SEXUAL MISCONDUCT POLICY INTRODUCTION

Lewis & Clark College does not tolerate sexual misconduct in any form. Sexually abusive behavior within the College community is harmful to both the learning environment and the sense of community the College seeks to foster among students, faculty, staff, and administrators. All members of the College community have an obligation to act responsibly in the realm of sexuality. This includes accepting personal responsibility for choices made about alcohol and drug consumption that might lead to behavior that violates another person. Additionally, all members of the College community have the responsibility to recognize and challenge any sexual misconduct.

I. POLICY Overview

In order for individuals to engage in sexual activity of any type with each other, each must have the other's consent. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is less clear than talking about what you do and do not want. Silence does not demonstrate consent. Someone who--due to age, mental status, intoxication, or any other reason--cannot understand the who, what, when, where, why, and how of the sexual situation at hand is unable to give consent. There is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy just as much as physically forcing someone into sex. Coercion happens when someone unreasonably pressures someone else to engage in a sexual activity.

Violations & Definitions

At Lewis & Clark College, *sexual misconduct* is any sexual act that takes place without consent. Sexual Misconduct is prohibited. Sexual Misconduct may also constitute Sexual Harassment. At Lewis & Clark College, *consent* is an informed, knowing, and voluntary mutually understandable willingness to do the same thing, at the same time, at the same place, in the same way, with each other. Consent is not present in cases where age, intoxication, mental status, incapacitation, etc. prevent a person from knowing the fact, nature, and extent of the sexual situation, or where a person has been compelled through coercion, threats, intimidation, fraud, or force. For more information, see "Consent", below.

SEXUAL MISCONDUCT OFFENSES INCLUDE, BUT ARE NOT LIMITED TO:

- 1. Sexual Harassment
- 2. Non-Consensual Sexual Contact (or attempts to commit same)
- 3. Non-Consensual Sexual Intercourse (or attempts to commit same)
- 4. Sexual Exploitation
- 1. SEXUAL HARASSMENT

Sexual Harassment is:

- unwelcome, gender- or sex-based verbal or physical conduct that is,
- sufficiently severe, persistent or pervasive that it,
- unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the College's educational program and/or activities, and may be
- based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention; to punish a refusal to comply with a sexual based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

2. NON-CONSENSUAL SEXUAL CONTACT (or attempts to commit same)

Non-Consensual Sexual Contact is:

- · any intentional sexual touching,
- however slight,
- with any object,

- by any person upon any person,
- that is without consent and/or by force.

Sexual Contact includes:

Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

3. NON-CONSENSUAL SEXUAL INTERCOURSE (or attempts to commit same)

Non-Consensual Sexual Intercourse is:

- any sexual intercourse
- · however slight,
- · with any object,
- by any person upon any person,
- that is without consent and/or by force.

Intercourse includes:

Vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

4. SEXUAL EXPLOITATION (or attempts to commit same)

Occurs when a student 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. Examples of sexual exploitation include, but are not limited to:

- invasion of sexual privacy;
- prostituting another person;
- non-consensual video or audio-recording of sexual activity;
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in voyeurism;
- knowingly transmitting an STI or HIV to another person;
- · Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation
- Inducing incapacitation with the intent to sexually assault someone, regardless of whether sexual activity actually takes place

Consent

At Lewis & Clark College, *Consent* is an informed, knowing, and voluntary mutually understandable willingness to do the same thing, at the same time, at the same place, in the same way, with each other.

- In order to give consent, one must be of legal age.
- In order to give consent, one must be able to understand the who, what, when, where, why, and how of the sexual situation at hand.
- Persons whose mental status (intoxication, cognitive disability, etc.) prevents them from understanding the fact, nature, and extent of the sexual situation at hand are not able to provide consent. The mental status of the party must be known or reasonably knowable to their sexual partner(s), in order to hold them responsible for violating the Sexual Misconduct policy.

- · Persons who are physically incapacitated (unconscious, unaware, etc.) are not able to provide consent.
- · Consent is active, not passive. Silence, without actions demonstrating permission, does not constitute consent.
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent given in the past does not imply consent to future sexual activity.

Consent can never be obtained through the use of force, threats, intimidation, coercion, or fraud:

- *Force* exists, for example, when someone acts upon you physically, such as hitting, kicking, restraining, or otherwise exerting their physical control over you through violence.
- *Threats* exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity they would not otherwise have given, absent the threat. For example, threats to kill you, themselves, or to harm someone you care for are sufficient to constitute threats.
- *Intimidation* exists where someone uses his or her physical presence to menace you, though no physical contact occurs, or where your knowledge of prior violent behavior by an assailant, coupled with menacing behavior, places you in fear.
- Coercion exists when a sexual initiator engages in sexually pressuring behavior that violates norms of respect in the community, causing the object of that behavior to engage in unwanted sexual behavior. Coercion may be differentiated from seduction by the unreasonable repetition of the coercive activity, the degree of pressure applied, and the initiator's knowledge that the pressure is unwanted.
- *Fraud* exists where someone misrepresents himself or herself or a situation in order to gain permission for sexual activity that would not otherwise have been given.

Engaging in sexual activity with someone who you should reasonably know to be incapable of providing consent, whether due to intoxication, incapacitation, or any other reason, is prohibited.

Lewis & Clark strongly encourages its students who choose to engage in sexual behavior to talk about their actions and to communicate as clearly and verbally as possible with each other. In the absence of mutually understandable words or actions (a meeting of the minds on what is to be done, where, with whom, and in what way), it is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity to make sure that they have consent from their partner(s). The initiator must obtain mutually understandable consent at every stage of sexual interaction.

Mutually understandable consent is almost always an objective standard. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to do the same thing, in the same way, at the same time, with one another. The only context in which mutually understandable consent may be considered in a subjective sense is in the context of long-term relationships where couples have mutually established patterns of communicating consent that alter the definition elaborated here.

A person who is the object of sexual aggression is not required to physically or otherwise resist a sexual aggressor if resisting would be unreasonable under the circumstances, but telling an aggressor "No" clearly and loudly is recommended. Silence, previous sexual relationships, attire, giving or receiving of gifts, going on a date, and/or current relationships do not, in themselves, imply consent. Intentional use of alcohol/drugs is not an excuse for violation of the sexual misconduct policy.

Consent to sexual activity may be withdrawn at any time, as long as the withdrawal is communicated clearly.

II. REDUCING RISK

It can be difficult to discuss sexual expectations with someone—especially when it is early on in a relationship. However, everyone must take responsibility to prevent sexual misconduct. These suggestions may help you avoid potentially damaging situations.

Responsibilities for All Individuals Involved

- 1. Get to know your partner(s); discuss sexual expectations before you find yourself in an intimate situation.
- 2. Clearly communicate your desires and limits.
- 3. Be responsible for your use of alcohol and other drugs, and realize that alcohol and other drugs lower your sexual inhibitions and may make you vulnerable to someone who might seek to take advantage of an intoxicated person.
- 4. Be assertive. Tell a sexual aggressor "NO" clearly and loudly.
- 5. Realize that being told "no" is not a rejection of you as a person.
- 6. Pay attention to the non-verbal actions of yourself and your partner(s).
- 7. Accept the decision made by your partner(s).
- 8. Understand and accept that you are responsible for your behavior and choices.
- 9. Trust your instincts. If you think something is wrong, you are probably right. Get out of the situation immediately.

Responsibilities for Initiators of Sexual Activity

If you find yourself in the position of being the initiator of sexual activity, you owe sexual respect to your potential partner(s); these suggestions may help you do this.

- 1. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- 2. Mixed messages from your partner(s) should be an indication that better communication is necessary before activities progress. You need to respect the timeline with which your partner(s) are comfortable.
- 3. Do not take advantage of someone's intoxicated state, regardless of how they became intoxicated.
- 4. Understand that consent to some forms of sexual activity does not necessarily imply consent to other forms of sexual activity.
- 5. Silence and passivity cannot be interpreted as indications of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication.

Intoxication

If you choose to drink, the likelihood that you will remember to consider the above responsibilities is greatly reduced; thus, you run the risk of impaired thinking and communication.

Being intoxicated is never an excuse for sexual misconduct.

Alcohol is not the only drug that can facilitate unwanted sex. There are drugs, increasingly found at parties, that have come to be known as "date rape drugs" because of their ability to incapacitate. These drugs are often added to drinks without the survivor's knowledge. These drugs include:

MDMA (also known as Ecstasy, X, E, Rolls). It can cause visions and other distortions of reality, teeth grinding and spasms, death from heat stroke-like event. Long term, it can cause dental-related issues and brain damage. It may be a powder, but mostly pressed pills with a wide range of logos.

GHB (also known as "G," Liquid Ecstasy, Blue Verve, Grievous Bodily Harm, or Georgia Home Boy). It can cause nausea, vomiting, delusions, amnesia, seizures, and loss of muscle control. It can leave you conscious but unable to move, unconscious, in a coma, or it can kill you. It usually has a bluish color, is odorless, and tasteless.

Ketamine (also known as Special K, Ket, Bump). It can cause an out of body experience, loss of muscle control, and flashbacks. It is a type of animal tranquilizer and is often stolen from veterinary clinics.

Rohypnol (also known as Roofies, Roche, or Forget-me Pill). It can cause drowsiness, dizziness, confusion, and amnesia. It can contain dangerous impurities.

Be careful. Do not accept a drink if you are not completely sure of its contents. Do not leave drinks unattended. Keep an eye on yourself and your friends for any suspicious activity and for signs of the symptoms listed above.

Risks of Alcohol

At least 70% of all sexual assaults involve alcohol.

The use of alcohol can be a factor for the survivor, the aggressor, or both.

Alcohol lowers inhibitions and impairs judgment, which can lead to dangerous situations.

III. PROCEDURES FOR SURVIVORS OF SEXUAL MISCONDUCT

Sexual misconduct is **never** the survivor's fault.

Sexual misconduct can happen to anyone. There is no typical survivor. Statistics indicate that anywhere from 85-

90% of all sexual misconducts occur between people who know each other.

If you have been subjected to sexual misconduct, you have control of the choices you can make. Depending upon the circumstances, the College may have an obligation to investigate in order to protect you or others.

The following are recommendations to assist you as a survivor:

- 1. Do not blame yourself. Sexual misconduct is *never* the survivor's fault.
- 2. Go to a safe location.
- 3. If you are injured, seek medical attention immediately.
- 4. Do not shower, bathe, or douche. The only way medical evidence can be collected is if it is left intact.
- 5. Contact one or more of the resources in the Sexual Assault Response Network.

If the survivor is one of your friends:

- 1. Listen and be supportive.
- 2. Let your friend make her or his own choices.
- 3. Encourage your friend to immediately contact the Sexual Assault Response Advocate, (503) 202-3119, or one of the other Sexual Assault Response Network contacts listed below.
- 4. Stay with your friend during interviews and examinations, if they want you to do so.
- 5. Take care of yourself. You may need to talk with someone about how this has affected you. The resources listed in this section are for you as well.

IV. SEXUAL ASSAULT RESPONSE NETWORK

Sexual Assault Response Advocate Pager(503) 202-3119
Campus Safety Office(503) 768-7777
Counseling Service(503) 768-7160
Dean of Students(503) 768-7110
Associate Dean of Students(503) 768-7186
$Associate\ Dean\ for\ Academic\ Affairs,\ Law\ School\(503)\ 768-6634$
Associate Dean of the Graduate School $\dots (503)$ 768-6003
Health Promotion & Wellness(503) 768-7112
Office of Campus Living(503) 768-7123
Student Health Service(503) 768-7165
Student Support Services(503) 768-7156

Your Resident Advisor or Area Director

Sexual Assault Response Advocate Pager: (503) 202-3119

(Enter your phone number after the prompt, and then press #)

The Sexual Assault Response Advocate (SARA), henceforth referred to as the "Advocate" responding to your page is on call 24 hours a day, 7 days a week.

The Advocate will offer overall assistance and follow-up to the survivor (see below for detailed information about anonymity and confidentiality).

The Advocate will explain the network of contact points available in terms of boundaries of confidentiality, services offered by each contact point, and options and choices available to the survivor. Each of the contact points in the network is trained to assist survivors.

Contact points included in this Sexual Assault Response Network include:

- Campus Living staff (ADs and RAs);
- Counseling Center staff;
- Student Health staff;
- · Campus Safety officers;
- and the Associate Dean of Students & Deputy Title IX Coordinator or designee.

These contact points provide counseling assistance, medical treatment, aid in seeking legal advice, family crisis management, help with rearranging class or exam schedules, transferring residence halls, and other service or facilitation as necessary.

The survivor's use of the Advocate, network contact points and any and all services provided by associated departments is *completely voluntary*.

Once involved with a survivor, the Advocate will notify the ADOS, or designee, that the Sexual Assault Network protocol is "active." With the exceptions noted below, the advocate will not disclose confidential information to the ADOS, or designee, without prior consent of the survivor.

The Sexual Assault Response Advocate will monitor each contact point to ensure consistent implementation of protocol. Every effort will be made to coordinate support among the different contact points so that the survivor is not recounting their experience for each new contact.

Advocacy services are also available for the accused, including counseling and medical resources.

TITLE IX COORDINATOR

The College's Title IX Coordinator is the Vice President and Provost. The Title IX Coordinator has responsibility for overseeing all Title IX compliance, including complaints of Sexual Misconduct. All instances of Sexual Misconduct should be reported to the Title IX Coordinator or a Deputy Coordinator.

Title IX Coordinator:

Vice President and Provost	(503) 768-7204

Deputy Title IX Coordinators:

Associate Dean of Students, College of Arts and Sciences:	(503) 768-7186
Associate Dean for Academic Affairs, Law School:	(503) 768-6634
Associate Dean of the Graduate School:	(503) 768-6003
Associate Vice President, Human Resources:	(503) 768-6239

Complaints involving students should be reported to the Deputy Title IX Coordinator for the school where the survivor attends. Complaints involving faculty or staff should be reported to the Associate Vice President for Human Resources.

Anonymity and Confidentiality

A survivor can call the Advocate, receive support and information, and never give their name. This ensures anonymity while providing necessary assistance. The survivor may choose to use services outlined by the Advocate, or the survivor may choose to do nothing at this time.

If the survivor chooses to give their name to the Advocate, the survivor's name will be maintained in confidence to the extent possible.

There are exceptions to this rule of confidentiality, but these exceptions arise very infrequently. They include:

- In cases where an accused poses a significant risk to the general safety of the campus community, the Advocate will contact the ADOS, or designee. The name of the survivor will only be disclosed to the ADOS, or designee, if that disclosure is absolutely necessary to protect the campus community from harm.
- In cases where the survivor is not of legal age, the Advocate is required to report the incident to Oregon DHS.
- If the Advocate believes the survivor is at significant risk of suicide or harming others, the Advocate will take action to protect the survivor or others from harm. This could involve a limited disclosure of information to health care providers, Campus Safety, or a similar entity.
- When legally compelled to disclose the survivor's name.
- Advocates may consult with other Advocates in an effort to improve the quality of services. All such
 consultations are strictly confidential.

Student Health employees, Counseling staff, and the ADOS, or designee, are not obligated to disclose the name of the survivor publicly, but must file an anonymous *Sexual Assault Incident Report* form. This form simply indicates that a sexual assault occurred; it does not need to contain any identifying information. Resident Advisors, Area Directors, Campus Safety personnel, and other administrative staff are required to inform their immediate supervisor if they learn of alleged sexual misconduct, and they are expected to file a *Sexual Assault Incident Report* form. Beyond this notification of supervisor, these individuals will keep information in confidence, except as described above.

No campus agency will release the names of survivors to the media or public. Some campus agencies may need to be notified about the incident regarding safety concerns for others, but names will not be released.

Sexual Assault Incident Report Form

The Sexual Assault Response Advocate, as well as all network contact points, will file an anonymous Sexual Misconduct Incident Report Form to be kept on file with the Sexual Assault Response Coordinator. This report does not carry the survivor's name or other specific identifying information, unless specifically authorized by the survivor. Forms will be available from Campus Safety, Campus Living, Counseling, Student Health, Health Promotion and Wellness, and the Associate Dean of Students. The form may be submitted to the Advocate by survivors at MSC 182.

The report is kept on file by the Sexual Assault Response Coordinator. Under federal law the incident will be reported to the Campus Safety Office and published as a statistic in the annual Crime Awareness, Security and Fire Safety Report. These federal statistical reporting obligations do not involve disclosing the name of the survivor or any other person or their personally identifiable information.

Survivors/Witnesses and Policy Violations

Sometimes survivors/witnesses are hesitant to report Sexual Misconduct, out of concern that they themselves might be accused of lesser policy violations (such as violations of the alcohol policy) that took place surrounding the incident. It is in the best interest of the community for survivors/witnesses to feel as comfortable reporting as possible. As a result, the College pursues a policy of offering survivors/witnesses of Sexual Misconduct limited immunity from being charged with policy violations related to the Sexual Misconduct incident.

V. MEDICAL ATTENTION

Survivors are strongly encouraged to seek immediate medical assistance. Physical evidence of a sexual penetration dissipates after 84 hours, at a maximum, and it is best to have a SAFE (Sexual Assault Forensics Exam) administered by a medical clinician within 48 hours of the assault. This procedure is available at most hospitals in the Portland area. For a complete list of hospitals, contact the SARA at 503-202-3119, or Portland Women's Crisis Line at 503-235-5333.

Preserving physical evidence is *essential* to any later criminal prosecution, and it is extremely helpful in campus conduct cases. Convictions without physical evidence are all but impossible. SAFE results are sealed by the doctor and safeguarded by the police. By Oregon law, survivors may chose to have a SAFE kit collected without filing a formal report with the police. In this instance, the SAFE kit will be administered at the medical facility, and later collected by the police for storage for up to 6 months, should the survivor wish to pursue criminal prosecution at a later date. The survivor remains anonymous unless she/he decides to press charges. SAFE kit evidence collected in this manner is destroyed after 6 months. Although the Student Health Service cannot perform a SAFE procedure, emergency contraception and testing for STIs and pregnancy are available. In Oregon the administration of the SAFE is covered by the Sexual Assault Victims' Emergency Medical Response Fund (SAFE funds). However, it may be of concern to the survivor that hospitals will charge for pregnancy and STI tests if a SAFE kit is not collected. If pregnancy is a serious concern, the survivor should be aware that in the state of Oregon, emergency contraception (the "morning after pill") is available over-the-counter at pharmacies. It is also available in the Student Health Service.

Unless it is still being worn, clothing worn at the time of the assault should be placed in clean, unused paper bags and taken to the hospital (or other medical facility). Receiving medical attention is also important if it is possible that the survivor has suffered internal injuries, or fears pregnancy or sexually transmitted infections. The Sexual Assault Forensic Exam Checklist used by hospital emergency units is available from the Sexual Assault Response Advocate.

Rape Trauma Syndrome (RTS)

An acute stress reaction resulting from either a completed or attempted sexual assault, Rape Trauma Syndrome is a form of Post Traumatic Stress Disorder (PTSD). Not all the reactions encompassed by RTS are experienced by each survivor; rather, RTS represents a range of possible reactions. RTS reactions vary from person to person.

RTS has two major phases: the immediate or acute phase, in which the survivor's lifestyle is completely disrupted, and the long-term phase, in which the survivor must reorganize this disrupted lifestyle.

Characteristics of the first phase include shock, disbelief, sleeping and eating pattern disturbances, difficulty in concentrating, fear, shame, guilt, mood swings, lack of self-esteem, and flashbacks to the incident. The reintegration phase will be aided by support from friends, relatives, and others in the survivor's environment.

VI. FILING A REPORT WITH THE PORTLAND POLICE BUREAU

Campus Safety officers are on duty 24 hours a day, 7 days a week and will initiate an investigation, if the survivor wishes.

At the discretion of the survivor, Campus Safety can assist in filing a report with the Portland Police Bureau. Campus Safety officers are trained in working with survivors of sexual assault and rape by members of the Portland Police Bureau's Sexual Crimes Unit. The Portland Police Bureau is required by law to maintain the confidentiality of all survivors of sexual assault and rape.

The survivor may request that the Portland Police Bureau investigate the crime and gather evidence at the time of the incident. The longer the survivor waits, the smaller the amount of evidence the police will be able to obtain. However, it is important that there at least be a fresh incident report on file and/or an anonymous SAFE kit collected within 84 hours of the incident if the survivor decides later that they would like to take further action. The survivor may request that the Police Bureau not investigate the crime itself but rather maintain the information of the crime and its particulars in its regular reservoir of crime data.

VII. FILING A REPORT WITH THE OFFICE OF CIVIL RIGHTS

The Office of Civil Rights enforces Title IX for the Department of Education. While reports are not required to be filed with the OCR, reports may be filed at the following office:

OFFICE OF CIVIL RIGHTS

U.S. Department of Education

Phone (206) 607-1600

http://www.ed.gov/ocr/complaintintro.html

VIII. ACADEMIC OR RESIDENCE HALL CHANGES

Initiation of any academic or housing changes is fully confidential and voluntary on the survivor's part, as is seeking disciplinary action by the College.

IX. SIGNIFICANT THREAT TO COMMUNITY

In cases where an accused poses a significant risk to the general safety of the campus community, the Advocate will contact the ADOS, or designee. The name of the survivor will only be disclosed to the ADOS, or designee, if that disclosure is absolutely necessary to protect the campus community from harm. If the ADOS, or designee, concludes that a significant threat exists, the ADOS, or designee, will take necessary action to protect the community while preserving the reporting survivor's anonymity.

X. PERTINENT FEDERAL LEGISLATION

The Jeanne Clery Disclosure of Campus Security Policy and Crime Statistics Act requires colleges to report accurate statistics regarding sexual misconduct, but such reports do not include names of survivors or others or personal information from which they could be identified.

Additionally, if the sexual misconduct is reported, the survivor can choose to pursue disciplinary action on campus without needing to file charges with the police. The campus disciplinary procedures, outlined below, are designed to support the survivor by expediting a hearing and appropriate outcomes.

XI. DISCIPLINARY PROCESS

These procedures will be followed for Sexual Misconduct hearings involving students from any school at the College.

The College's disciplinary procedures should be viewed as a resource to the survivor of sexual misconduct.

Sexual misconduct is a violation of College policy, and, depending on the behavior that constitutes a particular episode of misconduct, may also be subject to criminal and/or civil penalty. Regardless of whether a criminal or civil case is filed against a respondent, *a student charged with any type of Sexual Misconduct will be subject to the College Disciplinary process.* If the College's Sexual Misconduct Review Board finds that the alleged misconduct occurred, the following range of outcomes could apply:

OUTCOME STATEMENT

Any student found responsible for violating the policy on Non-Consensual Sexual Contact (where no intercourse has occurred) will likely receive an outcome ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

Any student found responsible for violating the policy on Non-Consensual Sexual Intercourse will likely face a recommended outcome of suspension or expulsion.*

Any student found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended outcome ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.*

*The conduct body reserves the right to broaden or lessen any range of recommended outcomes in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended outcomes unless compelling justification exists to do so.

Initial Steps

As described in this policy's section three, "Procedures for Survivors of Sexual Misconduct," it is possible for a survivor to make a first report to a number of different contact points throughout the College community (the Sexual Assault Response Network). If, after meeting with any of these contact points, the survivor determines that they would like to pursue a College disciplinary hearing, the contact point will direct the student to meet with the ADOS, or designee.

Once a meeting is arranged, the ADOS, or designee, will meet with the survivor and outline how a formal conduct hearing would work, as well as possible outcomes of the survivor's options. If the survivor decides to make a formal charge, the ADOS or designee will take a written (or audio-recorded) statement of the survivor's account of the incident (if the survivor has already made such a statement directly to Campus Safety, it may be used).

The accused student will also be given the opportunity to provide the ADOS, or designee, with a written statement after the charge has been made by the complainant (if the accused student has already made a statement to Campus Safety, it may be used). The ADOS, or designee, will then present the accused student with a charge letter indicating in writing what policies they are alleged to have violated.

Formal and Informal Complaint Procedure for Student Complaints of Sexual Misconduct

This procedure is intended to apply to student complaints against other students. Complaints about matters other than sexual misconduct will be addressed through the student conduct procedures located elsewhere in this *Code*. Human Resources will address complaints by a member of the community against an employee or other non-student.

The College community benefits from formal and informal procedures that encourage prompt resolution of complaints and concerns that students may have about the implementation of policies and procedures that govern the institution.

Formal Complaint Process:

The Associate Dean of Students & Deputy Title IX Coordinator (ADOS) or designee is designated to formally investigate student sexual misconduct complaints, address inquiries and coordinate the College's compliance efforts regarding student complaints regarding sexual misconduct. Notice of a formal complaint can be made in person or orally to the ADOS, or designee.

The complaint should clearly and concisely describe the alleged incident(s), when and where it occurred. The complaint should be signed by the complainant or, in the case of an email submission, sent as an email attachment, in letter format and should contain the name and all contact information for the complainant. Any supporting documentation and evidence should be referenced within the body of the formal complaint. Additionally, the complainant of a formal complaint should submit any supporting materials in writing as quickly as is practicable.

Upon receipt of a complaint the ADOS, or designee, will open a formal case file and assign an Investigator who will direct the investigation and confer with the Title IX Coordinator on interim action, accommodations for the complainant, or other necessary remedial short-term actions.

The Investigator will then take the following steps:

- · In coordination with the campus Title IX Coordinator, initiate any necessary remedial actions;
- Determine the identity and contact information of the complainant;
- Identify the correct policies allegedly violated;
- Conduct an immediate initial investigation to determine if there is reasonable cause to charge the respondent, and what policy violations should be alleged as part of the complaint;
- If there is insufficient evidence to support reasonable cause, the complaint will be closed with no further action;
- The complainant will be notified in person as to the reasons for closing the case
- Meet with the complainant to finalize the complaint;
- Prepare the notice of charges on the basis of the initial investigation;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the respondent, who may be given notice prior to or at the time of the interview;
- · Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not to have occurred);
- Present the findings and recommended outcome(s) to the respondent and complainant, each who may accept the findings, accept the findings in part and reject them in part, or may reject all findings;
- Share the findings and update the complainant on the status of the investigation and the outcome.

If the respondent is found not responsible for the alleged violation(s), the investigation should be closed, unless the complainant requests a hearing. If a hearing is requested, the ADOS, or designee, will convene a Sexual Misconduct Review Board to resolve the contested aspects of the complaint. If the respondent and the complainant accept the finding that respondent violated College policy, the ADOS, or designee, will impose appropriate outcomes for the violation, after consultation with the Title IX Coordinator. The College will act to end the discrimination, prevent its recurrence, and remedy its effects on the complainant and the College community.

In the event that the respondent or complainant rejects the findings in part or entirely, the ADOS, or designee, will convene a Sexual Misconduct Review Board to resolve the contested aspects of the complaint. The Investigator will present their findings to the board and the Hearing Board will interview the Investigator.

The complainant will present their case second, and will be able to interview the Investigator. There are some situations in which the complainant cannot or will not present their own case. In these situations, the ADOS may appoint an administrator to present the case for the complainant in the complainant's stead. If the complainant elects to let the College present the case, the complainant still may be present throughout the entire proceeding. The complainant may call no witnesses and presentation of the complainant's case will consist of interviewing the Investigator, unless the Hearing Board agrees that a witness other than the Investigator should be called.

Next, the respondent may present their case and interview the Investigator. The respondent may call no witnesses and presentation of the respondent's case will consist of interviewing the Investigator, unless the Hearing Board agrees that a witness other than the Investigator should be called.

The Hearing Board may call any witnesses interviewed by the Investigator at any point to clarify or challenge statements made during the hearing.

At any hearing, the findings of the investigation will be admitted, but are not binding on the decider(s) of fact. The Investigator may give evidence. The hearing will determine whether it is more likely than not that the respondent violated the policies forming the basis of the charge. The goal of the hearing is to provide an equitable resolution via an equitable process, respecting the rights of all participants.

The ADOS, or designee, has final decision-making authority with regard to formal complaints, subject to appeal. Where a respondent is found in violation, the ADOS, or designee, will impose appropriate outcomes for the violation, after consultation with the Title IX Coordinator. The College will act to end the discrimination, prevent its recurrence, and remedy its effects on the complainant and the College community. Appeal proceedings as described in this Policy will apply to all parties to the complaint.

Elaboration on Student Participation in the Complaint Process

The Investigator will contact or request a meeting with the initiator of the formal complaint, and the survivor (if different people). The Investigator also may contact or request a meeting with relevant College staff, students, or others as part of the investigation. The complainant may request to meet and discuss the allegations of the complaint with the Investigator and may offer any documentation, witnesses, or other materials in support of the complaint. All parties to a complaint shall be advised that they have the option to have an advisor assist them during the case. Such an advisor should be a member of the College community: student, faculty member, academic advisor, or staff member.

A party must advise the Investigator of the identity of an advisor or witness at least two (2) business days before the date of the meeting with the Investigator. During a meeting with the Investigator, an attorney acting as a lawyer may not serve as the student's advocate or formally represent the student. These procedures are entirely administrative in nature and are not considered legal proceedings. No audio or video recording of any kind other than as required by institutional procedure is permitted, nor is formal legal representation allowed. The Investigator may remove anyone disrupting the meeting from the discussion. All these same opportunities and privileges extend to all parties to the complaint.

Time Frame and Grounds for Filing an Appeal Request

In the event that a respondent accepts the findings of the investigation, those findings cannot be appealed. Outcomes imposed by the ADOS, or designee, post-investigation can be appealed by any party according to the grounds below. Post-hearing, any party may appeal the findings and/or outcomes only under the grounds described below.

All outcomes imposed will be in effect during the appeal. A request may be made to the ADOS, or designee, for special consideration in exigent circumstances, but the presumptive stance of the institution is that the outcomes will stand. Graduation, study abroad, internships/externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the institution or of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irretrievable in the short term.

The decision of the ADOS, or designee, may be appealed by petitioning the ADOS. Respondents or complainants must petition within 5 business days of receiving the written decision for a review of the decision or the outcomes imposed. Any party who files an appeal must do so in writing to the ADOS. The ADOS, or designee, will share the appeal with the other party (e.g., if the respondent appeals, the appeal is shared with the complainant, who may also wish to file a response), and then the ADOS will draft a response memorandum (also shared with all parties). All appeals and responses are then forwarded to the Dean of Students, or designee, for initial review to determine if the appeal meets the limited grounds and is timely. The original finding and outcome will stand if the appeal is not timely or substantively eligible, and the decision is final. If the appeal has standing, the documentation is forwarded for consideration. The party requesting appeal must show error as the original finding and outcome are presumed to have been decided reasonably and appropriately.

The ONLY grounds for appeal are as follows:

- A procedural error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.);
- To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or outcome. A summary of this new evidence and its potential impact must be included;
- The outcomes imposed are substantially disproportionate to the severity of the violation.

If the appeals officer or committee determines that new evidence should be considered, it will return the complaint to the original hearing body to reconsider in light of the new evidence, only.

If the appeals officer or committee determines that a material procedural error occurred, it may return the complaint to the original hearing body with instructions to reconvene to cure the error. In rare cases, where the procedural error cannot be cured by the original hearing officers (as in cases of bias), the appeals officers or committee may order a new hearing on the complaint with a new Sexual Misconduct Review Board. The results of a new hearing can be appealed once, on the three applicable grounds for appeals.

If the appeals officer or committee determines that the outcomes imposed are disproportionate to the severity of the violation, the appeals officer or committee will return the complaint to the ADOS, or designee, who imposed the outcome, which may then increase, decrease or otherwise modify the outcomes. This decision is final.

The procedures governing the hearing of appeals include the following:

- All parties should be informed in a timely way of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Every opportunity to return the appeal to the original hearing body for reconsideration (remand) should be pursued;
- Appeals are not intended to be full re-hearings of the complaint (de novo). In most cases, appeals are confined
 to a review of the written documentation or record of the original hearing, and pertinent documentation
 regarding the grounds for appeal;
- This is not an opportunity for appeals officers to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or outcomes. Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error and to the outcome only if there is a compelling justification to do so;
- Outcomes imposed are implemented immediately unless the ADOS, or designee, stays their implementation in extraordinary circumstances, pending the outcome of the appeal.

The appeals committee or officer will render a written decision on the appeal to all parties within seven (7) business days from hearing of the appeal. The committee's decision to deny appeal requests is final.

Special Complaint Process Provisions

1. Attempted Violations

In most circumstances, the College will treat attempts to commit any of the violations listed in the *Student Code* of *Conduct* as if those attempts had been completed.

2. College as Complainant

As necessary, the College reserves the right to initiate a complaint, to serve as complainant, and to initiate conduct proceedings without a formal complaint by the survivor of misconduct.

3. False Reports

The College will not tolerate intentional false reporting of incidents. It is a violation of the *Student Code of Conduct* to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

4. Immunity for Survivors and Witnesses

The College community encourages the reporting of Conduct Code violations, especially sexual misconduct. Sometimes, survivors or witnesses are hesitant to report to College officials or participate in complaint processes because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of this community that as many survivors as possible choose to report to College officials, and that witnesses come forward to share what they know. To encourage reporting, the College pursues a policy of offering survivors of sexual misconduct and witnesses limited immunity from being charged for policy violations related to the sexual misconduct incident. While violations cannot be completely overlooked, the College will provide educational rather than punitive responses, in such cases.

5. Bystander Engagement

The welfare of students in our community is of paramount importance. At times, students on and off-campus may need assistance. The College encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a sexual misconduct survivor to Campus Safety). The College pursues a policy of limited immunity for students who offer help to others in need. While policy violations cannot be overlooked, the College will provide educational options, rather than punishment, to those who offer their assistance to others in need.

6. Parental Notification

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. The College may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. Where a student is not-dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The College also reserves the right to designate which College officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act.

7. Notification of Outcomes

The outcome of a campus hearing is part of the educational record of the respondent, and is protected from release under a federal law, FERPA. However, the College observes the legal exceptions as follows:

 Complainants in non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and relationship violence incidents have an absolute right to be informed of the essential findings, and outcomes of the hearing, in writing, without condition or limitation. • The College <u>may</u> release publicly the name, nature of the violation and the outcome for any student who is found in violation of a College policy that is a "crime of violence," including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. The College will release this information to the complainant in any of these offenses regardless of the outcome.

8. Alternative Testimony Options

For sexual misconduct complaints, and other complaints of a sensitive nature, whether the survivor is serving as the complainant or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the survivor to testify outside the physical presence of the respondent, such as by Skype. While these options are intended to help make the survivor more comfortable, they are not intended to work to the disadvantage of the respondent.

9. Past Sexual History/Character

The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the ADOS, or Designee. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request, and must be reviewed in advance of the hearing by the ADOS, or Designee.

While previous conduct violations by the respondent are not generally admissible as information about the present alleged violation, the ADOS may supply previous complaint information to the investigators, the conduct board, or may consider it him/herself if s/he is hearing the complaint, only if:

- The respondent was previously found to be responsible;
- The previous incident was substantially similar to the present allegation;
- Or information indicates a pattern of behavior and substantial conformity with that pattern by the respondent.

XII. PORTLAND AREA RESOURCES

Crisis Services/Counseling/Advocacy

http://college.lclark.edu/offices/health_promotion_and_wellness/sexual_violence_prevention_and_response/resources/

XIII. LEGAL OPTIONS FOR SURVIVORS OF SEXUAL ASSAULT

Portland Area Legal Assistance

https://college.lclark.edu/offices/health_promotion_and_wellness/sexual_violence_prevention_and_response/resources/

Legal Process for Sexual Assault/Rape Survivor

https://college.lclark.edu/offices/health_promotion_and_wellness/sexual_violence_prevention_and_response/crimina.php

Note: Copies of pertinent Oregon Statutes are found in ORS 163.305–163.525 and may be obtained from the Campus Safety Office.