

**CHAPTER 9**  
**SEXUAL AND GENDER-BASED HARASSMENT**  
**POLICIES AND PROCEDURES**  
**OF THE**  
**LAC COURTE OREILLES OJIBWE UNIVERSITY**

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## **SUBCHAPTER 9.1 - GENERAL PROVISIONS**

### **§ 9.101      Title.**

- (1) This chapter shall be known as the Sexual and Gender-Based Harassment Policies and Procedures of the Lac Courte Oreilles Ojibwe University.

### **§ 9.102      Authority.**

- (1) This policy and procedure is enacted by Lac Courte Oreilles Ojibwe University Board of Regents pursuant to the Lac Courte Oreilles University Charter, Article XI section 19; “To develop general policies for the governance of the University and hold the University President accountable for administering them.”

### **§ 9.103      Purpose.**

- (1) It is the purpose of this policy and procedure to provide the general policies, rules and practices which prohibit any conduct or harassment of any person on the University campus or affiliated with the University operations by all faculty, students, and staff of the Lac Courte Oreilles Ojibwe University in the performance of their official job duties on behalf of the University. This policy and procedural manual is intended to define unwanted conduct and provide a procedure to address any allegations in a clear and documented manner, providing proper due process to the parties of any complaint.
- (2) The University must respond when discrimination and harassment occur in the University’s education program or activity, against a person based upon sex and/or gender. Education program or activity includes, but it is not limited to, locations, events, or circumstances over which the University 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. This policy applies to all of the University’s education programs or activities, whether such programs or activities occur on-campus or off-campus, including online instruction pursuant to 9.403 of this subchapter.

### **§ 9.104      Application.**

- (1) This policy and procedural manual shall apply to all faculty, students and staff and shall apply to visitors, prospective students, and other persons who are on the University property.

### **§ 9.105      Effective Date.**

- (1) Except as otherwise provided in specific sections, the provisions of this policy and procedural manual shall be effective on the date adopted by the Board of Regents.

**§ 9.106      Interpretation.**

- (1) The provisions of this policy and procedural manual:
  - a. Shall be interpreted and applied as minimum requirements applicable to all faculty, staff, and students conduct while on official University business.
  - b. Shall be liberally construed in favor of the University.

**§ 9.107      Severability and Non-Liability.**

- (1) If any section, provision or portion of this policy and procedural manual is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this policy shall not be affected thereby. The University further asserts immunity on its part and that of its agencies, employees, and/or agents from any action or damages that may occur for the express limited purpose of enforcing Title IX claims.

**§ 9.108      Public Access to Information.**

- (1) Any information about the University's Sexual and Gender-Based Discrimination policies and procedures are available on the University's website and or by e-mail, telephone or by mail, upon request. The request for information and the formal complaint process comports with applicable University policies and regulations governing information.
- (2) Other information related to student records and other determinations are protected from disclosure consistent with the University confidentiality policy, consistent with tribal and federal policies on student information. The University exercises caution to ensure that protected information is not made public according to the University's policy of Confidentiality. (Employee Handbook Policy No. 6.2) Any questions regarding disclosure of any protected information should be directed to the University Title IX Coordinator.
- (3) 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 the University or any person against any other person 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.

## **SUBCHAPTER 9.2 – DEFINITIONS**

### **§ 9.201      General Definitions.**

Any term not defined in this Section shall be given its ordinary meaning. The following terms, wherever used in this ordinance, shall be construed to apply as follows, except where the context indicates otherwise:

- (1) **“Office of Rights Enforcement”** a department of the University responsible for the development and implementing policies consistent under federal, state and tribal law that protect all person from sexual and/or gender-based harassment, consisting of a Title IX Coordinator who shall lead the department, and other personnel as assigned.
- (2) **“Per Diem”** is a daily payment instead of reimbursement for actual expenses for lodging (excluding taxes), meals, and related incidental expenses. Rate is specified by the U.S. General Services Administration (GSA).
- (3) **“Unwelcome Conduct”** conduct directed from one person to another person that is either, uninvited or unrequested and is deemed to be undesirable or offensive. Prior accepted conduct may become unwanted if such conduct is not invited or requested.
- (4) **“Gender-Based Harassment”** is a form of sex discrimination. This type of harassment does not involve explicit sexual behavior, but includes epithets, slurs, and negative stereotyping of men or women, directed at non-binary, female or male students, employees, or others.
- (5) **“Sexual Harassment”** behavior characterized by the making of unwelcome and inappropriate sexual remarks or physical advances in a workplace or other professional or social situation.
- (6) **“Title IX Decision”** is the final report made by the Title IX Decision Maker regarding allegations filed with the Title IX Coordinator. This report is appealable to the University President.
- (7) **“Title IX Decision-maker”** is responsible for reviewing all reports that are submitted by the Title IX Investigator and making a determination based on the information provided. The Decision Maker will preside over an open hearing as part of the University’s investigation under this chapter.
- (8) **“Title IX Coordinator”** is responsible for coordinating the recipient's responses to all complaints involving possible sex discrimination. This responsibility includes monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate.
- (9) **“Title IX Investigator”** Title IX Investigator acts as a neutral party in the investigation and provides a detailed, unbiased report regarding the findings of the investigation.

- (10) **“Board of Regents”** means the Lac Courte Oreilles Ojibwe University Board of Regents as established by the Lac Courte Oreilles Ojibwe University Charter.
- (11) **“University”** means the Lac Courte Oreilles Ojibwe University.
- (12) **“University President”** means the Chief Executive Officer of the Lac Courte Oreilles Ojibwe University. The University President hears all appeals of a Title IX decision.
- (13) **“Chief of Staff”** means the second ranking member for the operations of the Lac Courte Oreilles Ojibwe University, often operating as acting President.
- (14) **“Title IX”** a federal law that prohibits discrimination based on sex or gender in all education programs; Public Law No. 92-318, 86 Stat.
- (15) **“General Counsel”** means the authorized legal representative of the Lac Courte Oreilles Ojibwe University, the Regents, the faculty, students, and staff.
- (16) **“University Charter” or “Charter”** means the Restated Articles of Incorporation for the Lac Courte Oreilles Ojibwe University. The original document that established the University by the Lac Courte Oreilles Tribal Governing Board.
- (17) **“Office of Civil Rights” or “OCR”** The Office for Civil Rights is a sub-agency of the U.S. Department of Education that is primarily focused on enforcing civil rights laws prohibiting schools from engaging in discrimination on the basis of race, color, national origin, sex, disability, age, or membership in patriotic youth organizations.
- (18) **“Department of Education” or “DOE”** The Department of Education is the federal executive division responsible for carrying out government education programs and policies. It seeks to ensure access to education and to improve the quality of education nationwide.
- (19) **“Formal Complaint”** a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment and stating the date, time, place, name(s) of person(s) involved (e.g. the accused, witnesses) and sufficient detail to make a determination regarding basic elements of the formal complaint process.
- (20) **“Advising Representative”** A person who has agreed to assist a Complainant or Respondent during the Title IX process. The representative may be a person of the student’s choosing, including but not limited to, a University faculty or staff member, a friend, or an attorney. Any representation shall be at the parties’ own expense.
- (21) **“Complainant”** an individual who is alleged to be the victim of conduct that could constitute sexual discrimination or sexual harassment.

- (22) **“Respondent”** an individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination or sexual harassment.
- (23) **“Interim Measures”** are temporary instructions offered as appropriate to either or both, the reporting and responding parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending. Such temporary measures are enforceable under this chapter.
- (24) **“Non-Binary”** A person whose gender identity/expression can be described as neither man nor woman, between or beyond genders, or some combination of genders. This identity is usually related to or in reaction to the social construction of gender, gender stereotypes, and the gender binary system.
- (25) **“Title IX Worker”** A University employee appointed by the University President to the position of Title IX Coordinator, Title IX Investigator, or Title IX Decision-maker.
- (26) **“Quid Pro Quo Harassment”** A promise of action in exchange for an action of sexual nature.



## **SUBCHAPTER 9.3 – AUTHORITY AND ADMINISTRATIONS**

### **§ 9.301      General.**

- (1) This chapter details the authority for enforcement of the Office of Rights enforcement for the Lac Courte Oreilles Ojibwe University.

### **§ 9.302      Delegation of Authority.**

- (1) Generally, this Sexual and/or Gender-Based Harassment policy delegates responsibility for functions to the University President. As established in Article XX, section 20.1 of the University Charter, the University President has the power to exercise or limit any procedures, agreements, or contracts including this policy.
- (2) Pursuant to Article XX, section 20.1, the University President appoints and delegates authority and the administration of this policy to the Title IX Coordinator when s/he performs that function, regardless of any other job, position, or title s/he may have. The Title IX Coordinator shall issue operational procedures to implement this policy.

### **§ 9.303      Office of Rights Enforcement.**

- (1) The Office of Rights Enforcement shall consist of a Title IX Coordinator, Two Title IX Investigators, a Title IX Decision-maker, and Title IX Legal Counsel. The Coordinator, Investigators, and the Decision-maker shall be appointed by the University President. The Legal Counsel for Title IX shall be a member of the Office of General Counsel or the contracted Legal Counsel in the absence of an Office of General Counsel.
  - a. The Coordinator shall be the point of contact for all allegations arising under this chapter.
  - b. The Investigator shall collect information, including statements, for all parties and provide a written report.
  - c. One Investigator shall be assigned to investigate allegations arising or involving students; another Investigator shall be assigned to investigate all allegations involving faculty or staff.
  - d. The Decision-maker shall be a senior University staff member who shall review the written reports and determine the proper course of action regarding the complaint, the Decision-maker shall not be the University president.
  - e. All decisions arising from the Decision-maker may be appealed to the University President, whose decision is final.
  - f. At no time will the Coordinator, Investigator or Decision-maker be the same person to ensure fundamental fairness.

### **§ 9.304      Responsibility of the Title IX Coordinator.**

- (1) Pursuant to the delegated authority established in this policy, it is the responsibility of the Title IX Coordinator or his/her designee to:
  - a. Use sound judgment in implementing the policies under this chapter for the University; and
  - b. Ensure that all parties receive fair, impartial, and equitable treatment; and

- c. Ensure that complaints comply with all applicable University and Federal laws and rules and with this policy.

**§ 9.305      Staffing and Training.**

- (1) The University shall ensure that all Title IX employees have training and experience commensurate with the requirements of their duties. The University will implement training and experience standards for their Title IX positions and periodically review their Title IX operations to ensure that Title IX personnel meet those standards.

## **SUBCHAPTER 9.4 – AUTHORITY AND ADMINISTRATION**

### **§ 9.401      General.**

- (1) This section lists the job duties, staff functions, and communication protocols of offices involved in the collection and investigation of sexual and/or gender-based discrimination allegation, Title IX compliance, and other duties as may be assigned by the University President. Communication between personnel occurs by email or face to face contact. Also, all-staff and departmental meetings provide opportunities to share information.

### **§ 9.402      Authorization.**

- (1) Generally, a written or electronic authorization is required prior to employee incurring any travel expenses. If it is not practicable or possible to obtain such authorization prior to travel, a program director may approve a specific authorization for reimbursement of travel expenses after travel is complete.

### **§ 9.403      Jurisdiction.**

- (1) This policy shall have jurisdiction over any conduct that alleges discrimination committed by students, faculty, staff, University appointees, or third parties affiliated with the University whenever that misconduct occurs:
  - a. On University property or outreach sites; or
  - b. Off University property if:
    - i. The conduct was in connection with a University sanctioned program or activity; or
    - ii. The conduct may have the effect of creating a hostile environment for a member of the University community.

### **§ 9.404      Right to Legal Representation.**

- (1) Any person who has been or is subject to an informal report or formal allegation under this chapter shall have the right to retain legal representation, at their own expense.
- (2) Any person under this chapter shall have a right to have legal representation or have representation present with them during all steps of the process, at their own expense.

### **§ 9.405      Institutional and Division Structure.**

#### **(1) Office of Rights Enforcement**

- a. Title IX Coordinator, TitleIX@lco.edu
  - i. General Summary: Title IX Coordinator has primary responsibility for overseeing the process of coordinating University's compliance efforts, receiving complaints, investigations, hearing, sanctions, appeals, and education and training associated with this policy.

#### **(2) Dean of Student Affairs**

- a. General Summary: responsible for students' needs at the University; oversight for student programming.

**(3) Provost**

- a. General Summary: Responsible for administering the academic programming for the University with oversight duties for faculty accordance with applicable rules and regulations.

**(4) Human Resources Department**

- a. General Summary: management of employee regulations, develops and implement regulations for strategic staffing plans, compensation, benefits, training and development, budget, and labor relations.

**(5) Office of General Counsel or the contracted Legal Counsel in the absence of an Office of General Counsel**

- a. General Summary: Advising the University on various matters such as legal rights, and new and existing laws. Managing organization's legal matters. Examining and creating draft agreements, such as employment and vendor agreements.

**§ 9.406      Office of Rights Enforcement and Position Responsibilities.**

- (1) The Office of Rights Enforcement (ORE) is currently composed of full-time University staff members. ORE is coordinated by the Title IX Coordinator. The ORE shall have Investigators appointed as needed by the Title IX Coordinator. A Decision-maker shall be appointed by the University President. Legal Counsel for ORE shall be a member of the Office of General Counsel or the contracted Legal Counsel in the absence of an Office of General Counsel.
- (2) The essential job functions of the Title IX Coordinator are as follows:
  - a. Title IX Coordinator has primary responsibility for overseeing the process of coordinating University's compliance efforts, receiving complaints, investigations, hearing, sanctions, appeals, and education and training associated with this policy.
- (3) The essential job functions of the Title IX Investigator are as follows:
  - a. Acts as a neutral party in the investigation and provides a detailed, unbiased report regarding the findings of the investigation.
- (4) The essential job functions of the Title IX Title IX Decision-maker are as follows:
  - a. Review all reports filed by Investigators; and
  - b. Coordinate on the timely resolution of all complaints; and
  - c. Preside over all hearings brought under this chapter.
- (5) The essential job functions of the Title IX Legal Counsel are as follows:
  - a. Assist the University and the Department with the development and implementation of this chapter; and
  - b. Represent the ORE at all hearings.

**§ 9.407      Appointments with Staff.**

- (1) The Office of Rights Enforcement ensures assistance is available for student inquiries and access during regular business hours, Monday - Friday 8:00 am - 4:00 pm.
- (2) The Title IX Coordinator maintains an open-door policy, but appointments can be made

through the telephone, e-mail, or in-person.

- (3) The information needed to schedule an appointment is, Student or Employee's name, phone number, and reason for the appointment. All information is confidential.

**§ 9.408      Confidentiality of Student Records.**

- (1) Lac Courte Oreilles Ojibwe University follows guidelines and regulations for student records confidentiality as established under the Family Educational Rights and Privacy Act (FERPA) and the University's own policy of Confidentiality. (Employee Handbook Policy No. 6.2)
- (2) In accordance with FERPA, the Office of Rights Enforcement does not release any student information to individuals other than the student.
- (3) The Office of Rights Enforcement is prohibited from disclosing any student information unless a current Release of Information is on file with the office and with written clearance from the Office of General Counsel or the contracted Legal Counsel in the absence of an Office of General Counsel.

**§ 9.409      Records Management and Retention.**

- (1) The Office of Rights Enforcement is responsible for the creation and maintenance of all records under this chapter.
- (2) All records will be maintained and retained by the University for up to seven (7) years from the date of filing.
- (3) All files are kept in the Office of Rights Enforcement; only Title IX Staff are allowed access to files.

**§ 9.410      Family Educational Rights and Privacy Act.**

- (1) The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of students' education records.
- (2) The term "education records" means those records that are:
  - a. directly related to a student; and
  - b. maintained by an education agency or
  - c. postsecondary institution or
  - d. by a party acting for the agency or institution.
- (3) FERPA defines an "eligible student" as a student:
  - a. who has reached 18 years of age; or
  - b. any student who is attending an institution of postsecondary education at any age.
- (4) The University policies under FERPA guidelines are:
  - c. Student records can only be viewed by the student.
  - d. Students are encouraged to be physically present when requesting access to their information.
  - e. If students are requesting information via phone, they will be prompted to verify

identity at least two times, and any email conversations will be done strictly through LCOOU's email servers.

- (5) Please view the consumer information located on our website at <https://www.lco.edu/righttoknow> or the student handbook or more information regarding confidentiality of student records.

**§ 9.411      Staffing and Training.**

- (1) The University ensures that all staff of the Office of Rights Enforcement have training and experience commensurate with the requirements of their duties. The University has implemented training and experience standards for all positions under this chapter and periodically reviews their operations to ensure that all staff meet those standards.

## **SUBCHAPTER 9.5 – PROSCRIBED CONDUCT**

### **§ 9.501      Sexual Harassment.**

- (1) Sexual harassment is unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, graphic, or physical conduct of a sexual nature, when:
  - a. Submission to or rejection of such conduct is made either explicitly or implicitly a condition of an individual's employment or academic standing or is used as the basis for employment decisions or for academic evaluation, grades, or advancement (quid pro quo); or
  - b. Such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities (hostile environment).
  
- (2) Quid pro quo sexual harassment can occur whether a person resists and suffers the threatened harm, or the person submits and avoids the threatened harm. Both situations could constitute discrimination on the basis of sex.
  
- (3) A hostile environment can be created by persistent or pervasive conduct, or by a single severe episode. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment. Sexual violence, including rape, sexual assault, and domestic and dating violence, is a form of sexual harassment. In addition, the following conduct may violate this policy:
  - a. Observing, photographing, videotaping, or making other visual or auditory records of sexual activity or nudity, where there is a reasonable expectation of privacy, without the knowledge and consent of all parties; or
  - b. Sharing visual or auditory records of sexual activity or nudity without the knowledge and consent of all recorded parties and recipient(s); or
  - c. Sexual advances, whether or not they involve physical touching; or
  - d. Commenting about or inappropriately touching an individual's body; or
  - e. Requests for sexual favors in exchange for actual or promised job benefits, such as favorable reviews, salary increases, promotions, increased benefits, or continued employment; or
  - f. Lewd or sexually suggestive comments, jokes, innuendoes, or gestures; or
  - g. Stalking
  
- (4) Other verbal, nonverbal, graphic, or physical conduct may create a hostile environment if the conduct is sufficiently persistent, pervasive, or severe so as to deny a person equal access to the University's programs or activities. Whether the conduct creates a hostile environment may depend on a variety of factors, including: the degree to which the conduct affected one or more person's education or employment; the type, frequency, and duration of the conduct; the relationship between the parties; the number of people involved; and the context in which the conduct occurred.

**§ 9.502 Unwelcome Conduct.**

- (1) Conduct is unwelcomed if a person:
  - a. Did not request or invite it and
  - b. Regarded the unrequested or uninvited conduct as undesirable or offensive.
- (2) That a person welcomes some sexual contact does not necessarily mean that person welcomes other or additional sexual contact. Similarly, that a person willingly participates in conduct on one occasion does not necessarily mean that the same conduct is welcome on a subsequent occasion.
- (3) Whether conduct is unwelcome is determined based on the totality of the circumstances, including various objective and subjective factors. The following types of information may be helpful in making that determination:
  - a. Statements by any witnesses to the alleged incident; or
  - b. Information about the relative credibility of the parties and witnesses; or
  - c. The detail and consistency of each person's account; or
  - d. The absence of corroborating information where it should logically exist; or
  - e. Information that the Respondent has been found to have harassed others; or
  - f. Information that the Complainant has been found to have made false allegations against others; information about the Complainant's reaction or behavior after the alleged incident; and
  - g. Information about any actions the parties took immediately following the incident, including reporting the matter to others.
- (4) When a person is so impaired or incapacitated as to be incapable of requesting or inviting the conduct, conduct of a sexual nature is deemed unwelcome, provided that the Respondent knew or reasonably should have known of the person's impairment or incapacity.
  - a. The person may be impaired or incapacitated as a result of drugs or alcohol or for some other reason, such as sleep or unconsciousness.
  - b. A Respondent's impairment at the time of the incident as a result of drugs or alcohol does not, however, diminish the Respondent's responsibility for sexual or gender-based harassment under this Policy.

**§ 9.503 Gender-based Harassment.**

- (1) Gender-based harassment is verbal, nonverbal, graphic, or physical aggression, intimidation, or hostile conduct based on sex, sex-stereotyping, sexual orientation, or gender identity, but not involving conduct of a sexual nature, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with or limits a person's ability to participate in or benefit from the University's education or work programs or activities.

**§ 9.504 Sexual Assault.**

- (1) "Sexual assault" is actual or attempted sexual contact with another person without that person's consent. Sexual assault includes, but is not limited to:
  - a. Intentional touching of another person's intimate parts without that person's



- consent; or
- b. Other intentional sexual contact with another person without that person's consent; or
- c. Coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; or
- d. Rape, which is penetration, no matter how slight, of:
  - i. The vagina or anus of a person by any body part of another person or by an object, or
  - ii. The mouth of a person by a sex organ of another person, without that person's consent.

**§ 9.505      Sexual Exploitation.**

- (1) "Sexual exploitation" occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person without that person's consent. Examples of behavior that could rise to the level of sexual exploitation include:
  - a. Prostituting another person; or
  - b. Recording images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent; or
  - c. Distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and
  - d. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire.

**§ 9.506      Consent.**

- (1) "Consent" must be informed, voluntary, and mutual, and can be withdrawn at any time.
- (2) There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance does not imply consent.
- (3) Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.
- (4) If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard or being asleep or unconscious.

**§ 9.507      Retaliation.**

- (1) Retaliation: An adverse action (e.g. conduct that threatens, harasses, coerces or intimidates) taken against a person for making a good faith report of prohibited conduct, providing

information, exercising one's rights or responsibilities under this policy, or for otherwise being involved in the process of responding to, investigating, or addressing allegations of sexual misconduct.

- (2) Retaliation can be substantiated without a finding that there is responsibility for prohibited conduct. Third parties (i.e. not the reporting or responding party) can be the victims or perpetrators of retaliation.
- (3) Allegations of retaliatory actions, such as intimidation, threats, or coercion against any individual for having engaged in the above activities, will be addressed by Office of Rights Enforcement. Anyone who is aware of possible retaliation or has other concerns regarding the response to a complaint of sexual misconduct should report such concerns to the Title IX Coordinator who will ensure that the matter is investigated and make recommendations to the University to enable appropriate actions to be taken in a fair and impartial manner.
- (4) Individuals who engage in such actions are subject to disciplinary action that may include, but is not limited to, expulsion, or dismissal from the University, and termination of employment.
- (5) Harassment and retaliation against members of the Lac Courte Oreilles Ojibwe University and the University community are not protected expression or the proper exercise of academic freedom. The University may consider academic freedom in the investigation of reports of sexual misconduct or retaliation that involve individuals' statements or speech but retains the right to act on any action that is deemed to be retaliation as defined under this chapter.

**§ 9.508      Violation of Interim Measures.**

- (1) In responding to a report of prohibited conduct, the Office of Rights Enforcement may implement interim measures. Some interim protective measures require compliance by the responding party, such as no contact orders, access or participation restriction, or suspension.
- (2) Violations of interim measures may result in further discipline up to and including expulsion or termination from employment.
- (3) Interim actions may not remain in effect any period of time exceeding six months or one academic semester under the University's Academic Calendar. Such interim actions shall be considered non-binding after the time period stated in paragraph 3 of this section. Such interim actions will be canceled without notice to either party.

## **SUBCHAPTER 9.6 – MONITORING AND COMPLIANCE**

### **§ 9.601      Notice of Non-Discrimination.**

- (1) The Lac Courte Oreilles Ojibwe University does not discriminate on the basis of sex in education programming or prohibit the participation in any University sponsored activity.
- (2) Any form of discrimination is prohibited by the University as articulated under United States Code (federal law), 20 USC 1688; Wisconsin State Law, Wi Stat 111.321; and Lac Courte Oreilles Tribal Code of Law, 14 LCOTCL 1.401.
- (3) The University will publish this notice of non-discrimination in all University materials, the University website and any other printed materials that will promote the mission of the University.

### **§ 9.602      Obligations.**

- (1) The University must respond promptly to all requests of information as requested under this chapter.
- (2) All requests for an informal resolution will be responded to in a prompt and timely manner and shall be resolved within three weeks of submission.
- (3) All formal requests for a formal complaint will be responded in a prompt and timely manner. All formal complaints will be resolved within sixty (60) days of the submission.
- (4) All requests will be maintained in the Office of Rights Enforcement (ORE) where the records for informal and formal resolutions will be maintained for a period of seven (7) years.

### **§ 9.603      Mandatory Dismissal.**

- (1) The University must dismiss formal complaint if alleged conduct:
  - a. Even if proved, would not constitute sexual harassment; or
  - b. Did not occur in the institution's education program or activity; or
  - c. Did not occur against a person in the United States.
- (2) Such dismissal does not preclude action under another provision of the University's Rules of Conduct. (Employee Handbook Policy No. 7.1)
- (3) Notice of Dismissal must be provided to both parties, in writing, with a formal notice and articulated reasons for the dismissal.

### **§ 9.604      Discretionary Dismissal.**

- (1) The Complainant may dismiss a formal or informal complaint at any time during the investigation or at any time during the Title IX hearing, if:

- a. Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint and any/all allegations; or
  - b. Respondent is no longer enrolled or employed by the University; or
  - c. Specific circumstances prevent the recipient from gathering sufficient evidence to reach a determination as to the formal complaint or allegations therein.
- (2) Notice of Dismissal must be provided to both parties, in writing, with a formal notice and articulated reasons for the dismissal.

**§ 9.605      Office of Civil Rights.**

- (1) The Office for Civil Rights (OCR) is a sub-agency of the U.S. Department of Education that is primarily focused on enforcing civil rights laws prohibiting schools from engaging in discrimination on the basis of race, color, national origin, sex, disability, age, or membership in patriotic youth organizations.
- (2) If OCR finds that a recipient has discriminated against persons on the basis of sex in an education program or activity under this part, or otherwise violated this part, such recipient must take such remedial action as OCR deems necessary to remedy the violation
- (3) OCR will not use outcome of process as evidence of deliberate indifference, or otherwise evidence of discrimination, solely because OCR would have reached a different conclusion in an independent weighing of the evidence.

**§ 9.606      Recordkeeping.**

- (1) The Office of Rights Enforcement must maintain all records filed under this chapter for a period not to exceed seven (7) years, including:
  - a. Investigation and adjudication determination regarding responsibility;
  - b. All audio or audiovisual recordings or transcripts of the Title IX hearing;
  - c. Any disciplinary sanctions imposed;
  - d. All remedies provided to Complainant;
  - e. Any appeals and the final results; and/or
  - f. All informal resolution request and the results
- (2) Training materials for Investigators, Decision-makers, and persons designated to facilitate informal resolution process.
- (3) Any actions taken (including supportive measures) in response to a report of sexual harassment:
  - a. Basis for conclusion that response was not deliberately indifferent;
  - b. Measures were designed to restore or preserve equal access to educational programs and activities;
  - c. If supportive measures were not provided, document the reasons why such a response was not clearly unreasonable in light of known circumstances; and/or
  - d. Recordkeeping does not prevent inclusion of additional details or explanations later.

**§ 9.607      Reporting.**

**(1) Mandatory Reporting:**

- a. All University employees are responsible for taking all appropriate action to prevent sex discrimination or sexual harassment, to correct it when it occurs, and must promptly report it to the Title IX Coordinator. Failure to do so may result in disciplinary action up to and including termination. All University employees are considered responsible employees with a duty to report any incident to the Title IX Coordinator.

**(2) Confidential Reporting:**

- a. Resources are available through the University Student Services Division, staff, counselors, victims' advocates are available to speak with any person who wishes to report an incident and remain anonymous. All forms of sexual harassment should be reported, no matter the severity. In addition, University should be made aware of possible threats to the campus community in order to issue timely warnings. The University shall keep anonymous source's identity confidential.

**(3) Reporting to the Law Enforcement:**

- a. The University strongly encourages anyone to report sexual violence and any other criminal offenses to the appropriate law enforcement agency. 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, University disciplinary actions, and/or civil actions against the Respondent.

**(4) Reporting for Faculty and Staff (Non-Student) Instances:**

- a. Faculty and staff shall report any instances of sexual harassment by another faculty or staff member to the Title IX Coordinator. As stated above, the University also strongly encourages reporting any instances to the police.

**(5) Employee Obligation to Report (Student Instances):**

- a. In compliance with Title IX, employees who become aware of a student instance of sexual harassment shall immediately report such instance to the Title IX Coordinator, including the name of the persons involved.

**(6) Reporting of Student Instances:**

- a. Students shall report any instances of sex discrimination or sexual harassment to any University employee and/or the Title IX Coordinator. A complaint shall be filed as soon as reasonably possible. If either the Complainant or the Respondent is a student, the incident will be addressed through the Title IX process. The report can be made in person, by phone, mail, or email using the contact information listed for the Title IX Coordinator or by any other means that results in the Title IX Coordinator receiving the report.

## **SUBCHAPTER 9.7 – COMPLAINT PROCEDURE - STUDENT**

### **§ 9.701      General.**

- (1) University students, faculty, staff, other University appointees, or third parties who believe they are directly affected by the conduct of a University Student (collectively “Complainant”) may:
  - a. Request information; or
  - b. A confidential review to determine if the conduct may violate the policy; or
  - c. Seek informal resolution; or
  - d. File a formal complaint.
  
- (1) Claimants are encouraged to bring their concerns to the University’s Title IX Coordinator, but if they choose to contact another University representative, they shall refer the matter to the Title IX Coordinator per the Title IX policy. If matter involves the Title IX Coordinator, the University representative shall report the matter to the HR Director.

### **§ 9.702      Request for Information.**

- (1) A request for information about a comment or conduct alleged against an enrolled student of the University can be provided to the Title IX Coordinator to ascertain the appropriate response.
  
- (2) Such a request will be informal and not require the appointment of an Investigator.
  
- (3) The request will be confidential and available for public review only with written consent from the Complainant and the potential Respondent.
  
- (4) All requests for information will be maintained by the ORE for a period of six months, after such time the record will be destroyed.
  
- (5) Complainant seeking information or advice can expect to learn about resources available at the University and elsewhere that provide counseling and support.
  
- (6) All parties requesting information will be advised about the steps involved in pursuing an informal resolution or filing a formal complaint.
  
- (7) The Title IX Coordinator may discuss with Complainant whether any interim measures are appropriate at this stage.

### **§ 9.703      Request for Informal Resolution.**

- (1) Complainant may make a request, either orally or in writing, for informal resolution to the Title IX Coordinator. The Title IX coordinator will assign a Title IX Worker. The request will be confidential and available to public review with consent from the Complainant and the potential Respondent.

- (2) The request should identify the alleged harasser (if known) and describe the allegations with specificity. The Title IX Worker will assess the severity of the alleged harassment and the potential risk of a hostile environment for others in the community to determine whether informal resolution may be appropriate.
- (3) The Title IX Worker will consult further with the person initiating the request, inform the person who is the subject of the allegations, and gather additional relevant information as necessary from the parties and others, as indicated.
- (4) The Title IX Coordinator, upon recommendation of the Title IX Worker, may implement appropriate interim measures to protect the educational and work environment.
- (5) The Title IX Worker will attempt to aid the parties in finding a mutually acceptable resolution. A matter will be deemed satisfactorily resolved when both parties expressly agree to an outcome that is also acceptable to the Title IX Coordinator.
- (6) At any point prior to such an express agreement, the Complainant may withdraw the request for informal resolution.
- (7) All parties have the ability to file a formal complaint under section 9.605 of this policy.
- (8) Those facing allegations may wish to obtain legal advice about how this process could affect any criminal case in which they are or may become involved. At any time, the person that is the subject of the allegations formally secures legal representation, the Title IX Worker will suspend all further actions and will inform the Title IX Coordinator. The Title IX Coordinator will inform law enforcement.
- (9) All informal resolution requests will be concluded within 30 days of the date of the request. Any extensions to the deadline must be approved by the Title IX Coordinator.
- (10) Any informal resolution requests that are filed in bad faith may result in discipline up to and including expulsion or termination from employment, whichever is applicable.

**§ 9.704      Formal Complaint.**

- (1) A formal complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment and stating the date, time, place, name(s) of person(s) involved (e.g. the accused, witnesses) and sufficient detail to make a determination regarding the formal complaint process enumerated below.

**§ 9.705      Notice of Complaint.**

- (1) Upon receipt of a formal complaint, ORE shall provide written notice to all known parties within 30 days' and provide the Respondent 20 days to prepare a response before an initial interview. Written notice includes:

- a. Notice of the complaint procedure, including any informal resolution process; and
- b. 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; and
- c. 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; and
- d. Notice of the parties' right to have representation by an Advising Representative (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- e. Notice that knowingly making false statements or providing false information in the grievance process is a violation of the University's Rules of Conduct pursuant to the Employee Handbook Policy No.7.1 and subject to disciplinary action.

**§ 9.706      Interim Measures.**

- (1) The Title IX Coordinator, at any time after a Complainant has contacted the ORE, can implement interim measures. All measures implemented by the Title IX Coordinator must be approved by the University President.
- (2) Interim measures are designed to support and protect the Complainant or the University Community and may be considered or implemented at any time, including during a request for information, informal resolution, or a formal complaint proceeding.
- (3) Interim measures include, but are not limited to:
  - a. Restrictions on contact;
  - b. Course-schedule or work-schedule alteration;
  - c. Changes in housing;
  - d. Leaves of absence; and/or
  - e. Increased monitoring of certain areas of the campus.
- (4) These interim measures are subject to review and revision throughout the processes described below.

**§ 9.707      Investigation.**

- (1) The Title IX Coordinator 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 Title IX Coordinator will be available to explain to both parties the process and to notify in writing of the receipt of a complaint and the actions the University will take. The burden of gathering evidence and burden of proof must remain on the University. The Title IX Coordinator shall appoint a Title IX Investigator.
- (2) An investigation will be conducted by a Title IX Investigator. This investigation will include:



- a. Meeting personally with the Complainant, (unless extraordinary circumstances prevent a personal meeting);
- b. Meeting personally with the Respondent, (unless extraordinary circumstances prevent a personal meeting);
- c. Presumption that the Respondent is innocent of the alleged conduct until a determination regarding responsibility is made;
- d. Collecting any physical evidence;
- e. Meeting personally with any witnesses, (unless extraordinary circumstances prevent a personal meeting with one or more witnesses);
- f. Reviewing any documentary evidence; and
- g. Providing a written report to the Title IX Coordinator.

**§ 9.708      Title IX Hearing Determination.**

- (1) The Title IX Coordinator will determine if a Title IX Hearing is necessary. The Complainant and the Respondent shall be notified in writing of the hearing date, the alleged policy violation and issued a notice to appear at the hearing. The written notice shall 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.

**§ 9.709      Notice of a Title IX Hearing.**

- (1) Upon determination that a Title IX Hearing is required, ORE shall provide written notice to all known parties in sufficient time to give the parties time to prepare for the hearing. Written notice includes:
  - a. Notice of the hearing procedure, including date, time and location of the hearing;
  - b. Notice of the allegations;
  - c. Copies of all the information that has been created and maintained in the ORE file, including the investigation reports and statements of witnesses;
  - d. Notice of the parties' right to have representation by an Advising Representative (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
  - e. Notice that knowingly making false statements or providing false information in the grievance process is a violation of the University's Rules of Conduct pursuant to the Employee Handbook Policy No.7.1 and subject to disciplinary action.

## **SUBCHAPTER 9.8 – COMPLAINT PROCEDURE – STAFF**

### **§ 9.801      General.**

- (2) University students, faculty, staff, other University appointees, or third parties who believe they are directly affected by the conduct of a University staff member (collectively “Complainant”) may:
  - a. Request information;
  - b. A confidential review to determine if the conduct may violate the policy;
  - c. Seek informal resolution; and/or
  - d. File a formal complaint.
- (3) Claimants are encouraged to bring their concerns to the University’s Title IX Coordinator, but if they choose to contact another University representative, they shall refer the matter to the Title IX Coordinator per the Title IX policy. If matter involves the Title IX Coordinator, the University representative shall report the matter to the HR Director.

### **§ 9.802      Request for Information.**

- (1) A request for information about a comment or conduct alleged by a current staff member of the University can be provided to the Title IX Coordinator to ascertain the appropriate response.
- (2) Such a request will be informal and not require the appointment of an Investigator.
- (3) The request shall remain confidential and available for public review only with written consent from the Complainant and the potential Respondent.
- (4) All requests for information shall be maintained by the ORE for a period of six months, after such time the record will be destroyed.
- (5) Complainant seeking information or advice can receive resources available at the University and elsewhere that provide counseling and support.
- (6) All parties requesting information will be advised about the steps involved in pursuing an informal resolution or filing a formal complaint.
- (7) The Title IX Coordinator may discuss with Complainant whether any interim measures are appropriate.

### **§ 9.803      Request for Informal Resolution.**

- (1) Complainant may make a request, either verbally or in writing, for informal resolution to the Title IX Coordinator. The Title IX Coordinator will assign a Title IX Worker. The request will be confidential and available to public review with consent from the Complainant and the respondent.

- (2) The request should identify the alleged harasser (if known) and describe the allegations with specificity. The Title IX Worker will assess the severity of the alleged harassment and the potential risk of a hostile environment for others in the community to determine whether informal resolution may be appropriate.
- (3) The Title IX Worker will consult further with the person initiating the request, inform the person who is the subject of the allegations, and gather additional relevant information as necessary from the parties and others, as indicated.
- (4) The Title IX Coordinator, upon recommendation of the Title IX Worker, may implement appropriate interim measures to protect the educational and work environment.
- (5) The Title IX Worker will attempt to aid the parties in finding a mutually acceptable resolution. A matter will be deemed satisfactorily resolved when both parties expressly agree to an outcome that is also acceptable to the Title IX Coordinator.
- (6) At any point prior to such an express agreement, the Complainant may withdraw the request for informal resolution.
- (7) All parties have the ability to file a formal complaint under section 9.605 of this policy.
- (8) Those facing allegations may wish to obtain legal advice about how this process could affect any criminal case in which they are or may become involved. At any time, either party secures legal representation, the Title IX Worker will suspend all further actions and will inform the Title IX Coordinator.
- (9) All informal resolution requests shall be concluded within 30 days of the date of the request. Any extensions to the deadline must be approved by the Title IX Coordinator.
- (10) Any informal resolution requests that are filed in bad faith may result in disciplinary action, and including expulsion or termination from employment, whichever is applicable.

**§ 9.804      Formal Complaint.**

- (1) A formal complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment and stating the date, time, place, name(s) of person(s) involved (e.g. the accused, witnesses) and sufficient detail to make a determination regarding the formal complaint process enumerated below.

**§ 9.805      Notice of Complaint.**

- (1) Upon receipt of a formal complaint, ORE shall provide written notice to all known parties within 30 days' and provide the Respondent 20 days to prepare a response before an initial interview. Written notice includes:
  - a. Notice of the complaint procedure, including any informal resolution process; and

- b. 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; and
- c. A statement that the Respondent is presumed innocent, and that any responsibility will be determined at the conclusion of the grievance process; and
- d. Notice of the parties' right to have legal representation (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- e. Notice that knowingly making false statements or providing false information in the grievance process is a violation of the University's Rules of Conduct pursuant to the Employee Handbook Policy No.7.1 and subject to disciplinary action.

**§ 9.806      Interim Measures.**

- (1) The Title IX Coordinator, at any time after a Complainant has contacted the ORE, can implement interim measures. All measures implemented by the Title IX Coordinator must be approved by the University President.
- (2) Interim measures are designed to support and protect the Complainant or the University Community and may be considered or implemented at any time, including during a request for information, informal resolution, or a formal complaint proceeding.
- (3) Interim measures include, but are not limited to:
  - a. Restrictions on contact;
  - b. Course-schedule or work-schedule alteration;
  - c. Changes in housing;
  - d. Leaves of absence; and/or
  - e. Increased monitoring of certain areas of the campus.
- (4) These interim measures are subject to review and revision throughout the processes described below.

**§ 9.807      Investigation.**

- (1) The Title IX Coordinator shall make a determination to begin a formal investigation of sex, and/or gender discrimination or a sexual harassment incident which will lead to an institutional action. The Title IX Coordinator will be available to explain to both parties the process and to notify in writing the receipt of a complaint and the actions the University is taking. The Title IX Coordinator shall appoint a Title IX Investigator.
- (2) An investigation will be conducted by a Title IX Investigator. Investigations shall include:
  - a. Meeting personally with the Complainant, (unless extraordinary circumstances prevent a personal meeting);
  - b. Meeting personally with the Respondent, (unless extraordinary circumstances prevent a personal meeting);
  - c. Presumption that the Respondent is innocent of the alleged conduct until a determination regarding responsibility is made;
  - d. Collecting any physical evidence;
  - e. Meeting personally with any witnesses, (unless extraordinary circumstances

- prevent a personal meeting with one or more witnesses);
- f. Reviewing any documentary evidence; and
- g. Providing a written report to the Title IX Coordinator.

**§ 9.808 Title IX Hearing Determination.**

- (1) The Title IX Coordinator determines if a Title IX Hearing is necessary. If the University determines to proceed with a hearing, the Complainant and the Respondent shall be notified in writing of the hearing date, the alleged policy violation and issued a notice to appear at the hearing. The written notice will be hand delivered directly to the staff member or mailed to the local address on file in the HR Office. Staff are responsible for providing and maintaining a current local address in the HR Office.

**§ 9.809 Notice of a Title IX Hearing.**

- (1) Upon determination that a Title IX Hearing is required, ORE will provide written notice to all known parties within 30-days and provide the parties 20 days to prepare for the hearing. Written notice includes:
  - a. Notice of the hearing procedure, including date, time and location of the hearing;
  - b. Notice of the allegations;
  - c. Copies of all the information that has been created and maintained in the ORE file, including the investigation reports and statements of witnesses;
  - d. Notice of the parties' right to have representation by an Advising Representative (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
  - e. Notice that knowingly making false statements or providing false information in the grievance process is a violation of the University's Rules of Conduct pursuant to the Employee Handbook Policy No.7.1 and subject to disciplinary action.

## **SUBCHAPTER 9.9 – COMPLAINT PROCEDURE – FACULTY**

### **§ 9.901      General.**

- (1) University students, faculty, staff, other University appointees, or third parties (collectively “Complainant”) who believe they are directly affected by the conduct of a University faculty member may:
  - a. Request information;
  - b. Request a confidential review to determine if the conduct may violate the policy;
  - c. Seek informal resolution; and/or
  - d. File a formal complaint.
- (2) Claimants are encouraged to bring their concerns to the University’s Title IX Coordinator, but if they choose to contact another University representative, they shall refer the matter to the Title IX Coordinator per the Title IX policy. If matter involves the Title IX Coordinator, the University representative shall report the matter to the HR Director.

### **§ 9.902      Request for Information.**

- (1) A request for information about a comment or conduct alleged by a current faculty member of the University can be provided to the Title IX Coordinator to ascertain the appropriate response.
- (2) A request for information will be informal and not require the appointment of an Investigator.
- (3) The request shall remain confidential and available for public review only with written consent from the Complainant and the Respondent.
- (4) All requests for information shall be maintained by the ORE for a period of six months, after such time the record will be destroyed. Unless a claim is opened and in those cases will remain a part of the file.
- (5) Complainant seeking information or advice directed to resources available at the University and elsewhere that provide counseling and support.
- (6) All parties requesting information will be advised about the steps involved in pursuing an informal resolution or filing a formal complaint.
- (7) The Title IX Coordinator may discuss with Complainant whether any interim measures are appropriate at this stage.

### **§ 9.903      Request for Informal Resolution.**

- (1) Complainant may make a request for informal resolution, either verbally or in writing, to the Title IX Coordinator. The Title IX Coordinator will assign a Title IX Worker. The request will remain confidential and available for public review only with written consent from the Complainant and the Respondent.

- (2) The request for informal resolution must identify the alleged harasser (if known) and describe the allegations with specificity. The Title IX Worker will assess the severity of the alleged harassment and the potential risk of a hostile environment for others in the community to determine whether informal resolution may be appropriate.
- (3) The Title IX Worker shall consult further with the person initiating the request, inform the person who is the subject of the allegations, and gather additional relevant information as necessary from the parties and others, as indicated.
- (4) The Title IX Coordinator, upon recommendation of the Title IX Worker, may implement appropriate interim measures to protect the educational and work environment.
- (5) The Title IX Worker will attempt to aid the parties in finding a mutually acceptable resolution. A matter will be deemed satisfactorily resolved when both parties expressly agree to an outcome that is also acceptable to the Title IX Coordinator.
- (6) At any point prior to such an express agreement, the Complainant may withdraw the request for informal resolution.
- (7) All parties have the ability to file a formal complaint under section 9.605 of this policy.
- (8) Those facing allegations may wish to obtain legal advice about how this process could affect any criminal case in which they are or may become involved. At any time, either party secures legal representation, the Title IX Worker will suspend all further actions and will inform the Title IX Coordinator.
- (9) All informal resolution requests shall be addressed within 30 days of the date of the request. Any extensions to the deadline must be approved by the Title IX Coordinator.
- (10) Any informal resolution requests that are filed in bad faith may result in disciplinary action, up to, and including expulsion, or termination from employment, whichever is applicable.

**§ 9.904      Formal Complaint.**

- (1) A formal complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment and stating the date, time, place, name(s) of person(s) involved (e.g. the accused, witnesses) and sufficient detail to make a determination regarding the formal complaint process enumerated below.

**§ 9.905      Notice of Complaint.**

- (1) Upon receipt of a formal complaint, ORE shall provide written notice to all known parties within 30 days' and provide the Respondent 20 days to prepare a response before an initial interview. Written notice includes:
  - a. Notice of the complaint procedure, including any informal resolution process;

- b. 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;
- c. A statement that the Respondent is presumed innocent and that any responsibility will be determined at the conclusion of the grievance process;
- d. Notice of the parties' right to have legal representation (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- e. 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.

**§ 9.906      Interim Measures.**

- (1) The Title IX Coordinator, at any time after a Complainant has contacted the ORE, can implement interim measures. All interim measures implemented by the Title IX Coordinator must be approved by the University President.
- (2) Interim measures are designed to support and protect the Complainant or the University Community and may be considered or implemented at any time, including during a request for information, informal resolution, or a formal complaint proceeding.
- (3) Interim measures include, but are not limited to:
  - a. Restrictions on contact;
  - b. Course-schedule or work-schedule alteration;
  - c. Changes in housing;
  - d. Leaves of absence; and/or
  - e. Increased monitoring of certain areas of the campus.
- (4) These interim measures are subject to review and revision throughout the processes described below.

**§ 9.907      Investigation.**

- (1) The Title IX Coordinator shall make a determination to begin a formal investigation of sex, and/or gender discrimination or a sexual harassment incident which will lead to an institutional action. The coordinator will be available to explain to both parties the process and to notify in writing of the receipt of a complaint and the actions the University will take. The Title IX Coordinator shall appoint a Title IX Investigator.
- (2) An investigation will be conducted by a Title IX Investigator. This investigation will include:
  - a. Meeting personally with the Complainant, (unless extraordinary circumstances prevent a personal meeting);
  - b. Meeting personally with the Respondent, (unless extraordinary circumstances prevent a personal meeting);
  - c. Presumption that the Respondent is innocent of the alleged conduct until a determination regarding responsibility is made;
  - d. Collecting any physical evidence;



- e. Meeting personally with any witnesses, (unless extraordinary circumstances prevent a personal meeting with one or more witnesses);
- f. Reviewing any documentary evidence; and
- g. Providing a written report to the Title IX Coordinator.

**§ 9.908 Title IX Hearing Determination.**

- (1) The Title IX Coordinator shall determine if a Title IX Hearing is necessary. If it is determined that a hearing is necessary, the Complainant and the Respondent shall be notified in writing of the hearing date, the alleged policy violation and issued a notice to appear at the hearing. The written notice shall 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.

**§ 9.909 Notice of a Title IX Hearing.**

- (1) Upon determination that a Title IX Hearing is required, ORE will provide written notice to all known parties within 30 days and give the parties 20 days to prepare for the hearing. Written notice includes:
  - a. Notice of the hearing procedure, including date, time and location of the hearing;
  - b. Notice of the allegations;
  - c. Copies of all the information that has been created and maintained in the ORE file, including the investigation reports and statements of witnesses;
  - d. Notice of the parties' right to have legal representation (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
  - e. Notice that knowingly making false statements or providing false information in the grievance process is a violation of the University's Rules of Conduct pursuant to the Employee Handbook Policy No.7.1 and subject to disciplinary action.

## **SUBCHAPTER 9.10 – TITLE IX HEARING**

### **§ 9.1001      Hearings.**

- (1) All Title IX hearings under this chapter shall be held by the Title IX Decision-Maker whom is appointed by the University President.
- (2) Each party shall have a right to legal representation to present their case on their behalf.
- (3) The right to representation shall be at the party's own expense.
- (4) Not having representation is not a bar to conducting the hearing.

### **§ 9.1002      Formality.**

- (1) All hearings shall be conducted live with attendance in person when possible.
- (2) The Parties shall present evidence as defined by 2 Lac Courte Oreilles Tribal Code of Law Chapter 3.
- (3) Parties in their dealings with one another shall conduct all hearing and hearing-related proceedings, whether written or oral, with civility and respect for each of the participants. Parties will abstain from any conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive.

### **§ 9.1003      Evidence.**

- (1) Evidence shall be accepted into the record by the Title IX Decision Maker.
- (2) Evidence includes, but is not limited to the following: written reports, statements by witnesses, incident reports, photographs, audio, or visual evidence
- (3) All evidence accepted by the Title IX Decision-maker shall be made available to all parties to the complaint.

### **§ 9.1004      Hearing Protocol.**

- (1) Parties in their dealings with one another shall conduct all hearings and hearing-related proceedings, whether written or oral, with civility and respect for each of the participants. Parties will abstain from any conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive.
- (2) The Title IX Decision Maker may question witnesses.

**§ 9.1005      Parties.**

- (1) The University is a neutral Party with the responsibility to make sure its policies and procedures are followed to ensure fairness.
- (2) The Complainant shall be a Party, they will have the burden of proof to substantiate the allegation.
- (3) The Respondent shall be a Party and has a right to all notices and documents provided, they shall have the right to present any defense on all allegations properly brought under this Chapter.

**§ 9.1006      Burden of Proof.**

- (1) Where none is otherwise stated, the burden of proof shall be on the Party asserting a Claim, or affirmative defense, to prove each element of the claim. or the affirmative defense by a preponderance of the evidence.

**§ 9.1007      Conduct of a Title IX Hearing.**

- (1) The University must provide a hearing that includes:
  - a. The following rules of conduct that shall apply equally to both parties. Parties in their dealings with one another shall conduct all hearing and hearing-related proceedings, whether written or oral with civility and respect for each of the participants. Parties shall abstain from making disparaging, demeaning or sarcastic remarks or comments about another party.
  - b. Be audio recorded with a copy maintained by the ORE, available upon request.
- (2) The Hearing shall allow for testimony from each party that:
  - a. Permits each party's Advising Representative to ask the other party, and all witnesses, all relevant questions and follow-up questions
  - b. Provides, without fee or charge, an Advising Representative to a party without a representative
  - c. Includes questions challenging credibility
  - d. Includes cross-examination
  - e. Questions should be made by party's Advising Representative and never by a party personally.
- (3) All testimony shall be limited to the following:
  - a. Only relevant questions may be asked of a party or witness.
  - b. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-maker must first determine whether the question is relevant.
  - c. If a question is excluded as not relevant, the Title IX Decision-maker must explain the decision to exclude the question.
  - d. Complainant's sexual behavior or predisposition are not relevant unless:
    - i. Such questions and evidence are offered to prove someone other than Respondent committed the alleged conduct or

- ii. The questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent

**§ 9.1008      Written Determination.**

- (1) At the conclusion of the hearing and after all the required documentation has been provided to the Title IX Decision-maker. The Title IX Decision-maker shall issue a final determination. The final determination shall be in writing. The final determination shall include:
  - a. The names of the parties;
  - b. Identification of the allegations potentially constituting sexual harassment;
  - c. Procedural steps since complaint;
    - i. Notices to the Parties,
    - ii. Interviews with Parties and Witnesses,
    - iii. Site visits,
    - iv. Methods used to gather other evidence.
  - d. Findings of fact;
  - e. Conclusion regarding application of University's Rules of Conduct (Employee Handbook Policy 7.1) to the facts'
  - f. Statement of and rationale for the result as to each allegation; and
    - i. Determination of responsibility,
    - ii. Any disciplinary sanctions imposed on Respondent,
    - iii. Whether remedies will be provided to Complainant.
  - g. Appeal information.
- (2) The written decision shall be served at the same time, as reasonably possible, to all the parties.
- (3) Access to education cannot be denied to either party unless expulsion is the remedy for the Respondent.

## **SUBCHAPTER 9.11 – APPEAL**

### **§ 9.1101      Right to Appeal.**

- (1) The Complainant and Respondent have the right to appeal a final determination of the hearing based on the limited grounds of substantial procedural error that materially affected the outcome and/or material, new evidence not reasonably available at the time of the hearing.

### **§ 9.1102      Deadline to Appeal.**

- (1) Written requests for appeal must be submitted to the ORE within ten (10) business days following delivery of the notice of the decision. Each party may respond in writing to any appeal submitted by the other party. Any requests received by the ORE after ten business (10) days will constitute a waiver of any right to appeal and the determination will be considered final.

### **§ 9.1103      Notice of Appeal.**

- (1) Written requests for appeal shall be submitted to the Title IX Coordinator. Title IX Coordinator shall ensure copy of the appeal will be given to the other party within five days of receipt.

### **§ 9.1104      Process of Appeal.**

- (1) Appeals will be reviewed by the University President.
  - a. The appeal is strictly limited to a determination of substantial procedural error that materially affected the outcome, and/or new evidence not reasonably available to the Parties at the time of the hearing.
  - b. If either or both are found to be so by the University President, the appeal will be granted.
- (2) If the appeal is denied, the matter may be brought to LCO Tribal Court.
- (3) If the appeal is granted:
  - a. It is the University President's discretion to convert any sanction imposed to a lesser sanction, or rescind any previous sanction; or
  - b. Remand the matter back to the Decision-maker for further consideration:
    - i. Due to the discovery of new evidence not reasonably available at the time of the initial hearing,
    - ii. Due to procedural error, go back to the Decision-maker with instructions on the procedural error.
    - iii. The matter will be returned to the same Decision-maker which originally heard the matter for reconsideration in light of the new evidence and/or instruction on procedural error.

- (4) In the event of a reconsideration:
- a. The University President will give the Decision-maker instructions regarding the nature and extent of its reconsideration.
  - b. The Decision-maker will act promptly to reconsider the matter consistent with those instructions.
  - c. Upon remand, the finding of the Decision-maker will be final for the purposes of the Title IX hearing.
  - d. The Decision-maker shall provide the University President with the final decision.

**§ 9.1105      Final Decision on Appeal.**

- (1) The final written decision will be from the University President. The decision will be communicated within ten (10) business days of receiving the written recommendation. Both parties will be notified of the final outcome of the appeal.
- (2) The decision of the University President on appeal shall be final for the purposes of a Title IX hearing.

Chapter 9  
Sexual and Gender-Based Harassment Policies and Procedures for the  
Lac Courte Oreilles Ojibwe College

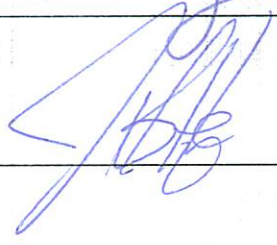
Date approved: 11/18/2022

Review date: November 2023

Signature



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President



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Board Chair