complainant, or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent and requesting that the Office of Institutional Compliance investigate the allegation(s) of sexual harassment. There is no deadline to file a formal complaint. At the time the formal complaint is filed, the Complainant must be participating in, or attempting to participate in, LMU or JFWA's education program or activity. Once a formal complaint is filed, the University is required to investigate the allegations contained in the formal complaint.

A formal complaint may be filed by the Complainant by:

- Completing the form located at <https://www.lmunet.edu/titleix>,
- Submitting a signed document via mail to the Title IX Coordinator,
- Sending an email with a digital signature to the Title IX Coordinator, or
- Submitting a signed document in person to the Title IX Coordinator.

There may be instances that require the Title IX Coordinator to sign and file a formal complaint. The Title IX Coordinator is not a Complainant or Party to the complaint when this occurs.

#### Notification of Formal Complaint

1. Upon receipt of a Formal Complaint, the Title IX Coordinator shall notify the Respondent and Complainant via electronic email of the following:
  - Details of the allegation,
  - Definition of the violation,
  - Identities of the Parties involved, including the Complainant,
  - Date of alleged incident,
  - Location of the alleged incident,
  - Statement that the Respondent is presumed not responsible until a determination is made by the hearing panel or decision maker,
  - That the Respondent may receive supportive measures,
  - That the Respondent and Complainant may have the advisor of their choice at any meeting related to the investigation,
  - Information about informal resolution (if applicable),
  - Statement that the Parties can request to inspect and review certain evidence,
  - The grievance process,
  - Information about student code of conduct violations, including but not limited to Section 10 falsification and Section 14 noncompliance (if applicable), and
  - Information about dismissal of a formal complaint (if applicable).

If the Office of Institutional Compliance receives additional allegations, the Title IX Coordinator will notify the Parties.

#### Dismissal of Formal Complaint

2. Upon receipt of a formal complaint, the Title IX Coordinator will evaluate the formal complaint and determine if the complaint alleges the Respondent's conduct meets the definition of sexual harassment. The Title IX Coordinator must dismiss the complaint if:
  - 1) The conduct described, if proved, does not meet the definition of sexual harassment;



- 2) The conduct alleged did not occur in the University's education program or activity; or
- 3) The alleged conduct did not occur in the United States.

The Title IX Coordinator may dismiss the complaint if:

- 1) The Complainant notifies the Title IX Coordinator in writing and request to withdrawal the formal complaint;
- 2) The Respondent is no longer enrolled at the University or employed by the University; or
- 3) Specific circumstances prevent the University from gathering evidence sufficient to reach a determination about the allegations.

The Title IX Coordinator will promptly notify the Parties in writing via electronic mail that the formal complaint was dismissed and why the formal complaint was dismissed. The Parties may appeal the dismissal in writing via electronic mail to the Title IX Coordinator within three (3) business days of the date of dismissal.

Although dismissed by the Title IX Coordinator, the conduct alleged in the formal complaint may be addressed under other University policies and codes of conduct.

### *Emergency Removal of Students*

A student Respondent may be removed on an emergency basis when the Respondent poses an immediate risk to the physical health or safety of the Complainant or any other individual on campus. The Title IX Coordinator will review reports or formal complaints and may convene the Threat Assessment Team within forty-eight (48) hours of receipt of a report or formal complaint. The Threat Assessment Team will conduct an individualized safety and risk analysis to determine:

- (1) If the Respondent poses a risk and an immediate threat to the physical health and safety of any student or other individual, and
- (2) If the risk is related to the allegations of sexual harassment.

Where the Threat Assessment Team determines a Respondent poses a risk and/or an immediate threat to the physical health and safety of any student or other individual, and that risk is related to the allegations of sexual harassment, the Threat Assessment Team shall notify the Respondent in writing of the emergency removal for the duration of the investigation, hearing, decision, and appeal. The Respondent may appeal the decision of the Threat Assessment Team in writing to the Special Assistant to the President within forty-eight (48) hours of the Threat Assessment Team's decision. The Special Assistant to the President will review the

appeal and issue a determination in writing via electronic mail within forty-eight (48) hours of the date of the appeal.

#### *Administrative Leave of Employees*

An employee Respondent may be placed on administrative leave pending the outcome of an investigation and hearing. Upon receipt of a report or formal complaint against an employee, the Title IX Coordinator will share the report or formal complaint with the Chief Human Resources Officer to determine whether the allegations warrant placing the employee on administrative leave pending the outcome of the investigation and hearing. The Chief Human Resources Officer shall determine whether the employee is placed on paid or unpaid leave. The Chief Human Resources Officer will notify the employee Respondent in writing of any decision made to place the employee on administrative leave. The Title IX Coordinator or the Chief Human Resources Officer may convene the Threat Assessment Team within forty-eight (48) hours of receipt of a report or formal complaint.

#### *Informal Resolution Process*

After a formal complaint is filed with the Title IX Coordinator and the Title IX Coordinator has sent the Parties a notification of a formal complaint, the Complainant and/or Respondent may initiate the informal resolution process before a determination of responsibility is reached. The Complainant(s) and Respondent(s) must give informed, voluntarily consent in writing to participate in an informal resolution process. If one Party does not consent, the formal grievance process will begin. A Party may terminate the informal resolution process and begin the formal grievance process at any point before a resolution agreement is reached by notifying the Title IX Coordinator in writing via electronic mail. If the informal resolution process is terminated, the Title IX Coordinator shall notify the Parties via electronic mail and the formal grievance process will begin. The Title IX Coordinator or designee will facilitate an informal resolution with the Parties. At the conclusion of the informal resolution, the Parties will sign a resolution agreement. A resolution agreement should be reached within ninety (90) calendar days of the date the Parties agreed to engage in the informal resolution process.

NOTE: this Informal Resolution Process is not available for allegations that an employee sexually harassed a student.

#### *Formal Grievance Process for Lincoln Memorial University and J. Frank White Academy Employees and Lincoln Memorial University Student Respondents<sup>1</sup>*

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<sup>1</sup> This portion of the policy (formal grievance process) does not apply to JFWA student respondents. The formal grievance process for JFWA students is available in Appendix 1.

The Office of Institutional Compliance may consolidate multiple formal complaints if the formal complaints are associated with the same incident, involve more than one Complainant, involve more than one Respondent, or are counter-complaints by one Party against another. The University must investigate every formal complaint submitted to the Title IX Coordinator/Office of Institutional Compliance. The Office of Institutional Compliance shall strive to conclude a formal grievance process within ninety (90) calendar days of the date the formal complaint was filed. Should the Parties enter an informal resolution process and resume the formal grievance process, the Office of Institutional Compliance shall strive to conclude the formal grievance process, including the appeal process, within ninety (90) calendar days of the date the informal resolution was terminated.

### Delays

The Title IX Coordinator may grant a temporary delay of a grievance process or an extension for good cause. The Title IX Coordinator shall notify the Complainant and Respondent simultaneously in writing via electronic mail about any delays or extensions and the rationale. Good cause may include, but is not limited to, the following:

- Absence of a Party or;
- Absence of a Party's advisor;
- Concurrent law enforcement activity; or
- The need for language assistance or accommodation of disabilities.

### Advisors

The Complainant and Respondent may select an advisor of their choice. The advisor may be, but is not required to be, an attorney. Parties may have an advisor present at any interview or meeting related to a report, formal complaint, investigation, or formal grievance process. The advisor is for support and cannot actively participate in meetings or answer questions on behalf of a Party. The advisor may not speak or otherwise participate on behalf of the Complainant(s) and/or Respondent(s). The participation of the advisors will be limited to conducting cross-examination of the Complainant(s), Respondent(s), and witnesses at the live hearing. Advisors are prohibited from communicating with the opposing Party and witnesses throughout the process and may only communicate with the opposing Party and witnesses during cross-examination at the live hearing. If a Complainant or Respondent does not have an advisor at the hearing, an advisor will be provided by the University. If a Party does not participate in the hearing, the University will appoint an advisor to conduct cross-examination at the hearing. Advisors appointed by the University will be appointed randomly from a pool of trained, non-attorney University employees. Individuals who are identified as witnesses may not serve as an advisor to a Complainant or Respondent.

## Privileges

No information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived the privilege in writing. Neither a Party nor the university is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege. Individuals can always opt to waive their own privileges, if they choose to do so, but waiver is not required.

## Investigation

The Title IX Coordinator will appoint an investigator from a pool of trained University employees. The Title IX Coordinator will provide to the Parties the name of the investigator. The Parties and investigator shall have three (3) business days to report a conflict of interest to the Title IX Coordinator. Should a Party or the investigator report that there is a conflict of interest between a Party and the investigator, the Title IX Coordinator will appoint a different investigator. The investigator will communicate with the Parties, and any witnesses, via electronic mail, information about the investigation and any meeting times. The investigator will notify the Parties and witnesses of any meetings a minimum of five (5) business days in advance. In the course of the investigation, the investigator:

- will engage in an investigation of the allegations. During the investigation, the investigator will interview the Complainant, the Respondent, and witnesses identified by the Parties or the investigator.
- will create a Draft Investigative Report that will include all evidence gathered in the investigation. The Draft Investigative Report may include witness summaries, photographs, text messages, emails, witness interviews, and any other information gathered throughout the investigation. The investigator will issue to the Complainant and Respondent, and their advisors, an electronic copy of the Draft Investigative Report via email. The Complainant and Respondent will have 10 business days to submit additional information and a response to the Draft Investigative Report.
- will create an Investigative Report that contains the Draft Investigative Report and any response submitted to the investigator by the Parties. The investigator will issue an electronic copy of the Investigative Report to the Parties and their advisors. The Parties will have 10 business days to review the Investigative Report prior to the hearing.

## Gathering Evidence Throughout the Formal Grievance Process

- The Title IX Coordinator and investigator shall explain rights and protections to each Party.
- The investigator and hearing panel may not access a Party's personal records if they are maintained by a physician, psychiatrist, psychologist, or other professional for the purpose of treatment to the Party without the Party's consent;
- The investigator and hearing panel shall provide equal opportunity for the Parties to have witnesses and evidence;
- The Office of Institutional Compliance cannot restrict the ability of either Party to discuss the allegations under investigation, or to gather and present relevant evidence;
- The University will provide the same opportunities to the Parties to have others present during the grievance proceedings, including access to an advisor of choice for any meetings or hearings, however, the role of advisors is limited to conducting cross-examination of the Parties and witnesses at the hearing;
- The investigator and hearing panel chair shall provide written notice of the date, time, location, participants, and purpose of all hearings, interviews, or other meetings, with sufficient time for the Party to prepare;
- The University shall provide equal opportunities for the Parties and their advisors to inspect and review the evidence obtained by the University as part of its investigation, if the information is directly related to the allegations raised in the formal complaint;
- The University shall give the Parties meaningful opportunity to respond to the evidence after the University has provided it to the Parties.

## Hearing

After the Investigative Report is issued, the Title IX Coordinator will appoint three (3) individuals to serve as the hearing panel at the live hearing from the pool of trained employees. The Title IX Coordinator will provide to the Parties the names of the hearing panel members five (5) business days before the hearing. The Parties and hearing panel members shall have three (3) business days to report a conflict of interest to the Title IX Coordinator. Should the Parties or the hearing panel members indicate there is a conflict of interest, the Title IX Coordinator will appoint a different hearing panel member(s). One individual will serve as the chair of the hearing panel. Hearing requirements include:

- The hearing shall be audio recorded for purposes of making a record of the hearing. Parties are allowed to inspect and review audio recordings. The hearing panel members' deliberations shall not be recorded.
- The Parties may, but are not required, to submit questions to the chair of the hearing panel three (3) business days prior to the hearing to

determine relevancy of questions. Contact information for the chair will be provided to the Parties five (5) business days before the hearing.

- The investigator may be subject to cross-examination at the live hearing if there are any disputes as to statements made during the investigation.
- All advisors and Parties should review the Hearing Decorum Guidelines (Appendix 2). Should an advisor, Party, or witness not follow the guidelines of hearing decorum, the hearing panel chair shall stop the hearing and schedule to resume the hearing at a later date.
- The Parties will have the opportunity to make an opening and a closing statement at the hearing. An advisor cannot make the opening and closing statements on behalf of a Party.
- If a Complainant or Respondent does not have an advisor, the Title IX Coordinator will appoint an individual from the pool of trained University employees to serve as an advisor solely for the purpose of cross-examining witnesses and Parties.
- No Party is allowed to personally question or cross examine another Party or witness at the hearing. Questioning or cross-examination must be done by an advisor.
- Upon the request of the Complainant or Respondent, a hearing may take place via video technology with the Complainant and Respondent in different rooms. Although the Parties are not in the same room, the hearing will be a live hearing. The University may hold the entire live hearing virtually or may allow some participants to appear virtually with technology such that every Party and witness can see and hear the others.
- The chair of the hearing panel will preside over the hearing and make determinations as to relevance of each cross-examination question asked by advisors before a Complainant, Respondent, or witness answers the question. If the chair determines any question is not relevant, the chair will document the reason they determined the question was not relevant.
- A Complainant's privacy must be protected, questions and evidence about the Complainant's prior sexual behavior or sexual predisposition are not relevant. Questions or evidence about prior sexual history may be permitted in two narrow circumstances:
  1. To prove someone other than Respondent committed the alleged conduct, or

2. Concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent.

### Participation

Every person has the right to choose whether to participate or not participate in any part of the grievance process. No individual shall be forced, threatened, coerced, or discriminated against for choosing not to be a part of the formal grievance process. If a Party or witness chooses not to appear, the decision maker/hearing panel must exclude that Party or witness's statements and evaluate any evidence that does not involve those statements. The decision maker/hearing panel must never make inferences about the determination regarding responsibility based on the fact that a Party or witness does not appear at the hearing or submit to the cross examination.

### Decision

The decision maker/hearing panel will objectively evaluate the relevant evidence and reach conclusions about whether the Respondent is responsible for the alleged sexual harassment. The decision maker/hearing panel members will receive training about how to be impartial and how to decide what evidence is relevant.

The hearing panel will deliberate, weigh all the relevant evidence and determine whether the Respondent violated this policy based on a preponderance of the evidence/more likely than not standard. A Respondent will be found responsible if the hearing panel determines it is more likely than not that a violation of the sexual harassment occurred based on information provided during the formal grievance process. If a witness participated in the investigation but did not participate in the hearing, the hearing panel may not consider the information provided by the witness in the investigation, or the witness's absence at the hearing, to make determinations.

The chair of the hearing panel will communicate the decision of the panel in a decision letter sent to the Parties and Title IX Coordinator simultaneously in writing via electronic mail within three (3) business days of the conclusion of the hearing. The decision letter will include:

- Description of the procedural steps that were taken by the hearing panel to arrive at the decision;
- Findings of fact;
- Which portion of the University's policies were violated, if any;
- Application of facts to University's policies;
- A rationale for each decision regarding the allegation(s);
- Any sanction imposed on a Respondent and rationale for the sanction;

- Whether the University will provide remedies for the Complainant;
- Statement and rationale for any remedies for the Complainant addressing how equal access will be restored or preserved;
- Either Party's right to appeal; and
- Instructions about how to file an appeal.

## Appeal

After a determination is made at the hearing, or after the complaint is dismissed without an investigation or hearing, either Party has the right to appeal the decision within five (5) business days from the date on the decision letter. To appeal the decision, a Party must submit a request for an appeal in writing to the Title IX Coordinator via electronic mail ([titleix@lmunet.edu](mailto:titleix@lmunet.edu)) or the appeal form available at <http://www.lmunet.edu/titleix>. The request for an appeal must include a statement specifying the grounds for appeal. Parties can appeal on one or more of the following grounds:

1. A procedural error was made in the process that affected the outcome;
2. New evidence is available that was not reasonably available at the time of the determination of responsibility or dismissal, that could affect the outcome; or
3. The Title IX Coordinator, investigator, 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.

Upon receipt of a request for an appeal, the Title IX Coordinator shall notify the Parties in writing that an appeal has been requested. The Parties may, but are not required, to submit a written statement supporting or challenging the appeal to the Title IX Coordinator.

The Title IX Coordinator will appoint three (3) individuals to serve as the appeal panel from the pool of trained University employees. The appeal panel will meet and determine whether the appeal is granted based on the information in the request for an appeal submitted by a Party. The appeal panel will deliberate and issue a decision in writing via email to the Parties within five (5) business days of the date the appeal was submitted. The determination of the appeal panel is final.

## Remedies

When a hearing panel determines a Respondent is responsible for violating this policy, the hearing panel will provide remedies to the Complainant. Remedies are designed to restore the Complainant or preserve equal access to the University's programs and activities after a Respondent is found responsible for violating this policy. Remedies may include continued supportive measures offered to the



Complainant and sanctions imposed on the Respondent. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

### Sanctions

When a hearing panel determines a Respondent is responsible for violating this policy, the hearing panel may impose sanctions on the Respondent. Sanctions for student Respondents include, but are not limited to:

- Loss of privileges
- Alcohol & Drug Education
- Healthy Relationships Education
- Apology Letters
- Mentoring Meetings
- Educational Projects
- Referral's to Campus Resources
- Dismissal from a course/class
- Probation
- Removal from housing
- Suspension
- Expulsion

Sanctions for employee Respondents include, but are not limited to:

- Verbal Meeting/Discussion
- Written Warnings
- Termination

### Retaliation

The University prohibits retaliation by the University or by any other person against any individual for (1) filing, or encouraging someone to file, a complaint of discrimination, (2) participating in, or refusing to participate in, an investigation or hearing under this policy, or (3) opposing discrimination. Retaliation is any adverse action or act of revenge against an individual. Retaliation includes actions that intimidate, threaten, coerce, or discriminate against an individual for reporting conduct prohibited by this policy, or for participating in an investigation of conduct prohibited by this policy. Complaints of retaliation may be submitted to the Title IX Coordinator and follow the grievance process outlined in this policy.

Exercise of rights protected by the First Amendment does not constitute retaliation. Charging an individual with a violation of any University code of conduct for making a material false statement in bad faith in the course of any process in this policy does not constitute retaliation, provided that a determination regarding

responsibility, alone, is not sufficient to conclude that any Party made a materially false statement in bad faith.

### Confidentiality

The identity of any individual who made a report or complaint of discrimination on the basis of sex will be confidential. This includes the identity of any individual who has made a report or filed a formal complaint of sexual harassment, any Complainant, and any individual who has been reported to be the perpetrator of sexual harassment, any Respondent, and any witness, except as may be permitted by FERPA, 20 U.S.C. 1232g, or FERPA regulations, 24 CFR part 99, or as required by law, or to carry out the purposes of 24 CFR part 106, including to conduct an investigation, hearing, or judicial proceeding.

### Accommodations

The University makes every effort to reasonably accommodate the needs of a student or employee with a disability. A Complainant, Respondent, or witness may request accommodations by contacting the Office of Accessible Education. For more information, visit <https://www.lmunet.edu/student-life/accessible-education-services.php>.

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### Records

The Office of Institutional Compliance will maintain any and all documents, images, audio or visual recordings, related to a report, formal report, investigation, supportive measures, remedies, informal resolution for seven (7) years.

### Training

The University maintains a list of employees trained to assist the Title IX Coordinator in carrying out the formal grievance process outlined in this policy. The employees on this list receive annual training on the following:

- Definition of sexual harassment, including sexual assault, domestic violence, dating violence, and stalking;
- The scope of University's education programs and activities;
- The informal resolution process;

- How to conduct an investigation, including how to draft an investigative report, hearings, and appeals;
- How to determine relevant evidence and questions;
- How to conduct the formal grievance process, including hearings and appeals;
- How to determine if questions are relevant;
- how to determine if questions regarding the Complainant's prior or past sexual behavior is relevant;
- How to serve as an advisor, including how to cross examine Respondents, Complainants, and witnesses;
- How to be impartial and unbiased in conducting the investigation and formal grievance process;
- How to avoid prejudgment of the facts;
- what constitutes conflicts of interest; and
- technology utilized at any live hearing.

The employees are trained to serve any role in the grievance process. Each employee is trained to serve as an investigator, serve as a member of a hearing panel, serve as the chair of a hearing panel, serve as an advisor, and serve as an appeals panel member.

## **Appendix 1- Formal Grievance Process for J. Frank White Academy Student Respondents<sup>2</sup>**

The Office of Institutional Compliance may consolidate multiple formal complaints if the formal complaints are associated with the same incident, involve more than one Complainant, involve more than one Respondent, or are counter-complaints by one Party against another. The University must investigate every formal complaint submitted to the Title IX Coordinator/Office of Institutional Compliance. The Office of Institutional Compliance shall strive to conclude a formal grievance process within ninety (90) calendar days of the date the formal complaint was filed. Should the Parties enter an informal resolution process and resume the formal grievance process, the Office of Institutional Compliance shall strive to conclude the formal grievance process, including the appeal process, within ninety (90) calendar days of the date the informal resolution was terminated.

The Title IX Coordinator may grant a temporary delay of a grievance process or an extension for good cause. The Title IX Coordinator shall notify the Complainant and Respondent simultaneously in writing via electronic mail about any delays or extensions and the rationale. Good cause may include, but is not limited to, the following:

- Absence of a Party or;
- Absence of a Party's advisor;
- Concurrent law enforcement activity;
- Need for language assistance or accommodation of disabilities.

### Advisors

The Complainant and Respondent may select an advisor of their choice. The advisor may be, but is not required to be, an attorney. Parties may have an advisor present at any interview or meeting related to a report, formal complaint, investigation, or formal grievance process. The advisor is for support and cannot actively participate in meetings or answer questions on behalf of a Party. The advisor may not speak or otherwise participate on behalf of the Complainant(s) and/or Respondent(s).

Advisors are prohibited from communicating with the opposing Party and witnesses throughout the process. If a Complainant or Respondent does not have an advisor, an advisor will be provided. Advisors appointed by the University will be appointed randomly from a pool of trained, non-attorney University employees. Individuals who are identified as witnesses may not serve as an advisor to a Complainant or Respondent.

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<sup>2</sup> Notifications pursuant to this process will be sent to students and/or parents/guardians.

## Privileges

No information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived the privilege in writing. Neither a Party nor the university is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege. Individuals can always opt to waive their own privileges, if they choose to do so, but waiver is not required.

## Investigation

The Title IX Coordinator will appoint an investigator from a pool of trained JFWA or LMU employees. The Title IX Coordinator will provide to the Parties the name of the investigator. The Parties and investigator shall have three (3) business days to report a conflict of interest to the Title IX Coordinator. Should the Parties or the investigator report that there is a conflict of interest between a Party and the investigator, the Title IX Coordinator will appoint a different investigator. The investigator will communicate with the Parties, and any witnesses to notify them of any meeting times. The investigator will notify the Parties and witnesses of any meetings a minimum of five (5) business days in advance. In the course of the investigation, the investigator:

- Will engage in an investigation of the allegations. During of the investigation, the investigator will interview the Complainant, the Respondent, and witnesses identified by the Parties or the investigator. The Complainant and Respondent may, but are not required to, submit questions to the investigator to ask one another or witnesses.
- Will create a Draft Investigative Report that will include all evidence gathered in the investigation. The Draft Investigative Report may include witness summaries, photographs, text messages, emails, witness interviews, and any other information gathered throughout the investigation. The investigator will issue to the Complainant and Respondent and advisors the Draft Investigative Report. The Complainant and Respondent will have ten (10) business days to submit additional information and/or a response to the Draft Investigative Report, and any questions to ask the Parties or witnesses.
- Will create an Investigative Report that contains the Draft Investigative Report and any response submitted to the investigator by the Parties. The investigator will issue a copy of the Investigative Report to the Parties and their advisors. The Parties will ten (10) business days to review the Investigative Report before it is provided to the decision maker/principal.

## Gathering Evidence Throughout the Formal Grievance Process

- The Title IX Coordinator or investigator shall explain rights and protections to each Party.
- The investigator and decision maker/principal may not access a Party's personal records if they are maintained by a physician, psychiatrist, psychologist, or other professional for the purpose of treatment to the Party without consent;
- The investigator and the decision maker/principal shall provide equal opportunity for the Parties to have witnesses and evidence;
- JFWA or the Office of Institutional Compliance cannot restrict the ability of either Party to discuss the allegations under investigation, or to gather and present relevant evidence;
- JFWA will provide the same opportunities to the Parties to have others present during the grievance proceedings, including access to an advisor of choice for any meetings, however, the role of advisors is limited.
- The investigator and decision maker/principal shall provide written notice of the date, time, location, participants, and purpose of interviews, or other meetings, with sufficient time for the Party to prepare;
- JFWA shall provide equal opportunities for the Parties, parents/guardians and their advisors to inspect and review the evidence obtained by JFWA as part of its investigation, if the information is directly related to the allegations raised the formal complaint; and
- JFWA shall give the Parties meaningful opportunity to respond to the evidence after the JFWA has provided it.

## Participation

Every person has the right to choose whether to participate or not participate in any part of the grievance process. No individual shall be forced, threatened, coerced, or discriminated against for choosing not to be a part of the formal grievance process. If a Party or witness chooses not to participate, the decision maker/principal must exclude that Party or witness's statements and evaluate any evidence that does not involve those statements. The decision maker/principal must never make inferences about the determination regarding responsibility based on the fact that a Party or witness did not participate in the grievance process.

## Decision

The decision maker/principal will receive training about how to be impartial and how to decide what evidence is relevant. The decision maker/principal will

objectively evaluate the relevant evidence and reach conclusions about whether the Respondent is responsible for the alleged sexual harassment.

The decision maker/principal will weigh all of the relevant evidence and determine whether the Respondent violated this policy based on a preponderance of the evidence/more likely than not standard. A Respondent will be found responsible if the decision maker/principal determines it is more likely than not that a violation of the sexual harassment occurred based on information provided during the formal grievance process.

The decision maker/principal will communicate the determination in a decision letter sent to the Parties and the Title IX Coordinator simultaneously in writing. The decision letter will include:

- Description of the procedural steps that were taken by the decision maker/principal to arrive at the decision;
- Findings of fact;
- Which portion of the JFWA's policies were violated, if any;
- Application of facts to JFWA's policies;
- A rationale for each decision regarding the allegation(s);
- Any sanction imposed on a Respondent and rationale for the sanction;
- Whether the JFWA will provide remedies for the Complainant; and
- Statement and rationale for any remedies for the Complainant addressing how equal access will be restored or preserved.

## Appeal

After a determination is made by the decision maker/principal, or after the complaint is dismissed without an investigation, either Party has the right to appeal the decision within five (5) business days from the date on the decision letter. To appeal the decision, a Party must submit a request for an appeal in writing to the Title IX Coordinator via electronic mail ([titleix@lmunet.edu](mailto:titleix@lmunet.edu)) or the appeal form available at <http://www.lmunet.edu/titleix>. The request for an appeal must include a statement specifying the grounds for appeal. Parties can appeal on one or more of the following grounds:

- A procedural error was made in the process that impacted the outcome;
- New evidence is available that was not reasonably available at the time of the determination of responsibility or dismissal; or
- There was a bias, or conflict of interest, on the part of the Coordinator, investigator, or decision maker, and the conflict of interest affected the outcome.

Upon receipt of a request for an appeal, the Title IX Coordinator shall notify the Parties in writing that an appeal has been requested. The Parties may, but are not required, to submit a written statement supporting or challenging the appeal to the Title IX Coordinator.

The Title IX Coordinator shall send the request for an appeal to the Vice-President and Dean of Enrollment and Student Affairs. The Vice-President and Dean of Enrollment and Student Affairs will determine whether the appeal is granted based on the information in the request for an appeal submitted by a Party. The Vice-President and Dean of Enrollment and Student Affairs will issue a decision to the Parties within five (5) business days of the date the appeal was submitted. The determination of the Vice-President and Dean of Enrollment and Student Affairs is final.

### Remedies

When the decision maker/principal determines a Respondent is responsible for violating this policy, the principal will provide remedies to the Complainant. Remedies are designed to restore the Complainant or preserve equal access to JFWA's programs and activities after a Respondent is found responsible for violating this policy. Remedies may include continued supportive measures to be offered to the Complainant and sanctions imposed on the Respondent.

### Sanctions

When it is determined that a Respondent is responsible for violating this policy, the decision maker/principal will assign sanctions on the Respondent. Sanctions for JFWA student Respondents include, but are not limited to:

- Educational conference with administrators;
- In-school detention;
- Out of school suspension; or
- Expulsion.



## *Appendix 2 – Hearing Rules of Decorum*

### Hearing Rules of Decorum for Complainants and Respondents

- Complainants and Respondents have the opportunity, but are not required, to make an opening statement at the start of the hearing, and a closing statement at the end of the hearing.
- Complainants and Respondents must not badger, harass, attack, or demean the other Party or any witnesses at the hearing.
- Complainants and Respondents are not prohibited from communicating with witnesses throughout the investigation and/or hearing processes.

### Hearing Rules of Decorum for Advisors

- Advisors must not badger, harass, attack, or demean Parties, witnesses, or the hearing panel during the hearing.
- Advisors are not permitted to speak on behalf of a Party, including during a Party's opportunity to make an opening and closing statement.
- The role of advisors in a hearing is limited to questioning and cross-examining the Parties and witnesses.
- Questions and evidence about the Complainant's prior sexual behavior are not relevant and not permitted at the hearing unless,
  - the questions and evidence are offered to prove someone other than the Respondent committed the conduct, or
  - the questions and evidence are about specific sexual behavior between the Complainant and Respondent and are offered to prove consent.

If any Complainant, Respondent, advisor, or witness violates these rules of decorum, the hearing panel chair may end the hearing and schedule the hearing for another date.