



## TITLE IX POLICY

### HARASSING CONDUCT AND GENDER-BASED DISCRIMINATION

Title IX is a federal civil rights law that prohibits discrimination on the basis of sex, including on the basis of sex stereotypes, in education programs and activities. All colleges and universities that receive federal funds must comply with Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 et seq. and its implementing regulations, 34 C.F.R. Part 106.

Because harassment, including sexual harassment, is prohibited by federal and state laws, LIBI strictly forbids harassment of any kind, and will swiftly take appropriate action to address any violations of this policy. Harassment is any verbal (can include verbal taunting, including racial and ethnic slurs) or physical conduct designed to threaten, intimidate or coerce that, in the victim's opinion, impairs his/her access to LIBI's programs or activities.

Harassing conduct may take many forms, including verbal acts and name calling; graphic and written statements, which may include use of cell phones or the Internet; or other conduct that may be physically threatening, harmful, or humiliating. Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by LIBI. When such harassment is based on race, color, national origin, sex, or disability, it violates the civil rights laws that the Office for Civil Rights (OCR) enforces.

Further examples of harassment include:

- **Verbal:** Comments that can be perceived as offensive or are unwelcomed regarding a person's nationality, origin, race, color, religion, gender, sexual orientation, age, body disability or appearance. Epithets, slurs, negative stereotyping.
- **Nonverbal:** Distribution, display or discussion of any written or graphic material that ridicules, demeans, insults, belittles, or shows hostility or aversion toward an individual or group because of national origin, race color, religion, age, gender, sexual orientation, pregnancy, disability, gender identity, marital or other protected status.

Members of the LIBI community who are found to be engaging in any behaviors that can be classified as harassing will face disciplinary actions commensurate with the severity of their actions. LIBI will address harassment incidents about which it knows or reasonably should have knowledge of (e.g., when the harassment is in plain sight, widespread, or well known to students and staff, such as harassment occurring in hallways, during scheduled class sessions, during extracurricular activities supervised by LIBI staff, or through graffiti on LIBI's premises). In cases where the obvious signs of the harassment are sufficient to take disciplinary action against an individual, the College will do so in accordance with its written policies. If through its investigation or conduct hearing process LIBI becomes aware of misconduct or discovers additional incidents that, taken together, may constitute a hostile environment, the individual(s) involved in creating such hostile conditions or environments will be subject to separate investigations or hearings. In all cases, without exception, LIBI staff, faculty and students are expected to familiarize themselves with all of LIBI's policies prohibiting harassment and procedures for reporting and resolving complaints that will alert the College to incidents of harassment.

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## JURISDICTION

The Long Island Business Institute must have the authority over the person or people committing the violent or harassing behavior and/or over the environment where the behavior is happening in order to respond properly and promptly.

When responding to harassment, LIBI will take immediate and appropriate action to investigate or otherwise determine what may have occurred. The specific steps in an investigation will vary depending upon the nature of the allegations, the source of the complaint, the age of the student or students involved and other similar factors. In all cases, however, the inquiry will be prompt, thorough, and impartial.

If the investigation reveals that discriminatory harassment has occurred, LIBI will take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring. LIBI will take steps to stop further harassment and prevent any retaliation against the person who made the complaint (or was the subject of the harassment) or against those who provided information as witnesses. LIBI will ensure that the harassed students and their families know how to report any subsequent problems, conducting follow-up inquiries to see if there have been any new incidents or any instances of retaliation, and responding promptly and appropriately to address continuing or new problems.

When responding to incidents of misconduct, LIBI will not be guided by the label used to describe the incident (e.g., bullying, sexually harassing, etc.). Rather, the nature of the conduct itself will be assessed for violation of College policies or processes, state and federal guideline violations, and civil rights implications. For instance, if the abusive behavior is on the basis of race, color, national origin, sex, or disability, and creates a hostile environment, LIBI will respond to the complaint in accordance with the applicable federal civil rights statutes and regulations enforced by OCR.

It is the explicit expectation of LIBI's administration that all staff, Faculty, and students will become familiar with all policies and procedures published by LIBI on stalking, harassment and gender-based violence. Students with questions regarding any of the published materials on these topics are highly encouraged to speak to their Academic Advisor or to seek clarification from the Registrar.

Colleges and universities receiving Title IV funding are required to provide additional services to the student who is reporting being harassed in order to end the harassment. Some acceptable approaches on behalf of the institution include separating the accused harasser and the target, providing counseling for the target and/or harasser, and/or taking disciplinary action against the harasser. Unless no other feasible alternatives exist, or the safety and security of the student is a concern, LIBI will attempt to minimize the burden on the target's educational program (e.g., avoiding requiring the target to change his/her class schedule).

## TITLE IX REQUIREMENTS RELATED TO SEXUAL HARASSMENT AND SEXUAL VIOLENCE

New York State's Sexual Assault Prevention and Security Act requires colleges to provide students with information relating to sexual assault prevention. The Long Island Business Institute is committed to maintaining a safe learning and work environment for all members of the LIBI community. Any behavior on the part of a member of the college community, its guests, or its visitors that constitutes a sexual offense is in violation of LIBI's regulations. All reports of sexual assault will be treated with appropriate gravity and promptly investigated.

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“**SEXUAL HARASSMENT** is unwelcome conduct of a sexual nature, which can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Thus, sexual harassment prohibited by Title IX can include conduct such as touching of a sexual nature; making sexual comments, jokes, or gestures; writing graffiti or displaying or distributing sexually explicit drawings, pictures, or written materials; calling students sexually charged names; spreading sexual rumors; rating students on sexual activity or performance; or circulating, showing, or creating e-mails or websites of a sexual nature.”<sup>1</sup>

“**SEXUAL VIOLENCE** refers to physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.”<sup>2</sup>

Students or employees who believe that they are, or have been, subject to any behaviors or conduct that can be classified as gender-based violence, harassment, stalking or any of the broad range of behaviors directed at the victim such as actions that harass, frighten, seriously alarm, threaten, terrorize, torment, and/or force another into the life of the victim, should immediately contact one of the Title IX Coordinators:

**Adriana Arguelles**  
Flushing Campus  
136-18 39th Avenue, 4th floor  
Flushing, NY 11354  
347.368.1193 ext. 114

**Audrey Sumner**  
Commack Campus  
6500 Jericho Turnpike  
Commack, NY 11725  
631.499.7100 ext. 13

**Ronald Murray**  
Manhattan Center  
232 W 40th street, 9th floor  
New York, NY 10018  
212.226.7300 ext. 314

Although students, faculty and staff may seek help from a coordinator or the Dean, everyone is initially encouraged to seek help from the Title IX Coordinator assigned to the location where they work or attend the majority of their classes.

For definition of Key Terms and further information and instructions on how to report incidents under this policy, grievance procedures, investigation process, hearing procedures, resolution and appeal please see Appendix J.

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1 Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender-based harassment is discussed in more detail in the 2001 Guidance, and in the 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

2 <http://www2.ed.gov/print/about/offices/list/ocr/letters/colleague-201104.html>

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## GRIEVANCE PROCEDURES FOR COMPLAINTS OF GENDER-BASED MISCONDUCT

### REPORTS INVOLVING FACULTY MEMBER, STAFF MEMBER, OR ADMINISTRATOR

Reports of gender-based misconduct by a LIBI faculty member, staff member, or administrator should be filed with the following office:

Title IX Coordinators:

**Adriana Arguelles**  
Flushing Campus  
136-18 39th Avenue, 4th Floor  
Flushing, NY 11354  
347.368.1193 ext. 114

**Audrey Sumner**  
Commack Campus  
6500 Jericho Turnpike  
Commack, NY 11725  
631.499.7100

**Ronald Murray**  
Manhattan Center  
232 W 40th street, 9th floor  
New York, NY 10013  
212.226.7300 ext. 314

### JURISDICTION

LIBI is able to respond formally to alleged incidents of gender-based misconduct:

- that occurred on campus;
- that were part of official College programs (regardless of location); or
- where the Complainant and Respondent are a student, member of the Faculty, staff, or administration of LIBI.

### THIRD-PARTY REPORTS

In cases where the gender-based misconduct is reported to the Title IX Coordinator or to the Dean of Administration by a third party, the Complainant will be notified by the Title IX Coordinator or the Dean that a report has been received. The Title IX Coordinator will contact the Complainant to discuss his/her options and rights under LIBI's written policies.

### CHOOSING TO REPORT

Reporting sexual harassment or any other gender-based misconduct is personal, and there is no one prescribed way to respond. Not every individual will be prepared to make a report to the college or to law enforcement, and individuals are not expected or required to pursue a specific course of action. LIBI recognizes that choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. At all times, LIBI will seek to respect an individual's autonomy in making these important decisions.

### ANONYMOUS REPORTING:

Any individual may make an anonymous report concerning an act of sexual harassment or gender-based misconduct. An individual may report the incident without disclosing his/her name, identifying the Respondent or requesting any action. Depending on the level of information available about the incident or the individuals involved, however, LIBI's ability to respond to an anonymous report may be limited.

Each LIBI library is equipped with a white lockbox. The purpose of these boxes is to give all members of the LIBI community the opportunity to submit any anonymous reports of gender-based misconduct anonymously to the Title IX Coordinator.

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## AMNESTY FOR STUDENTS WHO REPORT SEXUAL MISCONDUCT

LIBI encourages reporting and seeks to remove any barriers to reporting by making the procedures for reporting transparent and straightforward. LIBI recognizes that an individual who has been drinking or using drugs at the time of the incident may be hesitant to make a report because of potential Student Conduct consequences for his/her own conduct. An individual who reports sexual harassment or misconduct, either as a Complainant or a third party witness, will not be subject to disciplinary action by the College for his/her own personal consumption of alcohol or drugs at or near the time of the incident provided that any such violations did not and does not place the health or safety of any other person at risk. LIBI may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

## BYSTANDER INTERVENTION

LIBI expects all community members to take reasonable and prudent actions to prevent or stop an act of sexual harassment or misconduct. Taking action may include direct intervention, calling law enforcement, or seeking assistance from a person in administrative authority at the College. All members of the LIBI community who choose to exercise this positive moral obligation will be supported by the college and protected from retaliation.

## TIME FRAME FOR RESOLUTION

Once the complaint is received by the Title IX Coordinator, the College will aim to complete the investigation and have a resolution within 60 days. Extenuating circumstances may arise that require the complaint process to extend beyond 60 days. In the event that the investigation and resolution exceed this time frame, LIBI will notify all parties of the need for additional time and best efforts will be made to complete the process in a timely manner. In general, a Complainant and Respondent can expect to receive periodic updates as to the status of the review or investigation.

The grievance procedures below are specifically for the adjudication of complaints of gender-based misconduct when such complaints involve LIBI students, Faculty, staff, administrators, and/or third parties.

The Title IX Coordinators are responsible for implementation of LIBI's grievance policies and procedures. Students, Faculty, staff, and third parties wishing to report an offending incident or to direct inquiries or to file a complaint about any aspect of sexual harassment, discrimination, or inappropriate sexual conduct are asked to contact the Title IX Coordinator designated to the campus where the incident occurred. Every college employee (e.g., student services staff, members of the Advising staff, Associate (Program) Directors, Directors, members of Executive Staff, full-time Faculty, adjunct Faculty, etc.) informed of an allegation of gender-based misconduct against a student is expected to file a report with the campus-designated Title IX Coordinator or with the Dean of Administration. LIBI does not designate any officers to serve in a privileged professional capacity (i.e., counselors, clergy, medical providers, and rape crisis counselors) who will not be bound by this expectation.

Upon taking the Complainant's report, the Title IX Coordinator will determine the appropriate response to the allegation based on the nature of the alleged violation and the totality of information available at the time of the alleged incident and the circumstances involved. The Coordinator will make every effort to maintain confidentiality and to preserve the Complainant's rights and privacy and will involve only the college officials "who need to know" about the complaint in order to carry out LIBI's policies and procedures. Depending on the severity and immediacy of the case and circumstances surrounding the case, the Coordinator may determine that immediate involvement of law enforcement authorities may be necessary. In certain instances, based

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on the best assessment of the information available to the Coordinator at the time, the Coordinator may also determine that an internal investigation is necessary. In cases where the Complainant refuses to cooperate with the procedures of an internal investigation, such investigation may proceed without the support of the complainant. At such time, the Title IX Coordinator will turn the case over to the Dean of Administration, who will determine the best course of action to comply with LIBI's policies and procedures and compliance with federal and state laws.

In grievous cases, the Title IX Coordinator is authorized not to uphold requests from complainants to "just record my concerns" or "not take any action at this time," if in the best judgment of the Title IX Coordinator, the circumstances presented warrant the immediate involvement of the College or appropriate law enforcement.

Title IX Coordinators ensure a fair and neutral process for all parties with regard to Title IX compliance.

Sexual discrimination, sexual harassment, (intimate partner violence) domestic violence, dating violence, stalking, sexual exploitation, retaliation, or any other offending incident or sexual misconduct should be reported to the Title IX Coordinator as soon as they occur. Although there is no time limit on making a complaint, LIBI explicitly expects that individuals experiencing any unwelcomed or harassing behavior will report those incidents to the college promptly. A complaint should be filed as soon as the incident occurs to allow the College to conduct a timely, effective, and equitable investigation with the benefit of witnesses and evidence.

Individuals who select not to report an incident when it occurs must be aware that LIBI may not be able to pursue disciplinary action against an individual who is no longer affiliated with the college. LIBI, however, will still conduct a Title IX review, offer appropriate accommodations to a Complainant, and take appropriate action to eliminate a hostile environment in the future.

If the Title IX Coordinator determines that pre-investigation actions are warranted to ensure the safety of the Complainant, the Coordinator will discuss those with the Dean of Administration as soon as it is feasible to do so. The Coordinator will apply the "preponderance of the evidence"<sup>1</sup> standard in determining whether a violation of LIBI's sexual harassment and/or sexual violence policies may have occurred. Although the Coordinator will apply the "preponderance of the evidence" standard to determine the proper course of action, the Coordinator will only do so after determining that "clear and convincing evidence exists" or "reasonably certain" evidence of sexual violence or harassment exists.

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1 "Preponderance of evidence" standard means that it is more likely than not that a violation occurred.

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## SPECIAL NOTE

### THE INVESTIGATION

If upon being informed of all pertinent circumstances surrounding a complaint the Title IX Coordinator determines that the proper course of action is to commence an internal investigation, the Coordinator will officially notify the Dean of Administration within 24 hours of receiving the complaint. The Dean of Administration in conference with the Title IX Coordinator will determine the most effective method of investigating the allegations raised by the Complainant.

### CONSENT PRIOR TO COMMENCEMENT OF INVESTIGATION OF RELATIONSHIP VIOLENCE AND SEXUAL ASSAULT REPORTS:

#### Policy:

LIBI will seek consent from the reporting individual prior to conducting an investigation. If the reporting individual declines to consent, LIBI will respect that request unless otherwise required by law, or if the college determines in good faith that failure to investigate may create a risk of harm to the reporting individual or other members of the LIBI community.

The college will typically conduct an investigation against the reporting individual's wishes if:

- the accused has a history of violent behavior or is a repeat offender.
- the reporting individual is a minor.
- the accused reportedly used force or a weapon.
- the incident represents an escalation of sanctioned behavior (i.e. the accused had been previously sanctioned for similar, but lesser, incident).
- there is reason to believe that the accused may pose additional threat to the LIBI community.
- LIBI has security camera footage that shows or links the accused to the incident being reported.

LIBI will notify the reporting individual of its decision to pursue an investigation and will

assist the individual as appropriate or deemed necessary to help the student.

**The college assists with appropriate academic accommodations, transportation, and other reasonable and available accommodations regardless of the student's reporting choice.**

### EMERGENCY/IMMEDIATE REPORTING

LIBI encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual misconduct to address any concerns about personal safety and physical and emotional well-being. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response.

Not all sexual misconduct constitutes criminal behavior. Law enforcement authorities can assist in determining whether the conduct experienced was criminal in nature and warrants a criminal complaint. If the incident occurred off campus, the Title IX Coordinator can assist the affected student or employee in contacting the appropriate law enforcement agency.

### MEDICAL TREATMENT

Any member of the LIBI community subject to harm, as defined in this section, is strongly urged to seek medical treatment as soon as feasible after the incident. A medical professional can provide emergency and/or follow-up medical services and the ability to discuss any health care concerns related to the incident in a confidential medical setting. LIBI's Title IX Coordinator will encourage the individual to seek medical attention for a number of reasons. Most importantly, a medical exam will diagnose and treat the full extent of any injury or physical affect caused by the incident. LIBI does not have medical facilities on campus, so individuals reporting physical sexual assaults will be referred to outside providers. Secondly, Title IX Coordinators will urge the victim to seek medical treatment to ensure that evidence can be properly collected and preserved. There is a limited window of time (typically 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Whether or not an individual has chosen

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how to proceed at the time of the medical examination, taking the step to gather evidence now will preserve the full range of options to seek resolution through LIBI's complaint processes or through the pursuit of criminal action.

## TYPICAL PROCESS OF THE INTERNAL INVESTIGATION

The Dean will determine the most efficient and thorough approach to conduct a fact-finding investigation. Typically, such investigation will include separate meetings with the complainant, the Respondent, and any witnesses or individuals with personal knowledge of the situation. Each person interviewed in the process may be requested to document their statements in writing. In the event that one of the parties declines to, or is unable to provide a written account due to insufficient English language proficiency, the statement will be taken by the employee handling the investigation. If the individual refuses to sign his/her account of the incident recorded by the employee handling the investigation, the investigation will be conducted based upon available information.

The Dean's role in the investigation is to ensure that those involved in the incident receive a procedurally fair, prompt, and thorough evaluation and that the outcome of the investigation is accurately documented in writing.

The Dean will notify both the Complainant and the Respondent in writing of the outcome of the investigation within two (2) business days following the conclusion of the investigation.

The Dean, or an appropriate designee selected by the Dean, will review and analyze all relevant records that relate to the allegations. The Complainant will be provided an opportunity to discuss his/her claim with the Dean or the designee conducting the investigation. The Complainant, respondent, and witness(es) will have the right to present evidence (including documents and names of witnesses) to the Dean or designee conducting the investigation. The length of this investigation will be determined at the

Dean's discretion. The Dean will also make the determination whether to review all evidence and whether it is necessary to talk to all witnesses listed.

At that point the Dean, in consultation with appropriate college staff and Title IX Coordinator, will make the determination whether or not the complaint falls within the scope of discrimination/harassment procedures.

The Long Island Business Institute will take interim measures as necessary to prevent the Complainant from being subjected to discrimination or harassment during the investigative process. The College will take steps to ensure that any interim measures taken do not adversely affect the Complainant.

## KEY DEFINITIONS USED IN THE INVESTIGATIVE PROCESS

### PRE-INVESTIGATION PROCESS

During the pre-investigation evaluation period, the TITLE IX COORDINATOR will determine if:

- the complaint is timely, and
- whether the complaint includes sexual harassment or sexual assault.

Definition of sexual harassment below was taken from Equal Employment Opportunity Commission (EEOC) [http://www.eeoc.gov/laws/types/sexual\\_harassment.cfm](http://www.eeoc.gov/laws/types/sexual_harassment.cfm) and adapted to college settings. Sexual Harassment

Unwelcomed sexual advances, unwelcome requests for sexual favors, and other verbal or physical behavior of a sexual nature can be defined as sexual harassment when:

- A. submission to or rejection of such conduct or communication is a term or condition of education benefits, academic evaluations, or opportunities; or
- B. submission to or rejection of such conduct or communication has the effect of substantially interfering with a student's education; or
- C. such conduct is sufficiently severe, pervasive, and objectively offensive as to have the affect of creating an intimidating, hostile, or offensive environ-



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ment sufficient to deny an individual the education benefit of participation in activities. For additional information, see pages 63-66.

## SEXUAL ASSAULT

As defined by the National Center for Victims of Crime, sexual assault includes attacks such as rape or attempted rape, as well as any unwanted sexual act or contact or threats. Types of sexual acts that are considered sexual assault include: forced sexual intercourse (rape), forced oral or anal sex, child molestation, incest, fondling, and attempted rape. Perpetrators use many forms of violence to execute the attack including physical violence, threats, coercion, manipulation, pressure, or tricks. For additional information, see page 65.

Sexual assault may involve individuals who are known to one another or have an intimate and/or sexual relationship or may involve individuals not known to one another. Sexual assault includes the following acts:

### NON-CONSENSUAL SEXUAL INTERCOURSE

Having or attempting to have sexual intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with a body part or object, or oral penetration by mouth-to-genital contact. Non-consensual Sexual Contact

Having or attempting to have sexual contact with another individual without consent. Sexual contact includes kissing, touching the intimate parts of another, causing the other to touch one's intimate parts, or disrobing of another without permission. Intimate parts may include the breasts, genitals, buttocks, mouth, or any other part of the body that is touched in a sexual manner.

Sexual Exploitation Sexual exploitation involves taking non-consensual sexual advantage of another person. Examples can include, but are not limited to, the following behaviors:

- Electronically recording, photographing or transmitting intimate or sexual utterances, sounds or images via any medium, without the knowledge and consent of all parties involved.

- Non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved.
- Spying on others who are in intimate or sexual situations (i.e. voyeurism).
- Knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge.
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.
- Distributing intimate or sexual information about another person without that person's consent.

## RELATIONSHIP VIOLENCE

Any acts of physical, psychological, emotional or economic harm, or threats of harm against a current or former relationship are considered relationship violence. This definition includes harm against individuals in same-sex relationships and does not require sexual intimacy between those involved.

## INTIMATE PARTNER VIOLENCE

Intimate partner violence is often referred to as dating violence, domestic violence or relationship violence. Intimate partner violence includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic, or other intimate relationship with the Respondent. Intimate partner violence can encompass a broad range of behavior, including, but not limited to sexual violence. It may involve one act or an ongoing pattern of behavior. Intimate partner violence may take the form of threats, assault, property damage, violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner. Intimate partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientation and does not discriminate by racial, social, or economic background.

Under the Campus Sexual Violence Act ("SaVE Act") provision, Section 304 Dating Violence and Domestic Violence are defined as:

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*Dating violence* means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

*Domestic violence* includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

LIBI will investigate and record all relevant incidents of domestic violence and dating violence falling under the intimate partner violence policy. The college prohibits and sanctions domestic and dating violence behaviors under this policy.

### PHYSICAL HARM

Any act that uses physical force or weapons against another person (can also be other family members including pets) with the potential for causing death, disability, injury, or harm. Physical violence includes, but is not limited to, scratching, pushing, shoving, throwing, grabbing, biting, choking, shaking, slapping, punching, burning, use of a weapon and/or use of restraints, or one's body size or strength.

### THREAT OF PHYSICAL HARM

The act of bullying, threatening, or using words, gestures, or weapons to communicate an intent or desire to cause death, disability, injury, or physical harm upon a current or former relationship.

### PSYCHOLOGICAL/EMOTIONAL HARM

Any act, threat, or coercive tactic used to degrade or control a relationship. This can include, but is not limited to, humiliation, controlling what another can and cannot do, withholding information, deliberately doing something to make an individual feel diminished or embarrassed, and isolating someone from friends and family.

### ECONOMIC HARM

Any acts, threats of acts, or coercive tactics

used to degrade or control a relationship by limiting or denying access to money or other basic resources.

### STALKING

Under the Campus Sexual Violence Act ("SaVE Act") provision, Section 304, "stalking" means a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress. Any course of harassing, threatening, or intimidating conduct that an individual has willfully and repeatedly (more than once) engaged in that reasonably and seriously alarms, torments, or terrorizes another individual or group of individuals can be defined as stalking. Stalking behaviors may include, but are not limited to, repeated abusive and excessive contact and/or monitoring using telephone calls, voice-mails, e-mails, instant messaging, text messages, and/or social media to one's home or work; installing spyware on a person's computer or phone without consent; trespassing; following and/or threatening an individual or a person's friends and relatives; driving/walking by a person's home, school, and/or work; or vandalizing property. For additional information, see page 67.

### DISCRIMINATION/HARASSMENT COMPLAINT INVESTIGATION PROCEDURE FOR COMPLAINTS AGAINST FACULTY, STAFF, OR VISITORS

Sexual harassment of student by a member of the staff, Faculty, or visitor of the college follows the same reporting guidelines as outlined in the previous section.

Key Definitions that will guide the TITLE IX COORDINATOR and the Dean of Administration when determining that sexual harassment has occurred under these provisions are listed below.

Unwelcome sexual advances, unwelcome requests for sexual favors, and other verbal or physical behavior of a sexual nature can be defined as sexual harassment when:

- submission to or rejection of such conduct or communication is a term or condition of education benefits, academic

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evaluations, or opportunities;

- submission to or rejection of such conduct or communication has the effect of substantially interfering with a student's education;
- such conduct is sufficiently severe, pervasive, and objectively offensive as to have the effect of creating an intimidating, hostile, or offensive environment sufficient to deny an individual education benefit of participation in activities;
- withholding a letter of recommendation, or withholding assistance with any educational activity or intentionally making the individual's job or academic work more difficult because sexual conduct is rejected;
- the use or display in the classroom or workplace, including electronic, of pornographic or sexually harassing materials such as posters, photos, cartoons or graffiti without pedagogical justification;
- unwelcome sexual advances, repeated propositions or requests for a sexual relationship to an individual who has previously indicated that such conduct is unwelcome, or sexual gestures, noises, remarks, jokes, questions, or comments about a person's sexuality or sexual experience.

Any offensive graphic or epithet on clothing or other personal items that is publicly visible may be considered a form of harassment.

When evaluating the complaint, the Title IX Coordinator will attempt to ascertain whether the incident occurred between peers or whether a member of the staff or Faculty was aware of the occurrence, was witness to, or personally participated in the incident.

\*\* In order for a single, isolated incident to be classified as harassment, it must be sufficiently severe, persistent, or pervasive that it creates an educational or working environment that is hostile or abusive. In certain grievous circumstances, a single incident involving severe misconduct may rise to the level of harassment. In such grievous instances, the Title IX Coordinator will initiate

the investigative protocols described in the previous sections of this document.

## IMPORTANT NOTE ABOUT CONFIDENTIALITY

As noted previously in this policy, every college employee (e.g., student services staff, members of the Advising staff, Associate (Program) Directors, Directors, members of Executive Staff, full-time Faculty, adjunct Faculty, etc.) informed of an allegation of gender-based misconduct against a student is expected to file a report with the campus designated Title IX Coordinator or with the Dean of Administration. LIBI does not designate any officers to serve in a privileged professional capacity (i.e., counselors, clergy, medical providers, and rape crisis counselors) who will not be bound by this expectation). All LIBI employees, including work-study students, interns, volunteers, and individuals with any official relationship with the college who have knowledge of/or are informed of an allegation of gender-based misconduct involving students or other members of the College community are expected to alert the Title IX Coordinator or the Dean of Administration, regardless of whether or not the individual witnessed the incident or learned of it through the complainant or a third party.

When a report of gender-based misconduct is investigated, the Complainant, the Respondent and all identified witnesses who are interviewed in the investigation, will be notified of the College's expectation of confidentiality/privacy.

The College will make all reasonable efforts to maintain the confidentiality/privacy of the parties involved in gender-based misconduct investigations. Breaches of confidentiality/privacy will be considered a violation of the Policy and may result in additional disciplinary action

## OTHER EXAMPLES OF GENDER-BASED MISCONDUCT

Gender-based misconduct comprises a broad range of behaviors focused on sex and/or gender discrimination that may or may not

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be sexual in nature. Sexual harassment, sexual assault, gender-based harassment, stalking, and intimate partner violence are forms of gender-based misconduct under the policy. Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship (current or former). Gender-based misconduct can be committed by men or by women, and it can occur between people of the same or different sex.

Examples of Gender-based misconduct:

- Pressure for a date or a romantic or intimate relationship
- Unwelcome touching, kissing, hugging, rubbing, or massaging
- Pressure for or forced sexual activity
- Unnecessary and unwelcome references to various parts of the body
- Belittling remarks about a person's gender or sexual orientation
- Videotaping and photographing someone or people without consent
- Sexually explicit profanity
- Use of e-mail, the Internet, or other forms of digital media to facilitate any of the above referenced behaviors

### THE USE OF ALCOHOL AND OTHER DRUGS

The use of alcohol and other drugs can have unintended consequences. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent is freely and affirmatively given. The perspective of a reasonable person will be the basis for determining whether one should have known about the impact of alcohol and other drugs on another person's ability to give consent. The use of alcohol and other drugs never makes someone at fault for being sexually assaulted.

The College's primary concern is the safety of its community members and guests. Sometimes students are reluctant to report instances of sexual assault because they fear being charged with policy violations, such as underage alcohol consumption. To encourage

reporting, any other policy violations may be addressed (if necessary) separately from a sexual assault allegation.

Individuals reporting criminal acts of sexual or gender-based misconduct may also choose to file a report with the New York City Police Department/Nassau Police Department/Suffolk Police Department. The College system and police/legal system work independently from one another. Individuals can file reports with the College, with NYPD/Nassau PD/Suffolk PD, or with all systems.

### COMPLAINANT REQUEST FOR ANONYMITY

A complainant may make a request for anonymity. This type of request means that the complainant does not want his/her identity known to the respondent or witnesses, or that the complainant wishes to withdraw a report. In these situations, the College will make all reasonable attempts to comply with this request; however, the College's ability to investigate and respond may be limited.

The College is required by Title IX to consider the Complainant's request for anonymity with the College's commitment to provide a reasonably safe and non-discriminatory environment. If the College cannot maintain a Complainant's request for anonymity, he/she will be notified by the Title IX Coordinator. In situations where a member of the College community becomes aware of a pattern of behavior by a single Respondent, the College will take appropriate action in an attempt to protect the College community.

### RETALIATION

Any attempt by a member of the LIBI community to penalize, intimidate, or retaliate in any way against a person who makes a report of or who is otherwise involved in an investigation of discrimination or harassment is completely prohibited. Any person who believes that he/she has been the victim of retaliation for reporting discrimination or harassment or cooperating in an investigation should immediately contact the Title IX Coordinator or the Dean of Administration.

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Any person who retaliates against a person in response to a report or cooperation in an investigation will be in violation of this policy and will be subject to the appropriate discipline process.

## HEARINGS INVOLVING ALLEGED SEXUAL ASSAULT OR SEXUAL MISCONDUCT

When the hearing involves an allegation of sexual assault or sexual misconduct, information regarding the complainant's past sexual history will not be admissible unless the investigator in the case or the Dean of Administration makes a specific finding of relevance to the case pending.

## STANDARD OF PROOF

The evidence presented at the conduct hearing must prove that it is more likely than not that the student committed the misconduct of which he or she is accused.

Accused students will not be forced to testify at his/her hearing. No inference will be drawn from the silence of the accused student.

## HEARING RECORDS

The Dean of Administration in consultation with the investigator in the case and the Title IX Coordinator, as appropriate, will decide whether the hearing will be tape recorded (with only one single verbatim recording produced), or whether one of LIBI's Court Reporting faculty will attend the proceedings with the purpose of producing a complete transcript of the hearing.

Irrespective of how the hearing records are made, the deliberations of the hearing panel shall not be recorded.

Audio recordings and transcripts of the hearing will become the property of LIBI and will be maintained by the Dean of Administration. The recording, along with the documents submitted by the parties and accepted by the Student Conduct Committee, will constitute the official record of the hearing,

and will become part of the student's discipline record. An accused student who is considering filing an appeal with the President of the College will, upon request, be granted post-hearing access to review (but not copy) the recording or to read the full transcript.

This access will be provided only in the continued presence of the Dean of Administration during regular business hours.

In the event that the accused student is unable to meet with the Dean during regular business hours, the student will need to formally petition the Dean in writing for access to review the recording or transcript during any other time. The student must have adequate, sound proof to demonstrate why an accommodation must be made.

Under no circumstances will the recording be permitted to be removed from the campus or reproduced.

In cases where only an audio recording of the hearing was produced, the accused student may petition the Dean of Administration for a transcription of the recording. If the Dean grants the request, the transcript will be produced by a court reporter who will be vetted by LIBI. The student will bear all costs associated with the production of the transcript. The transcription will be redacted to comply with federal regulations and college policies.

## HEARING POLICIES AND PROCESSES

To protect the privacy of persons participating in the student conduct process, the hearing will be closed to spectators, including witnesses.

The hearing panel has the right to establish the rules governing the way the hearing will proceed and will take necessary actions to ensure a quiet, secure, and orderly conduct of the hearing.

All requests for an open hearing involving sexual assault or sexual misconduct allegations will be denied. Only the following circumstances are exceptions to this policy:

The Complainant and accused will each be entitled, for support, to have one person of

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their choice accompany them to the hearing. A support person may be called as a witness<sup>1</sup>; but under the support person provision of this policy, the fact that he/she is to act as a witness will not preclude that person's attendance throughout the entire hearing.

Under no circumstances will a support person on either side be entitled to, or permitted to, represent or defend the complainant or the accused.

The Complainant, if he/she wishes, will have the right to be present during the entire hearing.

(Special Note: In cases not involving allegations of sexual assault or sexual misconduct, the accused student may specifically petition for an open hearing. Even if allowable by the nature of the allegations, the request for an open hearing will be denied if any other participant objects.)

### RESPONSIBILITY FOR PRESENTATION OF CASES

The student may represent him/herself at the hearing; or if unable to do so for reasons deemed acceptable by LIBI, may choose to be assisted by a volunteer advocate. In such instances, the Dean of Administration will have the responsibility of selecting and assigning a qualified advocate to the student. The assigned advocate must be a member of the LIBI community. Students are not permitted by LIBI policy to be represented by legal counsel at college disciplinary hearings.

In cases where the student is assigned an advocate, all communications regarding the case will be directed to the student. If the student also wishes that communications concerning the case be directed to the person assigned to assist him or her at the hearing, then the student must provide the Dean of Administration and the Conduct Officer with such a request in writing. Under absolutely no circumstances can the communication regarding the case be solely with the individ-

ual assisting the student, even if the student makes that request in writing.

In cases involving sexual assault or sexual misconduct, the Dean of Administration and the investigator will present information to the hearing panel on behalf of LIBI. In grievous cases, or in instances where the Dean was not the main point of contact from the onset of the allegations being made public, the Dean of Administration may willingly abdicate the responsibility to another party. In such circumstances, the individual will be appointed by the President of the College to serve in the Dean's place.

### RESOLUTION

The student may make an admission of responsibility to the Dean of Administration, the Conduct Officer, or the investigator assigned to the case at any point in the hearing process until a written decision is rendered by the hearing panel and submitted to the Dean of Administration.

Admission of responsibility by the accused student will bind all parties and terminate all proceedings.

The Dean may then impose or defer one or more of the sanctions applicable to the violation. All sanctions may be applied retroactively.

Admission of responsibility AFTER the written decision is submitted to the Dean of Administration will carry additional disciplinary sanctions associated with, but not limited to, fabrication of testimony, dishonest and deceitful behavior, and lying to representatives of the College acting in their official role to ensure a just and equitable hearing process for all students, etc.

Within fifteen business days after the conclusion of the hearing, the hearing panel will submit a written decision to the President of the College and to the Dean of Administration, containing the following:

A summary of the allegations and the outcome of the hearing panel's examination of the information concerning the alleged misconduct, including the positions of the parties

1 If a support person is also a witness, the hearing panel may require that individual to testify prior to hearing the Complainant's testimony.

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and a summary of the evidence presented.

A judgment opinion presented on behalf of the majority of the panel, whether the student has violated one or more of LIBI's policies or regulations that the student had been charged with violating, or whether there has been insufficient evidence to sustain such a finding.

A minority report may be submitted along with the majority report to ensure that rationale for both sides is represented to the President of the College.

The panel must recommend sanctions if the panel found sufficient evidence of violations as charged. Recommendation of sanctions will be accepted by the President only if there is evidence that, prior to recommending any sanction, the hearing panel had conferred with the Dean of Administration, the Provost, or another properly ranking administrator regarding sanctions imposed in similar cases and any previous cases of misconduct by the accused student on file with the Dean, the Provost, or the Conduct Officer.

The panel must also indicate the rationale for recommended sanctions, especially if sanctions are more or less severe and set a precedent for similar cases in the future.

Only the President of the College may grant an extension of time for submission of the report to the hearing panel. The panel must make the request in writing to the President and must show good cause why the extension should be granted. The President will evaluate the reasons for the delay in an effort to preclude undue prejudice to the accused student.

Consistent with federal regulations in cases involving allegations of sexual harassment, sexual assault, sexual misconduct, or sexual violence the alleged victim may request a copy of the report submitted to the President of the College by the hearing panel. The report will be redacted to comply with federal regulations and college policies related to sexual harassment, assault, and sexual violence.

### APPEAL BY STUDENT

The student will have seven business days from the date of the letter informing him/her of the hearing panel's decision to appeal the findings and recommendations included in the report to the President of the College.

All appeal requests must be in writing and must state on which grounds it is being submitted. The appeal must be signed by the student and physically delivered to the President of the College. Appeals made electronically (i.e., e-mail, fax, etc.) will not be acted upon.

### ACCEPTABLE REASONS FOR APPEAL TO THE PRESIDENT OF THE COLLEGE

The sanction(s) are not appropriate or consistent with the code of conduct which the student was found to have violated.

Hearing was not conducted in accordance with the written policies as published in the College catalog. Departure from the prescribed format of the hearing in and of itself is not sufficient reason to seek an appeal. The student must have evidence of significant prejudicial or biased behavior on behalf of the panel that obstructed the student's ability to receive a fair hearing.

The emergence of new information, or other relevant facts, potentially sufficient to alter the findings, that were not brought out in the original hearing because such information and/or facts could not have been known to the accused student at the time of the hearing.

In the event that the President of the College grants the student an appeal and reasonably feels that the introduction of the new information not previously available to the hearing panel may substantially influence the ruling in the student's case, the President may rule on the case or opt to send the case and the new evidence back to the hearing panel to be reheard.

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### STATEMENT ON CONSENT, COERCION, INCAPACITATION, AND ALCOHOL

Engaging in sexual activity without consent violates college policy and may result in criminal and/or civil liability.

For purposes of the investigation and hearing standards in sexual assault cases under the GRIEVANCE PROCEDURES FOR COMPLAINTS OF GENDER-BASED MISCONDUCT policy, consent is a freely and affirmatively communicated willingness to participate in sexual activity or behavior, expressed either by words or clear, unambiguous action. Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity.

**Consent may not be inferred from silence, passivity, lack of resistance, or lack of active response. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.** For this reasons, relying on non-verbal communication can lead to misunderstandings.

Consent must be present throughout the sexual activity. At any time, a participant can communicate that he/she no longer consents to continuing the activity. If at any time, it is reasonably apparent that either party is hesitant, confused, or uncertain, sexual activity should stop unless and until mutual verbal consent to continue is given. If there is continued confusion or a question as to whether any participant has consented or continues to consent to sexual activity, it is essential that the participants stop the activity to clearly resolve the confusion or question.

**Once withdrawal of consent has been expressed, sexual activity must cease.**

The existence of a current or previous dating relationship between the persons involved is not sufficient to provide the basis for an assumption of consent. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in sexual activity.

Consent is not effective if it results from the use or threat of physical force, intimi-

dation, or coercion, or any other factor that would eliminate an individual's ability to exercise his/her own free will to choose whether or not to have sexual contact. Coercion includes the use of pressure and/or oppressive behavior, including express or implied threats of harm, severe and/or pervasive emotional intimidation, which places an individual in fear of immediate or future harm or physical injury, or causes a person to engage in unwelcome sexual activity. A person's words or conduct amount to coercion if they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity.

An individual who is incapacitated is not able to make rational, reasonable judgments and, therefore, is incapable of giving consent. Incapacitation is the inability, temporarily or permanently, to give consent, because the individual is mentally and/or physically helpless due to drug or alcohol consumption, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if he/she demonstrates that he/she is unaware of where he/she is, how he/she got there, or why or how he/she became engaged in a sexual interaction. Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, being unaware of circumstances or surroundings, or being unable to communicate for any reason. An individual may experience a blackout state in which he/she appears to be giving consent but does not actually have conscious awareness or the ability to consent. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication.

LIBI considers sexual contact while under the influence of alcohol to be imprudent behavior. Alcohol impairs a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. From the perspective of the Complainant, the use of alcohol or drugs can limit a person's ability to freely and clearly give consent. From the perspective of a Respondent, the use of alcohol or other drugs



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can create an atmosphere of confusion over whether or not consent has been freely and clearly sought or given. The perspective of a reasonable person will be the basis for determining whether a Respondent should have been aware of the extent to which the use of alcohol or drugs impacted a Complainant's ability to give consent.

**Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment or misconduct and does not diminish one's responsibility to obtain consent.** These standards will be used to adjudicate all cases heard by the Student Conduct Hearing panel.