



LONG ISLAND BUSINESS INSTITUTE

TITLE IX POLICY STUDENT INFORMATION 2020

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NON-DISCRIMINATION STATEMENT

LIBI does not discriminate in admission, employment, in the administration of its educational policies, scholarship and loan programs, and other institutionally administered programs, on the basis of an individual's actual or perceived, race, color, creed, religion, religious practice, national origin, ethnic group, sex, gender, gender identity, sexual orientation, political affiliation, age, marital status, military status, veteran status, disability, domestic violence victim status, genetic information or any other basis prohibited by New York state and/or federal non-discrimination laws. Retaliation against an individual because he or she made a complaint, testified, or participated in any manner in an investigation or proceeding will not be tolerated and is unlawful under Civil Rights laws.

LIBI's policy is in accordance with federal and state laws and regulations prohibiting discrimination and harassment, including the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and the New York State Human Rights Law.

Inquiries concerning the college's non-discrimination policies should be directed to:

Ms. Catherine Law:
email: claw@libi.edu
phone: 212.226.7300

In person:

232 West 40th Street, 9th floor
New York, NY 10018

For further information on notice of non-discrimination, please contact:

New York Office
Office for Civil Rights
U.S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500

Telephone: 646.428.3900

Fax: 646.428.3843; TDD: 800.877.8339

E-mail: OCR.NewYork@ed.gov

<http://www2.ed.gov/about/offices/list/ocr/docs/howto.pdf>

LIBI's policies are in accordance with federal and state laws and regulations prohibiting discrimination, harassment, sexual misconduct, including dating and domestic violence and stalking, as well as retaliation. These laws include the Americans with Disabilities Act (ADA) and the Amendments of 2008, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972 ("Title IX"), the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act"), as amended by the Violence Against Women Act/Campus Sexual Violence Act ("Campus SaVE Act"), Article 129-B of the New York State Education Law, Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, and the New York City Administrative Code.

Students, applicants for admission, employees, applicants for employment, third party vendors, contractors, guests, or any other third parties who hold professional agreements with LIBI may not be subjected to discrimination or harassment that is prohibited by law, treated adversely based upon a protected characteristic, or retaliated against for engaging in protected activity such as filing a complaint or participating in the review of a complaint.

FEDERAL TITLE IX REGULATIONS 106.8

DESIGNATION OF COORDINATOR, DISSEMINATION OF POLICY, AND ADOPTION OF GRIEVANCE PROCEDURES.

Title IX of the Education Amendments of 1972 (Title IX) states that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." It protects individuals from sexual or gender-based bullying, discrimination, harassment, and violence. This includes protection from being retaliated against for filing a complaint of discrimination or harassment.

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) is responsible for enforcing protections against sex discrimination under Title IX of the Education Amendments of 1972 (Title IX) and Section 1557 of the Affordable Care Act (Section 1557).

The Long Island Business Institute (LIBI) is committed to complying with Title IX and related laws and guidance, enforcing college policies prohibiting discrimination, and maintaining a safe learning and working environment. To that end, the responsibilities of LIBI's Title IX compliance including managing the institution's response to reports of discrimination, including alleged violations of LIBI's anti-harassment policies, are handled by the Director of Operations, Ms. Catherine Law. In addition to the Title IX Coordinators, Ms. Law is a resource for questions or concerns about sex discrimination, sexual harassment, sexual violence, or other forms of sexual misconduct, and is available to discuss your rights and judicial options.

Ms. Catherine Law can be contacted:

By email: claw@libi.edu

By phone: 212.226.7300

In person:

232 West 40th Street, 9th floor

New York, NY 10018

LIBI is committed to maintaining an equitable learning environment and supporting the academic success of pregnant and parenting students. The college explicitly prohibits discrimination based on pregnancy, termination of pregnancy, childbirth, recovery from related conditions, or parental status in all of its educational programs and activities pursuant to Title IX of the Education Amendments of 1972.

Students may request an accommodation for pregnancy-related conditions or parenting responsibilities by contacting their academic advisors or the Director of Operations, Ms. Catherine Law.

Ms. Catherine Law can be contacted:

By email: claw@libi.edu
By phone: 212.226.7300

In person:

232 West 40th Street, 9th floor
New York, NY 10018

§ 106.8 (A) DESIGNATION OF COORDINATOR

Under section 106.8(a) LIBI designates and authorizes the following employees to coordinate the college’s response under Title IX:

Ms. Catherine Law can be contacted:

By email: claw@libi.edu
By phone: 212.226.7300

In person:

232 West 40th Street, 9th floor
New York, NY 10018

Ms. Julia Scalia

Institutional Title IX Coordinator
jscaliam@libi.edu
232 West 40th Street
9th floor
New York, NY 10018
212.226.7300

The Title IX Coordinators are:

April Robinson

Flushing Campus (Main Campus)
Annex Building – ROOM A129
136-17 39th Avenue, 4th floor
Flushing, NY 11354
347.368.1193 **EXT. 109**

Audrey Sumner

Commack Campus
6500 Jericho Turnpike
Office #4
Commack, NY 11725
631.499.7100 **EXT. 19**

April Robinson

NYC Extension Center, RM 1016
232 West 40th Street, 10th floor
New York, NY 10018
212.226.7300 **EXT. 329**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

Any member of the LIBI community, regardless of age, race, ethnicity, gender, gender identity, sexual orientation, religious affiliation, or citizenship status, can suffer from sexual harassment, including sexual violence.

The goal of compiling and featuring this information in one place is to help you understand what sexual harassment means and to let you know that there are individuals at LIBI, and plenty of resources in the community, that can help if you experience it. It is important to the college that you understand your rights as a student, our institutional policies, and other issues related to sex discrimination, sexual harassment, gender harassment, and sexual violence.

Each LIBI location has an individual designated as the Title IX Coordinator. Title IX Coordinators receive training in helping students who are or have been sexually harassed or who have experienced sexual violence. If you are facing sexual harassment or are experiencing sexual violence, we urge you to communicate with one of our Title IX Coordinators so that you can receive important information and assistance in obtaining needed resources.

UNDER WHICH CIRCUMSTANCES WOULD I CONTACT A TITLE IX COORDINATOR?

Any student, faculty member, administrator, staff member, applicant for admission, or applicant for employment who has concerns about sex discrimination including sexual harassment, sexual violence, or sexual misconduct is encouraged to seek the assistance of a Title IX Coordinator or the Director of Operations responsible for coordinating LIBI's responses to reports of discrimination, including alleged harassment, sexual violence, and other forms of sexual misconduct.

LIBI encourages you to contact a Title IX Coordinator or the Director of Operations if you:

- Need help because you have experienced sexual violence.
- Wish to understand your options if you think you may have encountered sex discrimination or sexual misconduct.
- Need Options for confidentially disclosing sexual violence.
- Have witnessed a situation that you feel may warrant an investigation under LIBI's published policies.
- Need guidance on how to handle a situation by which you are indirectly affected.
- Have questions pertaining to LIBI's published policies and procedures.
- Are a pregnant or parenting student and need assistance with a pregnancy-related reasonable accommodation or you need time to pump breastmilk while on campus.

Any incidents of sex/gender discrimination, harassment, or sexual misconduct, including sexual violence should be reported immediately to ensure that the person subject to these actions gets the help, resources, and services that they need. Each person making a report to the college is in full control of what happens next, if anything. **The reporting individual decides if he or she wants to file an official Title IX complaint, if a Title IX investigation happens, and/or if criminal charges will be filed.** Even if the reporting person does not wish to pursue a Title IX investigation or criminal charges, he or she is able to use the resources and services that are available to him or her such as medical assistance, counseling, advocacy services, mutual restrictions on contact between the parties, changes to course or work schedules, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

If you feel you have been subjected to, witnessed, or heard of an incident, please contact the Title IX Coordinator:

Students:

Ms. Julia Scalia
Institutional Title IX Coordinator
jscalial@libi.edu
232 West 40th Street
9th floor
New York, NY 10018
212.226.7300

or

Employees:

Ms. Catherine Law
Director of Operations
By email: claw@libi.edu
By phone: 212.226.7300

In person:

232 West 40th Street, 9th floor
New York, NY 10018

Key information: the first 96 hours (4 days) after an assault are the most important – GET HELP.

IMPORTANT INFORMATION AND RESOURCES FOR VICTIMS/SURVIVORS OF SEXUAL VIOLENCE

If you have been subjected to **sexual violence** including sexual assault; dating, domestic and intimate partner violence; stalking; and any other sexual misconduct)

YOU HAVE THE RIGHT

- to make a report to the Title IX Coordinator, the local law enforcement and/or the state police, or you may choose not to report the incident at all.
- to report the incident to the LIBI.
- to receive assistance and resources from LIBI.
- to be protected by the college from retaliation for reporting an incident.

IMPORTANT DEFINITIONS AND SAFETY VOCABULARY

Accused: person who is suspected to have committed an alleged violation. Under New York Education Law Article 129-B, it is a person accused of a violation who has not yet entered an institution's judicial or conduct process.

In cases involving Title IX violations, the accused is defined as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Advisor: any individual who provides the victim/survivor/complainant or the accused/respondent with support, guidance, and/or advice. Both parties are permitted one advisor of their choosing to accompany them and assist them throughout the investigation and conduct process. An advisor may be a friend, parent, faculty, mentor, attorney, or any person they wish. The advisor will not be permitted to speak for them in the process or to have any role in the process other than to advise and assist them. The advisor can only speak to their advisee, and the College can only speak to the victim/survivor/complainant/accused/respondent during the process.

Affirmative Consent: is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When consent is withdrawn or can no longer be given, sexual activity must stop.

There is no definition imposed by the federal government of consent for Title IX purposes. Therefore, LIBI will use the criteria above when adjudicating Title IX cases.

Alcohol and/or Drug Amnesty: is used for sexual and interpersonal violence cases. It states that the health and safety of every student at LIBI and other colleges in New York State is of utmost importance. LIBI recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incident(s) due to fear of potential consequences for their own conduct. LIBI strongly encourages students to report incidents of sexual and/or interpersonal violence to campus officials. A bystander acting in good faith or a reporting individual acting in good faith who discloses any incident(s) of sexual and/or interpersonal to campus officials or law enforcement will not be subject to LIBI's Student Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the incident(s).

Article 129-A: This Article of the New York State Education Law requires all New York colleges to maintain policies related to specific provisions. General provisions include formation of a Campus Safety Committee; Sexual assault, domestic violence and stalking prevention information; Campus crime reporting and statistics; Investigation of violent felony offenses; Bias related crime prevention information; Prohibition on the marketing of credit cards; Notification of fire safety standards and measures in all college-owned or college-operated housing for colleges that have dorms.

Article 129-B: New York State Education Law requires all colleges in New York State to adopt a set of comprehensive procedures and guidelines to address sexual violence, including a uniform definition of affirmative consent, a statewide amnesty policy, and expanded access to law enforcement. This is also referred to as the Enough is Enough law.

Bystander: a person who is present when an event takes place but is not directly involved. Bystanders might be present when sexual assault or abuse occurs—or they could witness the circumstances that lead up to these crimes. Institutionally, we define a bystander as a person who observes a crime, impending crime, conflict, potentially-violent or violent behavior, or conduct that is in violation of rules or policies of the college.

Bystander Intervention: a bystander’s safe and positive actions taken to prevent harm or intervene when there is a risk posed to another person. Bystander intervention includes recognizing situations of potential harm, identifying safe and effective intervention options, and taking action to intervene.

Clery Act: Is short for the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. The Clery Act is a consumer protection law that aims to provide transparency around campus crime policy and statistics. The Clery Act requires colleges and universities that receive federal funding to disseminate a public annual security report (ASR) to employees and students every October 1st. This ASR must include statistics of campus crime for the preceding 3 calendar years, plus details about efforts taken to improve campus safety.

ASRs also must include policy statements regarding (but not limited to) crime reporting, campus facility security and access, law enforcement authority, incidence of alcohol and drug use, and the prevention of/response to sexual assault, domestic or dating violence, and stalking. Compliance with the Clery Act is monitored by the Federal government.

Code of Conduct: Is a collection of written rules and regulations that include what is and is not acceptable or expected behavior at LIBI. The Student Code of Conduct governs behavior, rights, and responsibilities while such student is matriculated at LIBI.

College: means the Long Island Business Institute (LIBI) and collectively, those persons responsible for its control and operation.

Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Any third party as well as the complainant may report sexual harassment.

Confidentiality: may be offered by certain individuals at the college who are not required by law to report known incidents of sexual assault or other crimes to LIBI's officials, in a manner consistent with Federal and State law. These individuals are called **confidential resources** and will not report crimes to law enforcement or college officials without your permission, except for extreme circumstances, such as a health and/or safety emergency. LIBI is committed to protecting the confidentiality of victims/survivors and will work closely with students who wish to obtain private/confidential assistance regarding an incident of sexual misconduct.

Dating Violence: is any act of violence, including physical, sexual, psychological, and verbal violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the victim's statement and with consideration of the type and length of the relationship and the frequency of the interaction between the persons involved in the relationship.

Discrimination: is the materially adverse treatment of an individual or group of individuals because they possess a protected characteristic. Protected characteristics include an individual's actual or perceived race, color, creed, religion, religious practice, national origin, ethnic group, sex, gender, gender identity, sexual orientation, political affiliation, age, marital status, pregnancy or parenting, military status, veteran status, disability, domestic violence victim status, genetic predisposition or carrier status, or any other basis prohibited by New York State, local, and/or federal non-discrimination laws or regulations.

Document filed by a complainant: for Title IX cases, this means a document or electronic submission (such as by e-mail or through an online portal provided for this purpose by the college) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.

Domestic Violence: defined as felony or misdemeanor crimes of violence perpetrated by:

- a) a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common;
- b) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- c) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or
- d) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Formal Complaint: In cases involving Title IX violations a formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail (e-mail), by using the contact information listed by LIBI for the Title IX Coordinator. For Title IX violations where a complainant desires to initiate a grievance process, the complainant cannot remain anonymous or prevent the complainant's identity from being disclosed to the respondent (via the written notice of allegations).

Grievance Process: under Title IX, colleges must treat complainants equitably by providing remedies any time a respondent is found responsible and treat respondents equitably by not imposing disciplinary sanctions without following the grievance process. Remedies, which are required to be provided to a complainant when a respondent is found responsible, must be designed to maintain the complainant's equal access to education and may include the same individualized services described in supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person's status as a complainant, respondent, or witness.

LIBI will presume that the respondent is not responsible until the grievance process is concluded.

Harassment: is a form of discrimination which involves unwelcome conduct, based on a protected characteristic, where the conduct creates an intimidating, hostile, or offensive academic environment or otherwise adversely affects academic opportunities or participation in the College's activities or benefits. See also: **Sexual Harassment**

Incapacitation: occurs when an individual lacks the ability to fully, knowingly choose to participate in sexual activity. Incapacitation includes impairment due to drugs or alcohol (whether such is voluntary or involuntary), the lack of consciousness or being asleep, being involuntarily restrained, if any of the parties are under the age of 17, or if an individual otherwise cannot consent.

Interim Suspension: for cases involving Title IX allegations, interim suspension is a disciplinary sanction that only can be applied after finding responsibility. However, where a respondent poses an immediate threat to the physical health or safety of the complainant or anyone else, § 106.44(c) allows for their emergency removal prior to the conclusion of a grievance process (or even where no grievance process is pending). LIBI will rely on objective evidence, current medical knowledge, or a licensed evaluator in its emergency removal process.

Non-Confidential Resources: certain college officials can offer *privacy (versus Confidentiality)* and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources. Officials also will provide the information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the college from retaliation, and to receive assistance and resources from LIBI. College officials who serve as non-confidential resources will disclose that they are **private** and **not confidential** resources and they still may be required by law and college policy to inform one or more college officials about the incident, including but not limited to the Title IX Coordinator. Even LIBI's employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a **non-confidential resource** will *be relayed only as necessary* for the Title IX Coordinator to investigate and/or seek a resolution.

Non-Fraternization: no college employee (staff, faculty, or administrator) shall pursue, have, or maintain a romantic or sexual relationship with any current LIBI student. In keeping with its commitment to provide equal opportunity to students, faculty and staff, and in order to avoid potential conflicts of interest, favoritism, exploitation, harassment or breaches of professional standards, LIBI prohibits romantic or sexual relationships where there is supervision, direction, or control between the parties. Even with consent, intimate or sexual relationships may not be

conducted by persons in unequal positions. Intimate relationships also have the potential to interfere with LIBI's ability to provide an appropriate and safe working and learning environment for the college community and may constitute sexual harassment or other unlawful discrimination.

Outcome: means any initial, interim, and final decision by any LIBI official or entity authorized to resolve disciplinary matters within the college. Students who are found responsible may face suspension or expulsion, and their transcript may be noted. Employees who are found responsible may face termination of employment. Students who are placed on probation or suspension may be sanctioned to intervention services, restrictions from accessing college buildings, and educational programs. This also may be referred to as **result**.

Preponderance of the Evidence: is the standard of proof in sexual and interpersonal violence cases, which asks whether it is "more likely than not" that the violence occurred. If the evidence presented meets this standard, then the accused/respondent should be found responsible.

Privacy: may be offered by a college official when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a victim/survivor/reporting individual/bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate college officials. Even LIBI's employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a **non-confidential resource** will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

Reporting Individual: shall encompass the terms victim, survivor, and complainant used by the College to reference an individual who brings forth a report of violation. Any person may report sexual harassment whether or not the person reporting is the person alleged to be the victim (third party reporting promotes Title IX's non-discrimination mandate § 106.8(a)).

Respondent: refers to an individual who has been accused. For Title IX related complaints Section 106.30(a) defines a **respondent** as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Responsible Employee: is an employee with the authority to redress sexual and interpersonal violence; who has been given the duty of reporting incidents of sexual violence, or any other misconduct to the Title IX Coordinator or other appropriate college designee; or whom a student reasonably could believe has this authority or duty. If a responsible employee is aware of an incident, then the college is considered on notice of that incident.

Retaliation: is an adverse action against another person for reporting a violation or for participating in any way in the investigation or conduct process. Retaliation includes harassment and intimidation (acts or words that constitute intimidation), including but not limited to violence, threats of violence, coercion intended to pressure any individual to participate, not participate, property destruction, making false statements about another person in print or verbally with intent to harm his or her reputation, adverse educational or employment consequences, and bullying. Any individual who participates in any of the sexual harassment or sexual violence reporting procedures has the right to do so without fear of or actual retaliation. Any person who retaliates against an individual reporting, filing, or participating in the investigation or adjudication of a complaint of discrimination or sexual misconduct will be subject to disciplinary action up to and including

expulsion or termination of employment. Retaliation is prohibited even if the underlying complaint eventually is dismissed or is deemed to lack merit.

SaVE Act: is an acronym for the Campus Sexual Violence Act provision of the 2013 reauthorized Violence Against Women Act (VAWA). The SaVE Act provision, Section 304, requires colleges to report domestic violence, dating violence, and stalking beyond the crime categories the Clery Act already mandates; adopt certain student conduct procedures, such as for notifying victims/survivors of their rights; and adopt training protocols and policies to address and prevent campus sexual violence.

Sexual Activity: has the same meaning as “sexual act” and “sexual contact” (A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Sexual Assault I: is sexual intercourse or any sexual penetration, however slight, of another person’s oral, anal, or genital opening with any object (an object includes but is not limited to parts of a person’s body) without the active consent of the victim.

Sexual Assault II: is touching a person’s intimate parts (defined as genitalia, groin, breast, or buttocks), whether directly or through clothing, without the active consent of the victim. It also includes forcing an unwilling person to touch another’s intimate parts.

Sexual Contact: means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse/gratify the sexual desire of any person.

Sexual Discrimination: is any behaviors and actions that deny or limit a person’s ability to benefit from, and/or fully participate in the educational programs or activities or employment opportunities because of a person’s sex. This includes, but is not limited to, sexual harassment, sexual assault, domestic violence, dating violence, and/or stalking by employees, students, or third parties.

Sexual Exploitation: is nonconsensual, abusive sexual behavior that does not otherwise constitute Sexual Assault I, Sexual Assault II or Sexual Harassment. Examples include, but are not limited to, intentional, nonconsensual tampering with or removal of condoms or other methods of birth control and Sexually Transmitted Infection (“STI”) prevention prior to or during sexual contact in a manner that significantly increases the likelihood of STI contraction and/or pregnancy by the non-consenting party; nonconsensual video or audio taping of sexual activity; allowing others to watch consensual or nonconsensual sexual activity without the consent of a sexual partner; observing others engaged in dressing/undressing or in sexual acts without their knowledge or consent; trafficking people to be sold for sex; and inducing incapacitation with the intent to sexually assault another person.

Sexual Harassment: in the Educational Setting is any unwelcome conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student denies or limits, on the basis of

sex, the student's ability to participate in or to receive benefits, services, or opportunities in the college's programs.

Sexual Harassment in the Employment Setting: is any unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature when any of the following occurs: (1) submission to such conduct is made a term or condition of an individual's continued employment, promotion, or other condition of employment; (2) submission to or rejection of such conduct is used as a basis for employment decisions affecting an employee or job applicant; or (3) such conduct is intended to interfere, or results in interference, with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

Sexual Violence: is an umbrella term that includes sexual assault, such as rape/attempted rape, criminal sexual act, forcible touching, and sexual abuse. If of a sexual nature, stalking/cyberstalking and dating, domestic and intimate partner violence also may constitute sexual harassment, gender-based harassment or sexual violence. Term refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.

Stalking: is intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for his or her safety or the safety of others or cause that person to suffer substantial emotional damage. Examples include, but are not limited to, repeatedly following such person(s), repeatedly committing acts that alarm, cause fear, or seriously annoy such other person(s) and that serve no legitimate purpose, and repeatedly communicating by any means, including electronic means, with such person(s) in a manner likely to intimidate, annoy, or alarm him or her. All acts of sexual discrimination are prohibited by Title IX.

Supportive measures: In cases involving Title IX complaints, the college has an obligation to provide individualized services that are reasonably available and that are nonpunitive, non-disciplinary, to the complainant or respondent. These services must be offered as appropriate, as reasonably available, and without fee or charge. Examples of such services are counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Under § 106.44(a), a Title IX Coordinator must consider a complainant's wishes with respect to supportive measures.

Title IX of the Education Amendments of 1972: is a comprehensive federal law that protects people from discrimination based on sex in education programs or activities which receive Federal financial assistance. It states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." The law prohibits discrimination on the basis of sex in any federally-funded education program or activity. Under Title IX, colleges are legally required to respond and remedy hostile educational environments and failure to do so is a violation that means a school could risk losing its federal funding.

Title IX Coordinator: Title IX Guidance requires every educational institution receiving federal funding to have a **Title IX Coordinator**. The contact information (name/title, office address, telephone number, email address) of the Coordinator should be available in the college's nondiscrimination notice, in the annual security report, and in the college catalog. The Title IX

Coordinator’s information also should be displayed prominently on the college’s website (see 34 C.F.R. § 106.8(b)(2)(i)). Individuals who need to report incidents of sex discrimination, sexual/gender harassment, or sexual violence should contact the Title IX Coordinator. Any person can report sex discrimination, including sexual harassment, using the contact information for the Title IX Coordinator or Coordinators, even outside of business hours.

Violence Against Women Act (VAWA): requires colleges to report dating violence, domestic violence, sexual assault, and stalking, beyond crime categories the Clery Act already mandates; adopt certain student discipline procedures, such as for notifying purported victims of their rights; and adopt certain institutional policies to address and prevent campus sexual violence.

As of August 14, 2020 updated Title IX regulations require recipients of federal funding (including LIBI) to: Promptly respond to individuals who are alleged to be victims of sexual harassment by offering supportive measures; follow a fair grievance process to resolve sexual harassment allegations when a complainant requests an investigation or a Title IX Coordinator decides on the recipient’s behalf that an investigation is necessary; and provide remedies to victims of sexual harassment.

The Department's **Title IX regulations define sexual harassment, including sexual assault, as unlawful sex discrimination.** The new Title IX regulation holds colleges accountable for failure to respond *equitably and promptly* to sexual misconduct incidents and aims to ensure an adjudication process that is fair to all students.

The following sections describe the steps LIBI will take to ensure students filing Title IX complaints receive a process that is fair to all students.

LIBI never will be required to deprive an individual of rights guaranteed under the U.S. Constitution in response to any claim of sex discrimination under Title IX. The Department of Education (“Department” or “DOE”) may require schools to take remedial action for discriminating on the basis of sex or otherwise violating the Department’s Title IX regulations.

Students who are enrolled in any of LIBI’s programs or are attempting to participate in programs administered by the college, may file a formal complaint against another member of the LIBI community under Title IX protections. Once a formal complaint of alleged sexual harassment is filed (it can be filed by the student complainant in person, by mail, by e-mail, or by using LIBI’s electronic incident report, or signed by the Title IX Coordinator), the college is prepared to respond directly to each and every report that comes in and to offer supportive measures, and to describe the school's processes for investigation and discipline if the complainant wishes to pursue that avenue.

Students who wait to file a complaint under Title IX until after they graduate are entitled to appropriate supportive measures but are precluded from using LIBI’s Title IX complaint process to investigate and adjudicate the matter, unless they are otherwise intending to return to participate in other activities such as obtaining another degree at the college or participating in alumni activities. This provision precludes the use of LIBI’s Title IX process when a student-complainant has withdrawn from school or an employee-complainant has left his or her employment with the college. Because the Title IX process is in place for active members of the community, complainants who have left the college and are no

longer participating in educational or employment opportunities at LIBI will have to address their claims via a non-Title IX process.

Similarly, § 106.45(b)(3)(i) requires colleges to dismiss formal complaints from its Title IX grievance process if they allege conduct that did not occur in the institution's education program or activity, or that did not occur in the United States for the purposes of sexual harassment under Title IX. For the purposes of filing a grievance under Title IX, the Department defines education program or activity as including, locations, events, or circumstances over which LIBI exercised substantial control over both the respondent and the context in which the sexual harassment occurs. Sexual harassment that occurs off campus and does not occur in an *education program or activity* controlled by LIBI (as defined above) will not be covered under Title IX. Therefore, sexual harassment that occurs off campus via social media that targets a student, for example, may not fall under the provision of Title IX. However, this type of misconduct is still in violation of LIBI's Students Code of Conduct and so LIBI's response would be pursuant to that policy.

WHAT DOES THIS MEAN?

This means that when you file a complaint against another member of the LIBI community, LIBI must be careful to first identify if the college has jurisdiction over sexual misconduct in order to determine if Title IX applies. However, even if LIBI does not have jurisdiction under Title IX, the college may have jurisdiction under another policy or provision, such as the Student Code of Conduct, or one of the other State and local laws protecting students from sexual harassment and sex discrimination. Remember, if something feels or seems illegal or it is making you feel uncomfortable – REPORT IT. The Title IX Coordinator or one of LIBI's officials who have authority over discipline at the college will help you determine how the college can help.

In line with guidance from the Department, a college may, in its discretion, dismiss a formal complaint under Title IX if the respondent, the individual being accused, is no longer enrolled or employed by the institution. The Department recognizes that an institution's general obligation to provide a complainant with a prompt, non-deliberately indifferent response might not include completing a grievance process in a situation where the college lacks any disciplinary authority over the respondent. In other words, colleges are limited in their capacity to respond to a formal complaint if the accused no longer attends or works at the institution. Students should bear this in mind when contemplating waiting to report incidents under Title IX – waiting to report can limit options to seek justice.

FORMAL COMPLAINT

The formal complaint, or the document filed by a complainant, can be done in person, it can be a paper submission that contains the complainant's physical signature, or it can be an electronic submission (such as by e-mail or through LIBI's online incident report located on the college website: https://docs.google.com/forms/d/e/1FAIpQLSfBft3sm_3snxRMuuU8KW5Wo2QO85mjMfQhUGkQPA62xpbmjQ/viewform). A complainant may not submit a formal complaint anonymously, as it requires their physical or digital signature.

Anyone can report sexual harassment to the Title IX Coordinator. It does not have to be the complainant (the individual alleged to be the victim) to trigger LIBI's response obligations, **but that will not be considered a formal complaint under Title IX.**

The definition of “formal complaint” precludes a third party from filing a **formal complaint**, which is defined as a document that must be filed by a complainant or signed by the Title IX Coordinator.

The Title IX Coordinator has discretion to file a Formal Complaint even if the complainant chooses not to, and even if the complainant chooses not to participate in a college resolution process. In general, the Title IX Coordinator will seek to respect the complainant’s wishes not to file a Formal Complaint. However, when the Respondent is an employee; when a significant safety concern is presented; or when the Title IX Coordinator concludes that failure to pursue a Formal Complaint may fail to meet LIBI’s duties under the law; the Title IX Coordinator usually will sign a Formal Complaint.

WHAT DOES THIS MEAN?

Any person who believes that sexual harassment may have occurred may report sexual harassment which then would trigger LIBI’s responsibility to determine if supportive services are necessary under the circumstances.

Unfortunately, for Title IX claims a complainant (the alleged victim) is not able to submit a formal complaint anonymously, as it requires that person’s physical or digital signature. While a Title IX Coordinator may sign a formal complaint based upon an anonymous report, the identity of the complainant will be disclosed if known.

THREE CATEGORIES OF CONDUCT

The new regulations provide that there are three categories of conduct that could constitute sexual harassment under Title IX:

- 1) unwelcome conduct on the basis of sex that a reasonable person would determine is so “severe, pervasive, and objectively offensive” that it effectively denies a person equal access to the recipient’s education program or activity;
- 2) quid pro quo harassment; or
- 3) sexual assault, dating violence, domestic violence, or stalking as defined in the Clery Act/Violence Against Women Act (“VAWA”).

When determining whether conduct meets the definition of sexual harassment, particularly under category 1 (hostile environment), the conduct must be severe, pervasive, **and** objectively offensive.

Notably, under the new regulations a single instance of harassment on the basis of sex no longer can be considered sexual harassment pursuant to the hostile environment analysis.

It is important to note that conduct that falls under the other two categories – quid pro quo (in Latin meaning “this for that”) and Clery Act/VAWA offenses – do not have to meet the elements of “severe, pervasiveness, and objective offensiveness” such that **a single instance of sufficiently severe harassment on the basis of sex may have the systemic effect of denying the victim equal access to an education program or activity.**

WHAT DOES THIS MEAN?

Students subject to harassing conduct should seek the guidance of LIBI's Title IX Coordinator. In the event that the particular harassing conduct does not meet the Title IX definition of sexual harassment, the student may have recourse under other provisions of LIBI's own Code of Conduct.

RESPONSE TO REPORTS

If the college has *actual knowledge* of sexual harassment in an *education program or activity* it administers, the college must respond promptly in a manner that is not deliberately indifferent. An institution could be deemed deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances. Meaning, when a student notifies a **Title IX Coordinator, the Provost, the Dean, or the Director of Operations** about an incident of harassment or brings to one of these individuals an allegation of sexual harassment against another student at the college or a current employee (faculty or staff), this notification will constitute actual knowledge.

WHAT DOES THIS MEAN?

If something is happening at the college that could constitute sexual harassment or sex discrimination under Title IX, you should promptly notify the Title IX Coordinator listed in this document and on LIBI's website or let a LIBI official who has authority to institute corrective measures on behalf of the college, know what is happening. When you do that, LIBI will be considered to have **actual knowledge** of what is happening and will have to respond in a meaningful way (that is **not deliberately indifferent**) to the situation. Once LIBI has actual knowledge you will be entitled to supportive measures and there will be a fair adjudication process.

It is illegal for LIBI or anyone else to retaliate against you in any way for making a formal report or a complaint under Title IX. Retaliation is also prohibited against anyone who testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Retaliation can be anything that can be considered as intimidation, threats, coercion, discrimination, including charges against you for Student Code of Conduct violations that do not involve sex discrimination or sexual harassment for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

Anyone can report sexual harassment to the Title IX Coordinator. It does not have to be the complainant (the individual alleged to be the victim) to trigger LIBI's response obligations. The definition of "formal complaint", however, precludes a third party from filing a formal complaint, which is defined as a document that must be filed by a complainant or signed by the Title IX Coordinator. **See Formal Complaint section for more information.**

NOTICE OF ALLEGATIONS

Upon receipt of a formal complaint, **LIBI** must provide the following information through written notice to the parties who are known:

1. Notice of the LIBI's grievance process that complies with this section, including any informal resolution process.

2. Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. **Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.**

The written notice provided by LIBI must include a statement that the respondent is presumed not responsible for the alleged conduct and that a **determination regarding responsibility is made at the conclusion of the grievance process**. The written notice must inform the parties that **they may have an advisor** of their choice, who may be, but is not required to be, an attorney, and **may inspect and review evidence obtained during the investigation**.

The written notice provided by LIBI must inform the parties of any provision in LIBI's Student Code of Conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, LIBI decides to investigate allegations about the complainant or respondent that are not included in the notice, **LIBI must provide notice of the additional allegations to the parties whose identities are known**.

WHAT DOES THIS MEAN?

The intent of the new Title IX regulations is to provide an **equitable process** that affords **due process** to the parties involved, particularly the respondent. Providing respondents with specific details about the allegations affords them a better opportunity to defend themselves, which is central to due process. In other words, the college has to give the person being accused of the alleged Title IX violations enough specific details about the charges to give him or her a fair chance to defend himself or herself against those allegations.

LIBI'S RESPONSE TO FORMAL COMPLAINTS

In compliance with the Department's guidance, LIBI must adopt and follow the following grievance process in response to a formal complaint that complies with the following elements:

- Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.
- Remedies must be designed to restore or preserve equal access to the recipient's education program or activity. Such remedies may include the same individualized services described in § 106.30 as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;
- Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness;

- Require that any individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

In order to meet these requirements, LIBI ensures that all Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30. LIBI is also responsible for ensuring that all involved in the process understand the scope of LIBI’s education programs and activities. LIBI must ensure that all officials handling the complaint understand how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

LIBI must also ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant. It is also LIBI’s responsibility to ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. LIBI must take great care that any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

WHAT DOES THIS MEAN?

LIBI will make sure that anyone handling the response to a formal complaint of sexual harassment is trained and understands the definition of sexual harassment and how to conduct an investigation and hearings. LIBI is expected to take great care to make sure all involved understand how to serve impartially, including how to avoid prejudging the facts at issue. LIBI also must ensure that it addresses any conflict of interest and bias and trains those involved to recognize it when it is happening. It is also LIBI’s responsibility to make sure all officials involved in the adjudication process are trained to use the technology involved in a live hearing.

At the heart of all of the training requirements is the notion that LIBI must provide students with a fair adjudication process (fair to both the complainant and the respondent). Fairness involves making sure that officials use only relevant evidence and do not rely on sex stereotypes to carry out impartial investigations and adjudications.

Important for complaints under Title IX: There is a presumption that **the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.** Meaning, the accused is presumed not responsible until the grievance process is concluded.

Both Title IX Regulations & New York Education Law Article 129-B call for colleges to set reasonably prompt time frames for conclusion of the grievance process. In compliance with these regulations, LIBI will ensure that any delays in the processes are temporary delays of no more than 10 (ten) days. LIBI will allow for a temporary delay of the grievance process or grant a limited extension of time frames for good cause only. LIBI will provide written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the

absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

If LIBI's conduct process runs concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence, temporary delays should not last more than 10 (ten) days except when law enforcement specifically requests and justifies a longer delay.

PREPONDERANCE OF THE EVIDENCE STANDARD

LIBI uses the **preponderance of the evidence standard** to determine responsibility in its judicial proceedings. Under the preponderance standard, the burden of proof is met when the party with the burden shows that there is a greater than 50% chance that the claim is true (more likely than not or >50%).

What preponderance of the evidence means is that the burden of proof is met if there is greater than a 50% chance that, based on all the reasonable evidence shown, the complainant claims are true, and respondent is found responsible. Another way to think of the standard is simply to ask whether the complainant's claim is more likely to be true than not true.

LIBI applies the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and applies the same standard of evidence to all formal complaints of sexual harassment.

SUPPORTIVE MEASURES

Supportive Measures are individualized services, accommodations, and other assistance that the college offers and may put in place, without fee or charge. Supportive Measures are designed to restore or preserve equal access to LIBI's programs and activities, protect the safety of all parties and LIBI's educational environment, and/or deter prohibited conduct, without being punitive or disciplinary in nature or unreasonably burdening the other party. Supportive Measures are available regardless of whether the matter is reported to the college for the purpose of initiating a proceeding under this Policy and before, after, and regardless of whether a Formal Complaint is filed.

A complainant who requests Supportive Measures has the right to file a Formal Complaint, either at the time the Supportive Measure is requested or at a later date. Any complainant who requests Supportive Measures will be informed in writing of their right to simultaneously or subsequently file a Formal Complaint under this Policy.

When the Title IX Coordinator receives a report of possible violation under Title IX, he or she will contact the complainant to discuss the availability of Supportive Measures; and to explain that Supportive Measures are available with or without filing a Formal Complaint. When the report involves a LIBI Employee, the Title IX Coordinator also will explain LIBI's obligation to investigate or otherwise respond to the report.

To determine the appropriate Supportive Measure(s) to be implemented, LIBI conducts an individualized assessment based on the facts and circumstances of a situation.

Supportive Measures will not be disciplinary or punitive in nature and will not unreasonably burden, or unreasonably interfere with the college program or activity pursuits of the other party. Whether a possible Supportive Measure unreasonably would burden the other party is a fact-specific determination that takes into account the nature of the programs, activities, opportunities, and benefits in which an individual is participating.

EXAMPLES OF SUPPORTIVE MEASURES INCLUDE:

- Academic support services and accommodations, including the ability to reschedule classes, exams, and assignments; transfer course sections; modify an academic schedule (typically to separate the complainant and the respondent) or withdraw from courses;
- Work schedule or job assignment modifications (for college work study employment);
- An escort to ensure safe movement on campus;
- On-campus counseling services and/or assistance in connecting to community-based counseling services;
- Assistance in connecting to community-based medical services;
- Mutual restrictions on contact or communication between the parties, although one-way restrictions may be appropriate to help enforce a preliminary injunction, restraining order, or other order of protection issued by a court, or in other special circumstances;
- Temporarily limiting an individual's access to certain college facilities or activities;
- Information about and/or assistance with obtaining personal protection orders;
- Leaves of absence;
- Increased monitoring and security of certain areas of the campus.

LIBI may any of the above or a combination of these measures. LIBI will maintain Supportive Measures provided to the complainant or respondent as confidential to the extent that maintaining such confidentiality would not impair LIBI's ability to provide the Supportive Measures.

EMERGENCY REMOVAL OF STUDENTS AND ADMINISTRATIVE LEAVE

The college has procedures that provide for emergency removal of students and third parties and administrative leave or suspension for employees.

The college can make the determination to remove a respondent from LIBI's education program or activity on an emergency basis, provided that the college undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. LIBI will rely on objective evidence, current medical knowledge, or a licensed evaluator in its emergency removal process.

WHAT DOES THIS MEAN?

LIBI may only remove a respondent from his or her education program or activity after considering several criteria in order to determine if the respondent must be removed to ensure the physical health or safety of other students.

When LIBI makes the decision based on objective evidence, current medical knowledge, or based on the opinion of a licensed evaluator, to remove the respondent from his or her educational program, LIBI will provide the respondent with due process immediately following his or her removal from his or her education program or activity. This due process may be a hearing or meeting with an administrator responsible for conducting the individualized safety and risk analysis for the sole purpose of providing the respondent the opportunity to challenge the decision.

DISMISSAL OF A FORMAL COMPLAINT

The recipient may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the recipient; or specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Upon dismissal of a formal complaint, the recipient must promptly send written notice of the dismissal and reason (s) therefore simultaneously to the parties.

INVESTIGATION OF A FORMAL COMPLAINT

When investigating a formal complaint and throughout the grievance process, LIBI must ensure that **the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the college** and not on the individuals involved. Furthermore, the college cannot access, consider, disclose, or otherwise use either side's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment of the individual, unless LIBI obtains that individual's voluntary, written consent to do so for a grievance process under this section.

LIBI will provide an equal opportunity for both sides to present witnesses, including fact and expert witnesses, and other inculpatory evidence that shows, or tends to show, a person's involvement in an act, or evidence that can establish responsibility and exculpatory evidence favorable to the respondent that exonerates or tends to exonerate the respondent.

For violations under Title IX, LIBI will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

LIBI will provide the parties involved with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting

or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

LIBI will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

LIBI will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which LIBI does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can respond meaningfully to the evidence prior to conclusion of the investigation.

Prior to completion of the investigative report, LIBI will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy. The parties will have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report. **LIBI will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.**

LIBI will create an investigative report that **fairly summarizes relevant evidence** and, at least ten (10) days prior to a hearing (if a hearing is required or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

WHAT DOES THIS MEAN?

The investigation procedure that LIBI has adopted must be followed as outlined in order to provide the parties, particularly the respondent, with due process. The Department's regulations make clear that it is LIBI's responsibility, not the parties', to gather evidence sufficient to reach a determination regarding responsibility and the burden of proof rests with the college.

Each party is **entitled to review, prior to the completion of the investigation report, all evidence, inculpatory and exculpatory, that is directly related to the allegations raised in the formal complaint.** LIBI will meet this requirement by having the investigator provide a copy of the draft investigation report prior to the completion of the report and allow each party at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigation report.

In cases where Title IX violations are being considered, **the Department mandates that college grievance process must provide for a live hearing.** At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, **including those challenging credibility.**

In accordance with the regulations, such **cross-examination** at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and **never by a party personally,** notwithstanding the discretion of the college to restrict the extent to which advisors may participate in the proceedings.

At the request of either party, LIBI must provide for the live hearing to occur with the **parties located in separate rooms** with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. The decision-maker(s) will determine whether the question being asked is relevant in cross-examinations. Only relevant cross-examination and other questions may be asked of a party or witness. The decision maker(s) will explain any decision to exclude a question as not relevant.

If one of the sides does not have an advisor present at the live hearing, LIBI must provide without fee or charge to that individual, an advisor to conduct cross-examination on behalf of that individual. The advisor will be chosen by LIBI.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, **or if 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.**

In accordance with the Department's guidance, if a party or **witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness** in reaching a determination regarding responsibility. The decision-maker(s) cannot draw an inference about responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. The Department indicates that colleges have discretion to determine where and how live hearings will be held. The college may conduct live hearings with all parties physically present in the same location or, at the LIBI's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

In accordance with the Department's guidelines, for all live Title IX hearings LIBI must make available to the parties for inspection and review either an audiovisual or audio recording, or transcript.

WHAT DOES THIS MEAN?

Postsecondary institutions are required to hold a live hearing conducted by a neutral decision-maker (hearing officer or panel) who will review the evidence and make a decision as to responsibility. **The decision-maker cannot be the Title IX Coordinator or the Investigator.** The hearing can be conducted via video conference and it must always be recorded. The parties must be allowed to ask relevant questions and cross-examine witnesses.

If one of the parties does not have an advisor present at a live hearing, it is LIBI's responsibility to provide an advisor of LIBI's choice to conduct cross-examination on behalf of that party. **A party cannot conduct questioning on their own behalf.** Therefore, if any of parties do not have an advisor, LIBI will need to provide them with one. The advisor can be an employee of the college or a person not affiliated with the college; the choice in these instances is LIBI's.

DETERMINATION OF RESPONSIBILITY

The Department emphasizes in its guidance that the decision-makers who will be issuing the written determination regarding responsibility cannot be the same person as the Title IX Coordinator(s) or the Investigators.

The decision-makers will apply the preponderance of evidence standard when making the determination of responsibility. This is the standard of evidence that LIBI applies to all formal complaints of sexual harassment.

THE WRITTEN DETERMINATION WILL INCLUDE THE FOLLOWING ELEMENTS:

- Identification of the allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination. Copies of any notifications given to the parties, as well as interviews with parties and witnesses, site visits if any were made, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of LIBI's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions LIBI imposes on the respondent, and whether remedies designed to restore or preserve equal access to LIBI's education program or activity will be provided by the college to the complainant;
- LIBI's procedures and permissible bases for the complainant and respondent to appeal.

LIBI MUST PROVIDE THE WRITTEN DETERMINATION TO THE PARTIES SIMULTANEOUSLY.

The determination regarding responsibility becomes final either on the date that LIBI provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any remedies.

WHAT DOES THIS MEAN?

LIBI must ensure that an individual, other than the Title IX Coordinator or Investigator, reviews all the evidence and makes a determination regarding a respondent's responsibility under Title IX.

SANCTIONS AND REMEDIES

The decision-makers who will be issuing the written determination in Title IX cases regarding responsibility will not be the same person as the Title IX Coordinator(s) or the Investigator. The decision-makers will apply the preponderance of evidence standard when making the determination of responsibility. This is the standard of evidence that LIBI applies to all formal complaints of sexual harassment involving students as well as employees.

If the respondent is found responsible after the hearing process, the selected decision-makers will identify long-term or permanent remedies to address the effects of the conduct on the complainant, restore the safety and well-being of the complainant, and maximize the complainant's educational and employment opportunities. Remedies should seek to restore or preserve equal access to an education program or activity along with all benefits and opportunities lost as a result of the Title IX violation, to the complainant, to the extent possible. The college will also identify remedies to address the effects of the conduct on the college community.

The following sanctions may be imposed for those who have been found responsible for Title IX violations:

STUDENTS

- Verbal Warning
- Written Warning
- Probation for a specified period of time
- Administrative withdrawal from a course without refund
- Mandated counseling
- Mandated training
- No Contact Directive
- Suspension
- Expulsion
- Expulsion without recourse
- Transcript notation
- Other consequences deemed appropriate to the specific violation (such as reassignment or removal of the respondent from a class or a campus location and others).

EMPLOYEES

- Verbal Warning
- Written Warning
- Mandated counseling
- Required completion of training program
- Recommendation of demotion

- Recommendation to suspend with or without pay
- Recommendation of Dismissal
- Other consequences deemed appropriate to the specific violation

Recommendations for **student expulsion or employee suspension, demotion or dismissal, will be made by the decision-makers to the appropriate LIBI official after the time for appeal has expired.** Should the decision-makers recommend that the respondent be demoted, dismissed, or expelled without recourse, during the time in which the parties involved have the right to appeal, the respondent will remain on suspension unless otherwise specifically indicated by the decision-makers.

APPEALS

Colleges are required to offer both the complainant and the respondent an appeal of the determination regarding responsibility, and from the college’s dismissal of a formal complaint or any allegations therein in the event that:

- There was a procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

LIBI MAY OFFER AN APPEAL EQUALLY TO BOTH PARTIES ON ADDITIONAL BASES.

WHEN APPEALS ARE OFFERED, LIBI MUST:

- Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) who reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator;
- Ensure that the decision-maker(s) for the appeal is unbiased and meets the training requirements under Title IX;
- LIBI must provide both parties a reasonable and equal opportunity to submit a written statement in support of, or challenging, the outcome.
- Once the decision-maker issues a written decision describing the result of the appeal and the rationale for the result, both parties must be provided with that written decision simultaneously.

WHAT DOES THIS MEAN?

Both parties must be offered the opportunity to appeal a determination regarding responsibility in cases involving Title IX violations. In addition, the decision-maker for the appeal must meet the same training requirement as the Title IX Coordinator.

Colleges receiving federal funding are **not permitted to require a waiver of the right to an investigation and adjudication of formal complaints of sexual harassment** consistent with this section as a condition of enrollment or continuing enrollment, or employment or continuing employment. Similarly, colleges receiving federal funding may not require the parties to participate

in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed.

However, at any time prior to reaching a determination regarding responsibility, **colleges may facilitate an informal resolution process, such as mediation**, that does not involve a full investigation and adjudication, provided that the college:

- Provides to the parties a written notice disclosing: the allegations, and the requirements of the informal resolution process.
- Describes the circumstances under which the informal resolution precludes the parties from resuming a formal complaint arising from the same allegations.
- Notify the parties that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
- Describe any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- Obtains the parties' voluntary, written consent to the informal resolution process.

Colleges are not permitted to offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

WHAT DOES THIS MEAN?

Colleges are not required to develop and implement an informal resolution process. However, if a college that receives federal funding chooses to develop an informal resolution process, **it cannot be offered unless a formal complaint has been filed.**

Colleges cannot offer or facilitate an informal resolution to resolve allegations that an employee sexually harassed a student.

RECORDKEEPING

In compliance with Department's regulations, LIBI must maintain for a period of seven (7) years records of the following:

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under Title IX, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity.
- Any appeal and the result.
- Any informal resolution and the result.
- All materials used to train Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an informal resolution process. Colleges must make these training materials publicly available on their websites.