

Little Big Horn College

Policy and Procedures

Title IX

Policy:

Little Big Horn College (LBHC) will address all incidents of sexual discrimination, such as sexual violence, stalking, rape, intimate partner violence, relationship violence, harassment and retaliation to the "Title IX Coordinator" in accordance to Title IX guidelines.

Purpose:

This policy informs all prospective students, current students and all LBHC employees of college policies and procedures regarding sex discrimination and sexual harassment to which all students, members of the faculty and non-faculty personnel are expected to adhere during their time at LBHC. In addition, comprehensive information is provided regarding the reporting of sex discrimination and sexual harassment and avenues to seek immediate assistance.

Procedure:

LBHC seeks to create a positive educational environment on and off campus through our academic programs, services, activities, policies and procedures aimed at providing protection against sex discrimination and harassment. To that end, LBHC condemns discrimination in its education programs and activities based on sex or gender, sexual orientation, gender identity or expression, sexual harassment, sexual violence, domestic violence, dating violence and stalking. Notice of a sex discrimination or sexual harassment incident to the LBHC Title IX Coordinator charges LBHC with actual knowledge and triggers LBHC's response obligation as described in the institutional action section.

Scope of the Policy:

LBHC must respond when sex discrimination and harassment occurs in the school's education program or activity, against a person in the United States. Education programs or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the discrimination or harassment occurred and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus including online instruction.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by e-mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the

Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time, including during non-business hours, by using the telephone number or e-mail address, or by mail to the office address, listed for the Title IX Coordinator.

Individuals are responsible for immediately reporting any knowledge or information concerning sexual harassment to the LBHC Title IX Coordinator identified in this policy which covers unwelcome conduct of a sexual or gender-based nature, whether committed on-campus, or off-campus where LBHC has control over the respondent or the context of the harassment.

LBHC encourages victims of sexual harassment to talk with an advocate, advisors, and Title IX investigators. Different employees within the scope of LBHC’s resources (YWCA), Big Horn County (BHC) Victim Specialist have different abilities to maintain a victim’s confidentiality.

- LBHC Employees are required to report all the details of an incident (including the identities of both the complainant and respondent) to the Title IX Coordinator. A report to LBHC employees (called “responsible employees”) constitutes a report to LBHC and places LBHC on notice to take appropriate steps to address the situation.

Compliance with this policy does not constitute a violation of the Family Educational Rights and Privacy Act (FERPA). For the purpose of this policy, the outcome of a disciplinary proceeding means only the institution’s final determination with respect to the alleged sex discrimination or sexual harassment offense and any sanction that is imposed against the respondent. This policy also applies to retaliation by LBHC or any person against any other person when for the purpose of interfering with Title IX rights, or because the person has participated or refused to participate in any manner in a proceeding under Title IX that is prohibited.

Assistance Following an Incident of Sexual Harassment

- Immediate Assistance:
Persons who have complaints of sexual harassment may file their complaints with the Title IX Coordinator (Patricia Whiteman) located in the Student Union Building (SUB), 8645 South Weaver Drive Crow Agency, MT 59022, phone number 406-638-3106 or email whitemanp@lbhc.edu.
Victims of a sexual violence should get to a place of safety and call Bureau of Indian Affairs Police Department 406-638-2673. Obtain necessary medical treatment; time is a critical factor for evidence collection and preservation. An assault should be reported directly to a law enforcement officer, and college officials will aid in facilitating this process. Filing a police report will not obligate the complainant to prosecute, nor will it subject the reporting party to scrutiny or judgmental opinions from officers. Filing a police report will ensure that a complainant of sexual violence receives the necessary medical treatment and tests. Provides the opportunity for collection of evidence helpful in prosecution, which cannot be obtained later.
- Ongoing Assistance:

In order to ensure the safety and well-being of the victim LBHC may take interim measures such as work schedules, academic schedules, transportation issues, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring). In addition, while an investigation is pending LBHC may initiate a “no contact order” between the parties that carries a sanction of expulsion if violated.

LBHC does not offer counseling options, but law enforcement officials and college representatives are available to facilitate access to support services (e.g., YWCA and BHCVS). LBHC Campus Security will assist any interested person in contacting this agencies.

Title IX Coordinator and Staff

- Title IX Director, Shaleen Old Coyote, located in LBHC Administration Building, 8645 South Weaver Drive, Crow Agency, MT 59022, phone number 406-638-3110 or email oldcoyotes@lbhc.edu has primary responsibility for overseeing the process of coordinating LBHC’s compliance efforts, receiving complaints, and investigations, hearing, sanctions, appeals and education and training associated with this policy.
- To file a complaint or submit questions concerning actions governed by this policy contact the Title IX Coordinators.
- Title IX Coordinators have secondary responsibility and assist in the duties of the Title IX Director. Coordinators include Dean of Student Affairs Patricia Whiteman-Pickett located in the LBHC Sub building, 8645 South Weaver Drive, Crow Agency, MT 59022, phone number 406-638-3106 or email whitemanp@lbhc.edu, and Human Resources Robin Vallie located in the LBHC Administration Building, 8645 South Weaver Drive Crow Agency, MT 59022, phone number 406-638-3148 or email vallier@lbhc.edu.
- Title IX Investigators may include but not be limited to LBHC security officer(s) and staff. The primary responsibility of the investigator is to collect statements and any evidence directly related to any allegations of the Title IX policy violation as directed by the Title IX Director. Investigators will receive appropriate Title IX and trauma informed training. Investigators include John Ille LBHC Archivist located in the Administration building 8645 South Weaver Drive Crow Agency, MT 59022, phone number 406-638-3182 or email illej@lbhc.edu. Kimmy Walks LBHC Data Coordinator located in the LBHC Sub building 8645 South Weaver Drive, Crow Agency, MT 59022, phone number 406-638-3115 or email walksk@lbhc.edu.
- Title IX Hearing Officer may include a LBHC administrator or external legal counsel. The primary responsibility of the hearing officer will be to ensure both parties receive due process in the event allegations of a Title IX policy violation are directed to a hearing by the Title IX Director. Hearing Officers will receive appropriate Title IX and trauma informed training.
- Title IX Hearing Member may include LBHC faculty or staff members. The primary responsibility of the hearing member is to listen to both sides of the complaint. Each

hearing member will evaluate the information being provided by both parties to make a decision whether or not a Title IX policy violation took place. Hearing members will receive appropriate Title IX training.

Definitions

Offenses prohibited under LBHC's policy include, but are not limited to sex discrimination (including sexual orientation discrimination and gender identity or gender expression discrimination), sexual harassment, sexual violence to include non-consensual sexual contact, non-consensual sexual intercourse, sexual coercion, domestic/dating violence, stalking, and sexual exploitation

What is Gender Discrimination?

- Inappropriate language about a specific gender, gender identity or expression, or sexual orientation
- Humor or jokes that target a specific gender, gender identity or expression, or sexual orientation
- Common expressions that are discriminatory toward a specific gender, gender identity or expression, or sexual orientation

What is Sexual Harassment?

- Displaying inappropriate sexual images that are offensive are unwelcomed
- Unwelcomed gender-based verbal or physical contact
- Exchanging sexual images, sexual acts or dating for grades or advancement

What is Sexual Assault?

- Non-consensual sexual contact
- Non-consensual sexual intercourse
- Taking advantage of a consensual or nonconsensual person

Other Unacceptable Behaviors:

- Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress

- 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
- Domestic violence: A felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim
- Sexting: Unwelcomed text messaging or other electronic messaging of sexual comments or images
- Cyber-bullying: Use of an electronic medium to target and psychologically torment a person

Hostile Environment: Sexual Harassment includes conduct that is sufficiently severe, pervasive, or persistent, objectively and subjectively offensive that it alters the conditions of education or employment or institutional benefits of a reasonable person with the same characteristics of the victim of the harassing conduct. Whether conduct is harassing is based upon examining a totality of circumstances, including but not limited to: The frequency of the conduct; The nature and severity of the conduct; Whether the conduct was physically threatening; Whether the conduct was deliberate, repeated humiliation based upon sex;

The effect of the conduct on the alleged victim's mental or emotional state from the perspective of a reasonable person; Whether the conduct was directed at more than one person; Whether the conduct arose in the context of other discriminatory conduct; Continued or repeated verbal abuse of a sexual nature, such as gratuitous suggestive comments and sexually explicit jokes; and Whether the speech or conduct deserves constitutional protections.

Quid Pro Quo Sexual Harassment exists when individuals in positions of authority over the complainant: Make unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and Indicate, explicitly or implicitly, that failure to submit to or the rejection of such conduct will result in adverse educational or employment action or where participation in an educational program or institutional activity or benefit is conditioned upon the complainant's submission to such activity.

Examples of Harassment: An instructor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student agrees to the request. A student repeatedly sends sexually oriented jokes around in an email list he or she created, even when asked to stop, causing one recipient to avoid the sender on campus. The instructor probes for explicit details, and demands that students respond to him or her, though they are clearly uncomfortable and hesitant. An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to his clear discomfort.

Sexual Violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by school employees, other students, or third parties.

Non-Consensual Sexual Contact is any intentional touching, however slight, whether clothed or unclothed, of the victim's intimate body parts (primarily genital area, groin, inner thigh, buttock or breast) with any object or body part, without consent and/or by force. It also includes the touching of any part of a victim's body using the perpetrator's genitalia and/or forcing the victim to touch the intimate areas of the perpetrator or any contact in a sexual manner even if not involving contact of or by breasts, buttocks, groin, genitals, mouth or other orifice. This definition includes sexual battery and sexual misconduct.

Non-Consensual Sexual Intercourse is defined as any sexual intercourse or penetration of the anal, oral, vaginal, genital opening of the victim, including sexual intercourse or penetration by any part of a person's body or by the use of an object, however slight, by one person to another without consent or against the victim's will. This definition includes rape and sexual assault, sexual misconduct, and sexual violence. a) Rape: 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 definition includes any gender of victim or perpetrator. Sexual penetration means 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. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.

Sexual Coercion is the act of using pressure (including physical pressure, verbal pressure or emotional pressure), alcohol, medications, drugs, or force to have sexual contact against someone's will or with someone who has already refused. This includes rape, sexual assault, sexual exploitation and sexual misconduct.

Dating violence is violence between individuals in the following circumstances: The party is or has been in a social relationship of a romantic or intimate nature with the victim; and The existence of such a relationship shall be determined based on a consideration of the following

factors: Length of the relationship Type of relationship Frequency of interaction between the persons involved in the relationship

Domestic Violence under LBHC policy means violence committed by a current or former spouse of the victim; A person with whom the victim shares a child in common; A person who is cohabitating with or has cohabitated with the victim as a spouse; A person similarly situated to a spouse of the victim under local law domestic or family violence laws; Any other person against an adult or youth victim who is protected from that person's acts under local law domestic or family violence laws.

Sexual Exploitation occurs when a person takes non-consensual, unjust 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 may not otherwise constitute one of the other sexual misconduct offenses.

Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community or the safety of any of the immediate family members of the community.

Retaliation is any attempt to penalize or take an adverse employment, educational or institutional benefit action, including but not limited to making threats, intimidation, reprisals or other adverse action, against a person because of participation in a complaint or the investigation of discrimination, sexual harassment or sexual misconduct.

Consent

Consent is the act of willingly agreeing to engage in sexual contact or conduct. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and the absence of "No" may not mean "Yes". A. Consent is informed, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity.

Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.

Previous relationships or consent does not imply consent to future sexual acts.

Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity.

In order to give effective consent, one must be of legal age and have the capacity to consent. Incapacity may result from mental disability, intellectual disability, unconsciousness/sleep, age, or use of alcohol, drugs, medication, and/or other substances. Consent given by someone who one should know to be, or based on the circumstances, reasonably should have known to be, mentally or physically incapacitated, is a policy violation. Incapacitation is a state where someone cannot make rational, reasonable decisions because he or she lacks capacity to give knowing consent. Note: indications of consent are irrelevant if the initiator knows or should reasonably have known of the incapacity of the other person.

Examples of when a person should know the other is incapacitated include, but are not limited to: The amount of alcohol, medication or drugs consumed, Imbalance or stumbling, Slurred speech, Lack of consciousness or inability to control bodily functions or movements, or vomiting, or Mental disability or incapacity.

Use of alcohol, medications, or other drugs will not excuse behavior that violates this policy.

Reporting

Mandatory Reporting All LBHC employees are responsible for taking all appropriate action to prevent sexual misconduct, to correct it when it occurs, and must promptly report it to the Title IX Director. Failure to do so may result in disciplinary action up to and including termination. All LBHC employees are considered responsible employees with a duty to report any incident to the Title IX Director.

All forms of sexual misconduct should be reported, no matter the severity. In addition, LBHC should be made aware of possible threats to the campus community in order to issue timely warnings.

Reporting to the Police LBHC strongly encourages anyone to report sexual violence and any other criminal offenses to the police. This does not commit a person to prosecution, but will allow the gathering of information and evidence. The information and evidence preserve future options regarding criminal prosecution, College disciplinary actions and/or civil actions against the respondent.

If the incident happened on campus, it can be reported to the Bureau of Indian Affairs Police Department at 406-638-2672. If the incident happened anywhere else, it can be reported to the local law enforcement with jurisdiction in the location where it occurred. Please know that

the information you report can be helpful in supporting other reports and/or preventing further incidents.

Reporting for Faculty and Staff (Non-Student) Instances: Faculty and staff shall report any instances of sexual misconduct by another faculty or staff member to the Title IX Director. As stated above, LBHC also strongly encourages reporting any instances to the police.

Employee Obligation to Report (Student Instances): In compliance with Title IX, employees who become aware of a student instance of sexual misconduct shall immediately report such instance to the Title IX Director, including the name of the persons involved.

Reporting for Student Instances Students shall report any instances sexual misconduct to the Title IX Director. A complaint should be filed as soon as possible. If either the complainant or the respondent is a student, the incident will be addressed through the Title IX Hearing process.

LBHC will promptly take necessary steps to protect the complainant and ensure his or her safety as necessary, including taking interim steps before the final outcome of any investigation once a report or knowledge of sexual misconduct has occurred. Periodic updates on the status of the investigation will be provided to the victim. If the school determines that the sexual violence occurred, LBHC will continue to take these steps to protect the complainant and ensure his or her safety, as necessary. LBHC will provide the complainant with any available resources, such as victim advocacy, academic support, counseling, disability services, health and mental health services advocacy, legal assistance, and the right to report a crime to local law enforcement

Written Notice of Complaint

Upon receipt of a formal complaint, LBHC will provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. Written notice includes:

- Notice of the grievance process including any informal resolution process;
- Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response;
- A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;

- Notice of the parties right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- Notice that knowingly making false statements or providing false information in the grievance process is a violation of the code of conduct and subject to disciplinary action.

Investigation

The Title IX Director will make a determination to begin a formal investigation of sex discrimination or a sexual harassment incident which will lead to an institutional action. The director will be available to explain to both parties the process and to notify in writing of the receipt of a complaint and the actions LBHC will take. The burden of gathering evidence and burden of proof must remain on LBHC, not on the parties.

An investigation will be conducted by a LBHC Title IX official. This investigation will include:

- Meeting personally with the complainant, (unless extraordinary circumstances prevent a personal meeting),
- Meeting personally with the respondent, (unless extraordinary circumstances prevent a personal meeting),
- Presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made,
- Collecting any physical evidence,
- Meeting personally with any witness, (unless extraordinary circumstances prevent a personal meeting), and
- Reviewing any documentary evidence.

The investigation of complaints will be adequate, reliable and impartial. The investigation process can take up to 60 days. When investigating a complaint and throughout the complaint process, LBHC must: ensure that the burden of proof and of gathering evidence rests on LBHC rather than the parties; provide an equal opportunity for the parties to present witnesses and evidence, not restrict either party's ability to discuss the allegations or gather and present evidence; provide the parties with the same opportunities to have others present during interviews or related proceedings, including an advisor; provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose and location of any investigative interview, hearing or other meeting with enough time to allow the party to prepare and participate; provide both parties and their advisors an equal opportunity to review all evidence directly related to the allegations in the formal complaint (both exculpatory and inculpatory) at least 10 days prior to the completion of the final investigation; and prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to or determination of responsibility.

LBHC will determine if a Title IX hearing is necessary. If it is determined that LBHC will proceed with hearing, the complainant and the respondent will be notified in writing of the hearing date.

Mandatory or Permissive Dismissal

Mandatory dismissal must occur when determined in the course of the investigation that allegation in a formal complaint: did not occur in LBHC's program or activity; did not constitute sexual harassment as defined; or did not occur against a person within the US. Both parties must receive written notice of a mandatory dismissal and reasons.

Permissive dismissal may occur at any time during the investigation or hearing when: a complainant notifies the Title IX Director in writing that they would like to withdraw; or the respondent is no longer enrolled or employed by LBHC; or specific circumstances prevent LBHC from gathering evidence sufficient to reach a determination. Both parties must receive written notice of a permissive dismissal and reasons.

LBHC may still address allegations of misconduct under the Student Code of Conduct.

Institutional Action

Mediation may include conflict resolution or a restorative agreement between the parties with the Title IX Officer presiding over the mediation. Participation in mediation is not required by LBHC and mediation will not require that the allegation be resolved directly with the alleged harasser without the Title IX officer. However, mediation may only be used:

1. Prior to a Notice of hearing being issued;
2. When the Title IX Officer determines this is a suitable option for resolving the concern, and both the Complainant and Respondent agree to use the process;
3. When the complaint does not involve sexual violence as defined in the Sexual Misconduct Policy.
4. When both parties acknowledge receipt of written notice of their rights under this policy and both parties provide written, voluntary consent.
5. Mediation is not available when the complaint alleges a LBHC employee harassed a student.

Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted. However, either the Complainant or the Respondent may terminate mediation at any time prior to the entry of a voluntary resolution and proceed with the Title IX hearing. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Title IX Officer to a Title IX Hearing. No offers to resolve the conflict that were made or discussed during the informal voluntary resolution process may be introduced during the Title IX Hearing.

Title IX Hearing

The Title IX Coordinator will determine if a hearing is necessary; mediation is never appropriate in sexual violence cases. If it is determined that LBHC will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing date, the alleged policy violation and a notice to appear at the hearing. The written notice will be hand delivered directly to the student(s) or mailed to the local address as filed in the Registrar's Office. Students are responsible for providing and maintaining a current local address in the Registrar's Office.

The hearing committee shall include trauma trained individuals in sexual misconduct adjudication to include the Title IX Coordinator as the committee chair, three members of the faculty and staff as committee members. The selection of the hearing committee will be made by the Title IX Coordinator. Criteria for the hearing committee will include: 1) have received all appropriate training, 2) not be a current instructor of either party involved, 3) have no previous knowledge of the incident, and 4) have no other perceived conflict of interest as determined by interview process with the Title IX Coordinator.

Description of the duties of the Title IX Hearing Committee will include but not limited to the following:

- Read and understand the Title IX Policy and Procedures, which include the hearing process.
- Read and understand all of the information of the Title IX case provided by the Coordinator prior to the hearing as part of a hearing packet.
- Read and understand the procedures of the Title IX hearing provided by the Coordinator prior to the hearing as part of a hearing packet.
- Take accurate notes of the questions you ask and the responses provided by the complaint and respondent.
- Have a clear understanding of the incident in question before going into deliberations for a decision.
- Decide the outcome (majority vote) and sanctions if needed based on the information presented, your notes, and the LBHC Title IX Policy.
- Provide copies of notes to the hearing committee chair. The Chair will inform the parties of the decision at the hearing and send a letter as described in this policy.

Complainant's Rights:

- Be given a written explanation of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Be accompanied by an advisor during the hearing the advisor is limited to advising the student and may not present the case, or make statements during the proceedings.

Students should provide LBHC with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing; (if the advisor is an attorney, LBHC's attorney will also be present for the hearing):

- Be given a timely hearing;
- Exclude evidence of the victim's past sexual history from discussion during the hearing. The past sexual history of the victim with persons other than the respondent shall be presumed irrelevant. If the respondent is found responsible for violating the Sexual Misconduct Policy, the complainant may submit an impact statement.
- Clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual misconduct;
- Written notification of the outcome of the hearing including any sanctions; remedies/accommodations for the complainant; additional remedies for the school community;
- Written notification of counseling services;
- Written notification of options for changing academic, living, transportation, and work site situations if reasonable;
- Written notification of an avenue for appeal.

Respondent's Rights:

- Be given written notice of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Have no violation presumed until found responsible;
- Be given a timely hearing;
- Be accompanied by an advisor during the hearing (the advisor is limited to advising the student and may not present the case, or make statements during the proceedings);
- Written notification of the outcome of the hearing including any sanctions;
- Written notification of an avenue for appeal.

The hearing will include opening statements, each party's evidence and witnesses, and closing statements. Students are permitted to be present during the disciplinary hearing (except during deliberations of the panel). Students are permitted to make statements, present witnesses and present evidence during the hearing which has been previously collected and approved during the investigation process. Witnesses and evidence need to be directly related to the incident. The standard of proof used in LBHC Title IX hearings is the preponderance of the evidence, which means the determination to be made, is whether it is more likely than not a violation occurred. This is significantly different than proof beyond a reasonable doubt, which is required for a criminal prosecution. In person hearings are preferred, but video conference hearings may be conducted if the hearing Chair determines that the health, safety and welfare of all participants is better served by the alternate hearing mode.

Outcome

If it is determined under the preponderance of evidence standard (more likely than not to have occurred) that the respondent is not responsible for a Sexual Misconduct policy violation the complaint will be dismissed.

If it is determined under the preponderance of evidence standard (more likely than not to have occurred) that the respondent is responsible for a Sexual Misconduct policy violation the following sanctions will be considered. The listing of sanctions below is not intended to be exclusive; in addition, sanctions may be imposed singularly or in combination when a violation of this policy is found.

Sexual Discrimination may include the following sanctions on the student(s) found responsible. Restriction – A limitation on a student’s privileges for a period of time and may include but not be limited to the denial of the use of facilities or access to parts of campus, denial of the right to represent LBHC, or denial of participation in extracurricular activities.

Voluntary Project – Community service or an education class or project beneficial to the individual and campus or community.

Probation Level I – A specified period of time during which the student is placed on formal notice that he/she is not in good standing with LBHC and that further violations of regulations will subject him/her to suspension or expulsion from the LBHC.

Housing Suspension – Currently LBHC does not have housing available.

Suspension – If warranted by the severity of the incident, exclusion from enrollment in classes and other privileges or activities for a definite period of time not to exceed three years and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from LBHC are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Dean of Student Affairs. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record in the Registrar’s Office. If a transcript is requested during the period of suspension, Student Affairs will send a letter to the requesting party/institution stating the student is under suspension for conduct reasons. Only unofficial transcripts will be released to the student directly. Any refund of tuition or fees will be subject to LBHC’s normal withdrawal policy.

Expulsion – Termination of student status for an indefinite period. The conditions for readmission, if any, shall be stated in the hearing outcome letter. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student’s record in the Registrar’s Office. If a transcript is requested, a letter will be sent with the transcript to the requesting party/institution stating the student has been expelled for conduct reasons. Only

unofficial transcripts will be released to the student directly. Expulsion becomes a permanent part of a student's conduct record. Any refund of tuition or fees will be subject to LBHC's normal withdrawal policy. Expulsion should be reserved and used only in cases involving the most severe instances of misconduct.

Sexual Harassment may include the following sanctions on the student(s) found responsible.

Restriction – A limitation on a student's privileges for a period of time and may include but not be limited to the denial of the use of facilities or access to parts of campus, denial of the right to represent LBHC.

Voluntary Project – Community service or an education class or project beneficial to the individual and campus or community.

Behavioral Change Requirement – Required activities including but not limited to, seeking academic counseling, substance abuse assessment, decision making class, writing a reflection paper, etc.

Housing Suspension – LBHC currently does not have housing available

Probation Level II – Adds to Level I the stipulation that students are prohibited from participating in any extracurricular activities not directly associated with academics (e.g., intramural sports, attending athletic events, student organizations/clubs/associations, leadership positions within housing or other organizations). Students must apply to get off Conduct Probation Level II by submitting documentation of their significant proactive efforts to become good citizens of the community and engage in responsible, productive behavior.

Suspension – If warranted by the severity of the incident, exclusion from enrollment in classes and other privileges or activities for a definite period of time not to exceed three years and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from LBHC are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Dean of Student Affairs. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student's record in the Registrar's Office. If a transcript is requested during the period of suspension, Student Affairs will send a letter to the requesting party/institution stating the student is under suspension for conduct reasons. Only unofficial transcripts will be released to the student directly. Any refund of tuition or fees will be subject to LBHC's normal withdrawal policy.

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requesting party/institution stating the student has been expelled for conduct reasons. Only unofficial transcripts will be released to the student directly. Expulsion becomes a permanent part of a student's conduct record. Any refund of tuition or fees will be subject to LBHC's normal withdrawal policy. Expulsion should be reserved and used only in cases involving the most severe instances of misconduct.

Sexual Violence may include the following sanction on the student(s) found responsible.

Expulsion – Termination of student status for an indefinite period. The conditions for readmission, if any, shall be stated in the hearing outcome letter. Notation on the transcript is not made; however, a permanent record of the action is maintained in the student's record in the Registrar's Office. If a transcript is requested, a letter will be sent with the transcript to the requesting party/institution stating the student has been expelled for conduct reasons. Only unofficial transcripts will be released to the student directly. Expulsion becomes a permanent part of a student's conduct record. Any refund of tuition or fees will be subject to LBHC's normal withdrawal policy. Expulsion should be reserved and used only in cases involving the most severe instances of misconduct.

The complainant has the right to be informed of the outcome. Both parties will be notified in writing by certified mail within five business days after the hearing at the same time. Both parties have the right to appeal the decision reached through the hearing proceedings within five days after the hearing.

Appeal Procedures

An appeal is not a new hearing, but is a review of the record of the original hearing. It serves as a procedural safeguard for the student. The burden of proof shifts from LBHC to the student(s) found responsible for the policy violation. The student must show one or more of the listed appeals.

- A. Appeals must be submitted in writing to the President within five (5), Little Big Horn College working/school days of receiving the decision. Failure to file an appeal within the prescribed time constitutes a waiver of any right to an appeal.
- B. The appeal must cite at least one of the following criteria as the reason for appeal and include supporting argument(s):
 1. The original hearing was not conducted in conformity with prescribed procedures and substantial prejudice to the complainant or the respondent resulted.
 2. The evidence presented at the previous hearing was not "sufficient" to justify a decision against the student or group.
 3. New evidence which could have substantially affected the outcome of the hearing has been discovered since the hearing. The evidence must not have been available at the time of the original hearing. Failure to present information that was available is not grounds for an appeal.

4. The sanction is not appropriate for the violation. This provision is intended to be utilized when a determined sanction is inherently inconsistent with LBHC procedures or precedent. Simple dissatisfaction with a sanction is not grounds for overturning a sanction under this provision.
- C. The President will review the record of the original hearing, including documentary evidence. It is the President's discretion to convert any sanction imposed to a lesser sanction, to rescind any previous sanction, or to return a recommended sanction to the original hearing committee for review/or reconsideration. If there is new evidence (unavailable at the time of the hearing through no fault of the parties) which is believed to substantially affect the outcome, or evidence presented at the previous hearing(s) was "insufficient" to justify a decision against the student or group, or a finding that a substantial procedural error resulting in prejudice occurred the matter may be remanded to either a rehearing of the entire matter or reconsideration of specific issues. If remanded to the original hearing committee, either or both students may appeal the committee's decision to the President and the procedures set out above shall control the appeal.
 - D. The final decision will be communicated in writing by the President to the appealing student(s). The decision will be communicated within ten (10) working/school days of receiving the written recommendation. Both parties will be notified of the final outcome of the appeal.
 - E. The decision of the President on appeal shall be final.

LBHC Officers and Designees

The designation of a LBHC official responsible for prescribed actions shall automatically include the official's designee in instances where an official is unable, unavailable or has concluded that the official may have a conflict of interest that causes the official to recuse from involvement in the matter. The official's designee shall have the same authority as the official in matters involving this policy.

Recordkeeping Protocol

LBHC will document all reports and complaints of sex discrimination and provide copies of those reports to the Title IX Coordinator. LBHC Title IX Office will maintain a secured electronic file system of all Title IX cases, reports, and complaints by academic year. The cases will include all information related to the individual case, which includes but is not limited to the initial complaint, letters sent to all parties, response from the respondent, immediate assistance, investigation notes, mediation agreement if applicable, notice of a hearing, committee selection, hearing notes, hearing decision, written notice of the outcome, and any recordings made of the hearing or in the course of the investigation. The time period to maintain the case records will be no less than seven (7) years from the date of LBHC's final action or decision (whether through report of the investigation, mediation, or hearing). The confidential reporting of the number of incidents and types will be sent to LBHC Security for the preparation of the Annual Crimes Report.

Prevention and Education

A. Education

LBHC requires all employees to take the following educational- training courses on an annual basis. Employees may be required to be recertified on demand. Failure to have a certification of this required training may result in appropriate disciplinary action. Additional in-person trainings are also offered periodically and on request.

B. Bystander Intervention

If you witness a policy violation, or behaviors that may lead to a policy violation, there are a variety of things you can do as a bystander:

- Divert the intended victim (e.g. "help me out of here; I don't feel well")
- Distract the perpetrator (e.g. "looks like your car is being towed")
- Delegate to a person of authority (e.g. if at a nightclub let the bartender/bouncer know of the situation)
- Direct, confront the perpetrator (e.g. "don't speak to him/her in that manner; you are going to get yourself into trouble")

Training

Training on sexual misconduct: discrimination, harassment, and violence is included in CMN's education program.

In-person training for student groups and students will be conducted through a variety of presentations, student orientation, and other meetings. In-person training for Active Bystander Intervention skills may include: On-going campus campaigns and information at a variety of events concerning the policy and appropriate behaviors, including Bystander Intervention.

Informational website and brochures devoted to educating students will be presented at prevention workshops.

Mandatory training for employees will be provided through In-person training on sexual misconduct: discrimination, harassment, and violence and mandatory reporting through new employee orientations and other periodic training opportunities and upon request. In-person training for Active Bystander Intervention skills may include: ongoing campus campaigns and information at a variety of events, concerning the policy and appropriate behaviors, including Bystander Intervention. Informational website and brochures devoted to educating employees

Retaliation

The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual harassment or filing a sexual harassment complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or school's investigation or proceeding. Therefore, if a student, parent, teacher, sponsor coach, or other individual complains formally or informally about sexual harassment or participates in an OCR or school's investigation or proceedings related to sexual harassment, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual's complaint or participation. Individuals who, apart from official associations with LBHC, engage in retaliatory activities will also be subject to LBHC's policies insofar as they are applicable to third party actions.

LBHC will take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses. Complaints of retaliation will follow the same process of investigation, hearing, and appeal.

If it is determined under the preponderance of evidentiary standard (more likely than not to have occurred) that a student is responsible for retaliation the following sanction will be imposed.

- Suspension – Exclusion from enrollment in classes and other privileges or activities for a definite period of time not to exceed three years and until the conditions which are set forth in the hearing outcome letter are met. Students who are suspended from LBHC are not permitted on campus or in campus buildings, facilities or activities at any time for any reason during the period of suspension, unless otherwise directed by the Dean of Student Affairs. Conditions to conclude a suspension and reinstatement process will be stated in the written notification. Notation on the transcript is not made; however, a

permanent record of the action is maintained in the student's record. Any refund of tuition or fees will be subject to LBHC's normal withdrawal policy.

Free Speech and Academic Freedom

Members of the LBHC community enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution. This policy is intended to protect members of the LBHC community from discrimination and is not designed to regulate protected speech. No provision of this policy shall be interpreted to prohibit conduct that is legitimately related to course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.