

**LEHIGH VALLEY HEALTH NETWORK
System Manual**

GME - SEXUAL MISCONDUCT POLICY & PROCEDURES – DEPARTMENT OF EDUCATION (DOE)

SCOPE:

Lehigh Valley Health Network (LVHN) adopts this policy for the following selected licensed entities:

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|---|---|
| <input checked="" type="checkbox"/> Lehigh Valley Hospital | <input type="checkbox"/> Transitional Skilled Unit |
| <input type="checkbox"/> Lehigh Valley Hospital – Dickson City | <input type="checkbox"/> Lehigh Valley Home Care |
| <input checked="" type="checkbox"/> Lehigh Valley Hospital – Hazleton | <input type="checkbox"/> Lehigh Valley Hospice |
| <input type="checkbox"/> Lehigh Valley Hospital – Pocono | <input type="checkbox"/> Pocono VNA / Hospice |
| <input checked="" type="checkbox"/> Lehigh Valley Hospital – Schuylkill | <input type="checkbox"/> Lehigh Valley Home Care – Schuylkill |
| <input type="checkbox"/> LVHN Children’s Surgery Center | <input type="checkbox"/> Lehigh Valley Home Care – Hazleton |
| <input type="checkbox"/> LVHN Surgery Center – Tilghman | |

Medical and Dental Resident and Fellow Physicians

LINKS TO ATTACHMENTS: N/A

LIST OF ASSOCIATED FORMS: N/A

DISCLAIMER:

This policy and the implementing procedures are intended to provide a description of recommended courses of action to comply with statutory or regulatory requirements and/or operational standards. It is recognized that there may be specific circumstances, not contemplated by laws or regulatory requirements that make compliance inappropriate. For advice in these circumstances, consult with the Departments of Risk Management and/or Legal Services, as appropriate.

REVIEW:

Origination: 01 / 2021

Review / Revision:

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I. POLICY:

LVHN is committed to providing a learning and working environment free from discriminatory conduct, which includes sexual misconduct. Sexual misconduct, which includes sexual harassment, is a type of discriminatory conduct that is contrary to LVHN's commitment. Sexual misconduct undermines the mission and the work of LVHN, and can impact the career, educational experience, and well-being of **residents and fellows (hereinafter referred to collectively as "students")**, faculty, and staff. All members of the LVHN community have a responsibility to ensure that LVHN is free from all forms of sexual misconduct. This Sexual Misconduct Procedure outlines LVHN's commitment to address sexual misconduct, describes the prohibited conduct, how to report and file a complaint of sexual misconduct, the process to investigate and resolve complaints of sexual misconduct, and the resources available for both the Complainant and Respondent.

This Procedure and the corresponding processes comply with the final Title IX regulations issued by the U.S. Department of Education's Office for Civil Rights in May 2020. Sexual misconduct, including sexual harassment, may also constitute a form of sex discrimination which is illegal under Title VII of the Civil Rights Act of 1964, Title IX of the Elementary/ Secondary Education Act of 1972, and state and local law. Inquiries concerning the application of Title IX may be referred to the Title IX Coordinator. The Title IX Coordinator is Carolyn Coleman, Administrator, Risk Management and may be contacted as set forth in Section VIII. In addition to any sanctions that LVHN may impose for violation of this policy, an individual who engages in sexual misconduct against another may be held personally liable to the individual who experienced the misconduct and may be subject to sanctions independent of those LVHN imposes.

For the purpose of this policy, sexual misconduct includes sexual or sex-based: hostile environment harassment, quid pro quo harassment, sexual assault, domestic violence, dating violence, and stalking, as well as other forms of sexual exploitation. This policy is intended to promote an environment that is free from sexual misconduct as well as one that is consistent with other constitutional protections and personal freedoms.

Specifically, this policy provides for:

1. Comprehensive education and prevention programs that inform the LVHN community about the nature and forms of sexual misconduct, its impact on individuals and the LVHN community as a whole, and the steps necessary to combat it;
2. Equitable procedures for those reporting sexual misconduct as well as for those reported to have engaged in sexual misconduct, including informing individuals about their right to file criminal charges, and the availability of appropriate supportive measures for both parties; and,
3. LVHN disciplinary actions for those who have violated this policy. LVHN recognizes that certain participants in its educational programs and activities are affiliated with schools, colleges and universities that also have sexual misconduct policies. When another institution's policy may be implicated by conduct prohibited under this policy, LVHN will cooperate and/or defer to that institution to ensure fairness to all parties.

II. DEFINITIONS:

Complainant: An individual who has reportedly experienced sexual misconduct as defined below.

Confidential Resource: A licensed, professional counselor, pastoral counselor or a health care provider serving in their capacity as a counselor or health care provider and any employee so designated as a confidential resource by their institute or department.

Consent: For the purpose of this policy, consent means knowing, voluntary, and clear permission by words or actions to engage in sexual activity. Consent must be ongoing throughout sexual activity and can be revoked at any time. Mere assent (an affirmative statement or action) shall not constitute consent

if it is given by a person who is unable to make a reasonable judgment concerning the nature or harmfulness of the activity because of their incapacitation, unconsciousness, youth, mental deficiency, or if the assent is the product of threat or coercion. (See 18 Pa.C.S.A. §311) Consent to prior sexual activities does not constitute consent to future acts. Consent in relationship to sexual activity is defined in Pennsylvania in accordance with its plain and common meaning. (Com. v. Duffy, 832 A.2d 1132, 1139 (Pa. Super. 2003))

Educational Program or Activity: Any program or activity offered at LVHN or by LVHN employees in the scope of their duties that is educational in nature beyond on-the-job training, general interest, or routine continuing education programs. Factors in determining whether a program or activity is educational include whether it is structured through a particular course of study; whether participants earn academic credit toward a degree or certificate, or qualify to sit for professional exams; or whether a program provides instructors, exams or other evaluation process. Educational programs and activities include, without limitation, residency training programs offered by LVHN and affiliated colleges and universities; clinical rotations for degree- or certificate-granting programs; medical and other residency programs; research and medical fellowships; internships; and educational programs offered college and university students.

Formal Complaint: Written documentation from the Complainant of their desire to initiate an LVHN investigation into reported sexual harassment as defined below. At the time of submitting a Formal Complaint, the Complainant must be either participating in or attempting to participate in LVHN's programs or activities. A Formal Complaint cannot be anonymous.

A Formal Complaint may also be signed by the Title IX Coordinator, should circumstances necessitate. If a Formal Complaint is signed by the Title IX Coordinator and a Complainant is known, the Complainant will receive all notices and opportunities set forth below.

Incapacity: Incapacity occurs when an individual is unable to make rational, reasonable decisions because they lack the capacity to understand what is happening. Incapacitation is determined through consideration of the circumstances and all relevant indicators of a person's mental and physical state.

Informal Complaint: An Informal Complaint of sexual misconduct may be submitted to the Title IX Coordinator by anyone regardless of whether they are participating in LVHN's programs or activities. Upon receiving an Informal Complaint, the Title IX Coordinator or appropriate designee will reach out to the individual who has reportedly experienced sexual misconduct, if known, and discuss available resources, supportive measures, and options moving forward. An Informal Complaint, unless determined otherwise by the Title IX Coordinator, will not initiate a formal LVHN investigation.

Participant: Any person participating in LVHN's educational programs and activities, as defined in this Policy. The term includes, but is not limited to, staff and faculty, preceptors, medical and other residents, research and other fellows, visiting scholars, interns, and students and patients participating in educational programs and activities.

Preponderance of the Evidence: Standard of proof used to determine if the Policy has been violated. To meet this standard, the evidence must show that the conduct considered a violation is more likely than not to have occurred.

Prohibited Conduct: Conduct that violates the Policy. Prohibited conduct includes sex discrimination, sexual harassment, sexual violence and retaliation, as those terms are defined in the Policy.

Relationship involving authority or power: Relationship between two individuals in which one has responsibility over the other's professional or academic development, performance or future. Consent can sometimes be difficult to discern in these types of relationships, may be deemed not

possible, and may be construed as coercive. Such relationships have the potential to result in claims of sexual harassment.

Reporter: An individual who brings an Informal Complaint of sexual misconduct to the attention of LVHN. Any person may report sexual misconduct regardless of whether they are a member of the LVHN community or whether they have personally experienced the conduct at issue. A Reporter may be a friend or parent of the Complainant, a witness to the sexual misconduct, or the Complainant.

Respondent: An individual who has reportedly engaged in sexual misconduct as defined below. The respondent(s) and the complainant(s) may be referred to collectively as the parties.

Responsible Employee: An employee who has the authority to address reports of prohibited conduct as defined in the Policy, or who a participant in an educational program or activity could reasonably believe has this authority. Program directors, administrators, supervisors, program and project managers, coordinators, clinical instructors, clinical educators, fieldwork instructors, fieldwork educators, principal investigators, mentors, research laboratory employees, preceptors and faculty members are responsible employees, unless they are considered a confidential resource.

Student(s): For the purpose of this policy “student” or “students” shall be limited to only those individuals who are Residents and Fellows and employed in an established, accredited or non-accredited, medical or dental residency or fellowship program overseen by LVHN’s Graduate Medical Education Committee (GMEC).

III. PROCEDURE:

1. Jurisdiction

This policy applies to prohibited conduct that takes place on LVHN property, on property owned or controlled by LVHN, or at LVHN-sponsored events, it may also apply to conduct away from LVHN property and online conduct when the Title IX Coordinator determines that LVHN has substantial control over both the Respondent and the context in which the reported misconduct has occurred. If the Respondent is unknown or is not a member of the LVHN community, the Title IX Coordinator will assist the Complainant in identifying appropriate LVHN and community resources and explaining available supportive measures. LVHN reserves the right to address, in accordance with other policies, harassment that either does not fall within this policy’s definition of prohibited sexual misconduct or that is not based on sex/gender. The Title IX Coordinator will determine whether reported conduct is covered by this policy. If not, such conduct will not be addressed through the procedures as detailed below but may be considered according to processes articulated in other relevant LVHN policies.

2. Complaints

Any member of the LVHN community, visitor, or a participant in a LVHN-sponsored activity may bring a complaint of sexual harassment, sexual violence, relationship violence, stalking or a nonconsensual romantic or sexual relationships in the workplace or educational setting against a faculty member, instructor, graduate trainee, or any other LVHN staff or colleague. The complaint should be made to the Title IX Coordinator who will meet with the Complainant; determine whether the behavior is covered by the Sexual Misconduct Policy and, if so, the appropriate process for resolution or investigation; and oversee that process. If a determination is made that the complaint involves a violation of LVHN’s Harassment, Policy, then they will direct the process in accordance with the Procedures for Resolving Complaints under that policy. If a determination is made that the complaint could fall under either, the Complainant shall determine which of the policies the Complainant wishes to proceed under.

3. **Conduct Prohibited**

The following are definitions of specific prohibited conduct under this policy.

Sex Discrimination: Behavior or action that denies or limits a person's ability to benefit from, or fully participate in, education programs or activities or employment opportunities because of a person's sex, including gender, gender identity, gender expression or sexual orientation. Examples of the type of discrimination that are covered under Title IX include, but are not limited to, sexual harassment, sexual violence, failure to provide equal opportunity in educational and co-curricular programs, discrimination based on pregnancy, and employment discrimination based on sex in educational and co-curricular programs. Some types of sex discrimination are also considered sexual violence.

Sexual Harassment: Conduct on the basis of sex/gender, including gender identity, gender expression, or sexual orientation, when one or more of the below categories are also met:

- 1) **Quid Pro Quo Harassment.** Submission to unwelcome conduct is a) made explicitly or implicitly a term or condition of an individual's employment or status in a course, program, or activity, or b) used as a basis for an employment-related, educational, or other decision affecting an individual.
- 2) **Hostile Environment Harassment.** Unwelcome conduct that is severe, pervasive, and objectively offensive such that it effectively denies an individual from participating in or benefitting from LVHN's education or employment programs and/or activities. Conduct must be severe, persistent, and pervasive from both a subjective and an objective perspective. In evaluating these aspects, LVHN will consider the totality of the known circumstances.
- 3) **Dating Violence.** Violent acts or conduct by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. Whether such relationship exists will be determined based on the Complainant's statement and consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts that meet the definition of "domestic violence."
- 4) **Domestic Violence.** Violent acts or conduct committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or who has cohabitated with the Complainant as a spouse, by a person similarly situated to a spouse of the Complainant, by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the Commonwealth of Pennsylvania, or as "domestic violence" is otherwise defined under the laws of the Commonwealth of Pennsylvania. (See 23 Pa. C.S.A. § 6102, et seq. and 18 Pa.C.S.A. § 2711)
- 5) **Stalking.** Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to fear for their safety or the safety of others; or suffer severe emotional distress; or as "stalking" is otherwise defined by the law of the Commonwealth of Pennsylvania. One engages in an impermissible course of conduct if one engages in two or more acts that include, but are not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates about a person in a way prohibited as described above, or interferes with a person's property. (See 18 Pa. .C.S.A. § 2709.1)
- 6) **Sexual Assault.** Includes any of the following, or threat or attempt to engage in any of the following:
 - a. Any intentional and unconsented touching of the following for the purpose of sexual gratification:
 - i. an intimate body part of another person, such as a sexual organ, buttocks or breast;
 - ii. any body part of another person with a sexual organ; or

- iii. any part of another person's body with the intent of accomplishing a sexual act.
- b. Vaginal or anal penetration of another individual, by body part or object, without the other person's consent; or
- c. Vaginal, anal, or oral sexual intercourse with another individual without the other person's consent.

In accordance with federal regulations, LVHN prohibits sexual assault that includes conduct defined by federal agencies as rape, sodomy, sexual assault with an object, and fondling. (The U.S. Department of Justice sets forth the definitions of relevant sex offense terms here: <https://ucr.fbi.gov/nibrs/nibrs-user-manual>)

Sexual Exploitation: Conduct in which a person takes non-consensual sexual advantage of another individual for the benefit of anyone other than the individual being exploited. When sexual exploitation rises to the level of sexual harassment as defined in this policy, the reported conduct will be processed through the procedures set forth below. In the event that sexual exploitation does not rise to the level of sexual harassment, this conduct will be addressed through the disciplinary procedures in applicable LVHN policies. Examples of sexual exploitation include, but are not limited to, the following:

- Taking and/or disseminating pictures, video, or audio recording of another person engaged in sexual activity without the consent of all involved in the activity.
- Exposing one's genitals in non-consensual circumstances, including via online communications.
- Sexual voyeurism, such as watching another engage in sexual activity or undressing without consent.
- Disrobing another person without their consent.
- Knowingly transmitting sexually transmitted infections (STI) or sexually transmitted diseases (STD) without disclosing that one is infected with an STI or STD.

4. **Relationships between Students/Persons in positions of Authority**

The professional relationship between students and persons in authority (faculty, instructors, advisors, and others) is central to the academic mission of LVHN. No persons in authority, as that term is explained below, shall ask a student for a date or sexual favor, or in other ways make a sexual advance toward the student. While an individual is a student of a particular person in authority, any sort of sexual or romantic advances or relationship between them is prohibited, whether such action rises to the level of sexual harassment under this policy or not. In the event the reported conduct does not constitute sexual harassment as defined above, this conduct will be addressed under applicable work rules and/or LVHN policies.

An individual is a student of a particular person in authority:

- a. When a student is registered in a course taught by the faculty/instructor and has not yet received a final grade; or
- b. When a student is assigned to be advised by a particular faculty member/instructor, whether the instructor is serving as an undergraduate advisor, graduate advisor, or member of a thesis or dissertation committee; or
- c. At other times when a faculty member/instructor has a relationship with a student such that a student's activities at LVHN are being supervised or evaluated by the instructor; or
- d. At other times when an advisor, physician, laboratory operator or other similar individual has a relationship with a student such that the student's activities at LVHN are being supervised or evaluated by that person. The relationships covered by this paragraph include, but are not limited to, medical residents and physicians.

5. Resources

Supportive Measures

For both the Complainant and Respondent, LVHN offers and will implement appropriate and reasonable responsive, supportive, and/or protective measures upon notice of sexual misconduct, regardless of whether a Formal Complaint has been filed. Such measures, which are free of charge and non-disciplinary or non-punitive and individualized in nature, are intended to support both parties, address immediate effects of sexual misconduct, and preserve access to educational and employment programs and activities. LVHN will maintain the confidentiality of these measures, provided that doing so does not impair LVHN's ability to provide the measures. Complainants and Respondents have the right to request and receive supportive measures as appropriate.

Supportive measures may be imposed or changed at any point during the resolution of a report in order to protect the interests of the parties and LVHN. Supportive measures will be determined on a case-by-case basis considering all relevant circumstances, including, but not limited to, specific requests by the parties, the severity of the allegations, and whether the parties are in the same educational program or share a job location.

Supportive measures may include, but are not limited to, separating individuals ("no contact" orders), counseling or support services, making alternative class placement or workplace arrangements, leaves of absence, or escort services or other safety measures. When changes to educational or working conditions are required, the Title IX Coordinator will work with the relevant program to ensure that supportive measures are feasible and appropriate under the circumstances, and consistent with any related policies or procedures within the institute or program.

In cases where there is an immediate threat to the physical health or safety of any individual arising from a report, an interim suspension is appropriate. When a suspension is considered, the Title IX Coordinator will work with the Human Resources Department, the Security Department and the relevant institute or program to conduct an individualized safety and risk analysis before imposing an interim suspension. Any individual suspended under this provision shall be given the opportunity to immediately appeal the interim suspension to an appropriate decision-maker based on the status of the individual.

Failure to comply with interim measures shall constitute a separate violation of the Policy.

Measures may include, but are not limited, to:

- Referral to counseling, medical, and/or other health services
- Referral to financial aid counseling
- Alteration of housing at the School of Nursing Building on the 17th Street campus
- Modifications to work/academic arrangements
- Academic support
- Adjustments to academic deadlines, schedules, etc.
- Leaves of absence
- Reassignment of parking designation
- Relocation of office space
- Reconfiguration of reporting structure
- Provision of safety escorts
- Contact restrictions between the Complainant and Respondent

Medical Attention and/or Law Enforcement

If desired, Complainant should consider seeking medical attention and/or law enforcement assistance as soon as possible. LVHN can assist the Complainant in notifying appropriate local law

enforcement and assist in directing individuals on how to obtain protection from abuse orders through the appropriate court. In circumstances of sexual violence, health care providers can treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted disease. Although LVHN strongly encourages all members of its community to report violations of this policy to law enforcement, it is wholly up to the individual who has experienced the misconduct whether or not to make such a report. The Employee Assistance Program (“EAP”), the Employee Health Services Department provide individuals a confidential resource, emotional support, and an opportunity to discuss reporting options, if they choose.

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protection from abuse orders related to the incident more difficult. If an individual chooses not to make a complaint regarding an incident, they are still able to confer with the resources listed below or other law enforcement agencies to preserve evidence in the event of a later change of mind.

LVHN Resources

- Title IX Coordinator: Carolyn Coleman
Carolyn_R.Coleman@lvhn.org
 (610) 402-9412
- Employee Health Services

Campus	Phone number
LVH – Cedar Crest	610-402-8869 option 2
LVH – Muhlenberg	484-884-7318 option 2
LVH - Hazelton	570-501-4788
LVH - Schuylkill	570-621-4351
LVH - Pocono	570-476-3779

- Employee Assistance Program (610) 433-8550
<http://www.preferredeap.org/>
 You can also access EAP through the LVHN CRC:
 Compassion for Colleagues tile, click on Caring for Colleagues
 You can use this link:
<https://erc.enwisen.com/ASI/Toolset/DownloadPosting.aspx?code=0b0e36c7>
- LVHN Department of Security (610) 402-8220
- Compliance Hotline 1-877-895-2905

Other Resources

- Local Police (911) (can also access through LVHN Department of Security)
- Crime Victims Council of the Lehigh Valley (610-437-6610) www.cvclv.org/
- Dating Violence Resource Center www.dvrc-or.org/domestic/violence/resources/C66/
- Women Organized Against Rape Hotline (215.985.3333)
- Rape Crisis and Prevention--Department of Public Welfare (1-800-543-PCAR)
www.dpw.state.pa.us/foradults/rapecrisisandprevention/index.htm
- Pennsylvania [Coalition Against Rape \(http://www.pcar.org/\)](http://www.pcar.org/)
- Pennsylvania Coalition Against Domestic Violence (<http://www.pcadv.org/>)
- Rape, Abuse and Incest National Network (www.rainn.org)
- The National Center for Victims of Crime (www.ncvc.org/ncvc/Main.aspx)

- The National Sexual Violence Resource Center (www.nsvrc.org/)
- National Organization of Male Sexual Victimization (www.malesurvivor.org)
- [Department of Justice - Office on Violence Against Women](http://www.ovw.usdoj.gov/sexassault.htm) (<http://www.ovw.usdoj.gov/sexassault.htm>)
- Turning Point of the Lehigh Valley (610) 437-336 (a helpline operated 24/7)

6. Procedures for Reporting

The reporting and resolution procedures set forth below are internal administrative procedures of LVHN. These procedures are designed to afford a prompt, fair, and equitable response to reports of sexual misconduct, to maintain confidentiality and fairness consistent with applicable legal requirements, and to impose appropriate sanctions as applicable pursuant to the policies and procedures of LVHN on those who have violated this policy.

As to those forms of sexual misconduct that also violate local, state, or federal law, LVHN may pursue an investigation, take appropriate remedial action, and/or impose disciplinary sanctions against a member of LVHN community at the same time the individual is facing criminal charges for the same incident, even if the criminal prosecution is pending, has been dismissed, or the charges have been reduced. The below procedures are supplemental to, and are not intended to displace, other disciplinary procedures set forth in any applicable collective bargaining agreement, or any other rules pertaining to a LVHN employee, or member of the Medical Staff.

Informal Complaints

If a person reports to a LVHN management, faculty member, or the Human Resources or Compliance Services Departments that they have experienced sexual misconduct but chooses not to file a Formal Complaint at that time, the Complainant will be promptly contacted by the Title IX Coordinator or their designee.

Informal complaints to LVHN personnel will be treated as confidentially as possible, consistent with applicable legal requirements and safety considerations. Complainants will be promptly contacted by the Title IX Coordinator or their designee to discuss available supportive measures and resources, to understand the Complainant's wishes, and to explain the process of filing a Formal Complaint should the Complainant wish to do so.

Any individual may bring an Informal Complaint to the attention of LVHN, regardless of whether they are a member of the LVHN community or whether they have personally experienced the conduct at issue. A Reporter may include, but is not limited to, a friend or parent of the Complainant or a witness to the sexual misconduct.

The Title IX Coordinator may be contacted at any time by any of the following methods to bring an Informal Complaint to the attention of LVHN:

In person: 1251 S. Cedar Crest Blvd. Suite 204, Allentown, PA 18104

By phone at: 610 402-9412

By email at: Carolyn_R.Coleman@lvhn.org

Formal Complaints

A person wishing to file a Formal Complaint of sexual harassment may contact the Title IX Coordinator or the Title IX Investigators, who are primarily responsible for coordinating LVHN investigations of these complaints. The Title IX Investigators shall be Human Resources Consultants who have received training to conduct an investigation under Title IX. At the Complainant's request, Security will be contacted to facilitate contact with the applicable law enforcement agency to lead any criminal investigation. All Formal Complaints will be treated as confidentially as possible, consistent with applicable legal requirements and customary law

enforcement practices. Individual Complainants will be informed promptly of available support services, as well as legal and administrative options, if reasonably available, such as protection from abuse orders through an appropriate court of law and changes to housing assignments and academic or work schedules.

Complainants will be informed about the outcome of any investigation undertaken by LVHN. In addition, under appropriate circumstances, LVHN will inform members of LVHN community of reported sexual misconduct without identifying the individual Complainant.

Informal Resolution

Informal resolution of reports when the parties wish to resolve a report cooperatively is permitted, whether or not the conduct in question rises to the level of a Policy violation. Informal resolution may include an inquiry into the facts, but typically does not involve an investigation and will not result in a determination whether the Policy has been violated unless agreed by both parties. Informal resolution may not be used when the complainant is a student and the respondent is an employee who is not also a student or trainee.

Participation in an informal resolution process is voluntary and the parties must agree in writing to participate. Any party may end the informal resolution process at any time before it concludes. Informal resolution may include joint or separate mediation discussions, separation of the parties, referral to counseling programs, targeted education and training programs, or any other steps agreed by the parties. An informal resolution process is expected to take no more than 30 days.

If the parties agree to informally resolve the report, the matter will be considered closed. The Title IX Coordinator will maintain a record of the resolution, will inform relevant offices or institutes of the outcome, and will monitor implementation of the resolution as appropriate.

Duty to Report

All Responsible Employees who become aware of information that leads them to reasonably believe that a participant in an educational program or activity has been subject to prohibited conduct under this policy must promptly make a report to the Title IX Coordinator. All other LVHN employees, except confidential resources, are strongly encourage to make such a report.

Employees of schools, colleges and universities whose students participate in LVHN educational programs and activities are encouraged, and in some cases required by agreement, to report to LVHN's Title IX Coordinator any information that leads them to reasonably believe that a participant in a LVHN educational program or activity has been subject to prohibited conduct under this policy.

7. Confidentiality

LVHN is required by Title IX to weigh the Complainant's request for confidentiality/privacy with the LVHN's commitment to provide a reasonably safe and nondiscriminatory environment. In situations where a Complainant requests confidentiality, LVHN's ability to investigate and respond to the allegations may be limited. The Title IX Investigator will notify the Complainant if LVHN cannot, in unusual cases, maintain the Complainant's confidentiality/privacy. The Complainant's and Respondent's identities will only be revealed to those individuals who need to know their names in order to investigate or adjudicate the complaint or provide interim measures. If LVHN becomes aware of a pattern of behavior by one or more Respondents, LVHN will take appropriate action in an attempt to protect the LVHN community. LVHN will make every reasonable effort to abide by Complainant's wishes regarding anonymity; however, there may be circumstances that necessitate an investigation into the reported conduct. This decision will be made by LVHN's Title IX Coordinator, the Designated Institutional Officer ("DIO") and the Human Resources Department, or their designees, with legal advice as necessary. If LVHN proceeds with an investigation, the Complainant will be provided with all the notices and opportunities set forth below. Students and

employees who have experienced sexual misconduct can report confidentially as discussed in this Section to the resources set forth in Section VII.

8. Investigations of Allegations of Sexual Harassment

Formal Complaints of Sexual Harassment filed with LVHN under this Policy will be investigated by a designated Title IX Investigator in accordance with the below procedures. In the event that the Respondent is found responsible for a violation of this policy, there is consideration of appropriate next steps, up to and including dismissal from LVHN. The disciplinary process is described in further detail in Section X. below as well as in related policies and procedures.

The processes for investigating and determining sanctions will be prompt, fair, equitable, and administered by properly trained individuals. LVHN endeavors to conduct the investigation and render sanctions (if appropriate) as promptly as possible, generally between sixty (60) and ninety (90) business days, recognizing that circumstances may arise that delay the process. Should such circumstances arise, LVHN will provide written notice to the parties of the delay and the reason for such a delay. LVHN will ensure that all those who are materially involved with administering these processes will be free from conflicts of interest and bias that would affect the outcome. Training materials used by LVHN for those materially involved with the investigation and disciplinary processes will be identified and made available.

1) General Procedural Elements

Regardless of the status of the Complainant and Respondent (i.e. student, faculty, staff), the following procedural elements will be provided to the parties and are applicable throughout the investigation process. When reported conduct implicates or can be addressed under two policies, LVHN may, if circumstances allow, combine the investigation and follow one process to appropriately address the reported conduct.

a. Notice of Allegations

Upon receipt of a Formal Complaint, LVHN will provide written notice to the Complainant and Respondent with details about the reported conduct and time to prepare a response before any interview. Written notice will also include:

- A copy of this policy and any other relevant procedures;
- A statement that the Respondent is presumed not responsible and a determination regarding responsibility is rendered at the end of the process;
- A statement regarding each party's ability to have an advisor of their choice; and
- A statement regarding LVHN's prohibition of retaliation.

If, in the course of the investigation, LVHN determines that there are distinct and/or additional allegations that were not included in the original notice provided to the parties, LVHN will provide written notice of these additional allegations to the known parties as soon as reasonably possible upon discovery of those distinct and/or additional allegations, with details about the additional allegations and time to prepare a response before any subsequent interview.

b. Evidentiary Considerations

The burden of gathering evidence sufficient to reach a determination rests with LVHN and not with either party. All relevant evidence will be evaluated objectively, using the preponderance standard (i.e. "more likely than not"). This standard is used regardless of the status of the Respondent, who is presumed not responsible for the reported misconduct until a determination regarding responsibility is rendered at the end of the process. Throughout the investigation, the parties have an equal opportunity to present evidence or questions. However, disclosure of information protected under a legally recognized privilege is not permissible and will not be considered unless the individual holding such privilege

has voluntarily waived the privilege and documented the waiver in writing.

c. Dismissal of Formal Complaint

i. Mandatory Dismissal

At any point during this process, the Title IX Coordinator (or their designee) will dismiss the Formal Complaint, in whole or in relevant part, if any of the below are met:

- The Title IX Coordinator (or their designee) determines that the reported conduct, even if proven true, does not constitute sexual harassment as defined above;
- The Title IX Coordinator (or their designee) determines that the reported conduct did not occur against an individual in the United States; and/or
- The Title IX Coordinator (or their designee) determines that the reported conduct did not occur in a location, event, or circumstance over which LVHN exercised substantial control.

ii. Discretionary Dismissal

At any point during this process, the Title IX Coordinator (or their designee) may dismiss the Formal Complaint, in whole or in relevant part, if any of the below are met:

- The Complainant notifies the Title IX Coordinator (or their designee) in writing that they would like to withdraw the Formal Complaint, in whole or in part;
- The Respondent is no longer enrolled in a graduate training program or employed by LVHN; and/or
- Specific circumstances prevent LVHN from gathering evidence sufficient to reach a determination regarding the reported conduct.

Should the Title IX Coordinator (or their designee) decide to dismiss a Formal Complaint, the Title IX Coordinator or designee will send written notice of this dismissal and related rationale to the parties simultaneously. Dismissal from the Sexual Harassment investigation process does not preclude LVHN action under an alternate policy provision.

iii. Appeal of Dismissal

Each party has the right to appeal the decision to dismiss a Formal Complaint. The parties will be notified simultaneously in writing a) when either party submits such an appeal and b) of the final outcome, including the rationale, after the appeal is resolved. When an appeal is submitted, both parties have an opportunity to submit a written statement in support of, or challenging the original determination.

An appeal of a dismissal of a Formal Complaint is submitted to the Vice President of Department of Education or their designee and the other party and may be submitted on the following bases:

- A. Procedural irregularity that affected the decision to dismiss the matter;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the decision to dismiss the matter; and/or
- C. The Title IX Coordinator, investigator(s), and/or Determination Panel had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the decision to dismiss the matter.

Upon receipt of the written Appeal, the other party shall have ten (10) business days to submit a response to the Vice President of the Department of Education with a copy to the appealing party. The Vice President of the Department of Education shall then have ten (10) business days to issue a written finding that either uphold the decision of the Determination Panel, or remands the matter back to the Determination Panel with direction on how to address the basis for the remand.

2) Investigation Interviews

Properly trained investigators will meet with the parties and others to obtain information about the reported conduct. These meetings may occur in-person, over video conference or telephone, and/or other modes as necessary depending on the circumstances.

a. Notice of Interview/Meeting

LVHN will provide written notice to any Complainant or Respondent whose participation is expected at any interview, or other meeting held pursuant to this process. Such notice will include the date, time, location, participants, and purpose of the meeting.

b. Advisors

The parties have the opportunity to be advised by a personal advisor of their choice, who may, but is not required to be an attorney, at any stage of the process and to be accompanied by that advisor at any meeting or hearing. During investigation interviews/meetings, an advisor may only consult and advise their advisee, but is not permitted speak for their advisee at any meeting. Unless special exception is granted, each party may have only one advisor present at any given time.

c. Review of Evidence

LVHN will provide both parties and their advisors, if any, an equal opportunity to review the evidence gathered during the investigation interview process that is directly related to the reported conduct, including evidence upon which LVHN does not intend to rely, and evidence that has a tendency to show the Respondent is more or less likely to be found responsible. Such evidence will be made available to the parties and their advisors prior to completion of the investigation report and the parties will have at least ten (10) business days to submit a written response, which the investigator(s) will review prior to completing the investigation report.

An investigation report will be provided to the parties and their advisors, if any, at least ten (10) business days before a determination regarding responsibility is made for review. The parties will be permitted, if they choose, to submit a written response to the investigation report within five (5) business days from receipt of the investigation report.

3) Resolution:

The matter may be resolved at this stage if both parties agree to the recommendations of the Investigator with respect to responsibility and, if applicable, sanctions, or if the parties otherwise reach a mutually acceptable resolution. LVHN, however, will not compel either the Complainant or the Respondent to engage in face-to-face mediation or to accept the recommendations of the Investigator.

4) Alternative Resolution

In appropriate circumstances, as determined by the Title IX Coordinator or their designee and the agreement of the parties, alternative resolution may be an option for resolving matters.

9. **Determination of Responsibility and Imposition of Sanctions**

Upon completion of the final investigative report, the Title IX Coordinator will provide the report to the parties and designate a "Determination Panel" consisting of at least two program directors and resident/fellow representative who are not directly involved in the allegations or investigation of the Complaint. The parties shall be given five (5) business days to submit written questions for the Determination Panel to ask of any party or witness, including the title IX Investigator. The Determination Panel shall review submitted questions either in a meeting or through email or other electronic platform. If the questions are relevant and not otherwise prohibited, they will be forwarded to the appropriate party or witness for response within five (5) business days. Responses shall be shared with the party who submitted the question, who will be given an additional two (2) business days for follow up. The process will continue until all questions have been answered or the Determination Panel has determined that submitted questions are irrelevant, duplicative or otherwise prohibited and if such a determination is made, the Determination Panel shall provide an explanation to the party who submitted the question. If the Determination Panel decides, based on the volume or nature of the questions submitted, that it would be more efficient or appropriate to meet with the parties rather than forward the questions, it may schedule separate meetings with each party and/or with any of the witnesses. In such circumstances the Determination Panel will provide a written summary of such responses to the party who asked the question(s).

When all responses to questions have been received, the Determination Panel shall meet either in person or through an electronic platform and make a final determination whether the Policy has been violated. Throughout the investigation, the respondent shall be presumed "not responsible" unless or until the Determination Panel makes such a final determination. The final determination shall be based on all relevant information available to the Panel, including the investigation report and subsequent questions and answers. If the Panel determines that the Policy has been violated, it may consult with the Human Resources Department, Medical Staff Services or the Department of Legal Services as to appropriate remedies.

If applicable, sanctions imposed will be governed by the following processes:

- 1) Sanctions for violations of this policy by students will be governed by the disciplinary procedures applicable to charges of such misconduct under the LVHN policies and procedures which can be accessed through Policy Tech. Student sanctions can include, but are not limited to, probation, counseling, suspension, or expulsion as set forth in their Graduate Training Agreements.
- 2) Sanctions for violations of this policy by LVHN employees, including faculty and staff, will be governed by the disciplinary procedures in LVHN policies and/or a collective bargaining agreement, if applicable. Sanctions for employees may include, but are not limited to, counseling, being placed on leave with/without pay, change in role and responsibilities, and termination of employment.
- 3) Depending on the context in which the behavior at issue occurred, sanctions for violations of this policy by other instructional personnel may be governed by LVHN Rules of Conduct. Policy Sanctions can include, but are not limited to, counseling, being placed on leave with/without pay, change in role and responsibilities, and termination of employment.

A written determination regarding responsibility and sanctions will be issued to the parties simultaneously, and will include:

- The specific allegations implicating this policy;

- A description of the procedural steps LVHN has taken, including any notifications to the parties, interviews conducted, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of LVHN policy to the facts;
- Responsibility determination for each allegation, including supporting rationale, using the preponderance of evidence standard;
- Sanctions LVHN imposed on the Respondent;
- Whether remedies will be provided to the Complainant; and
- Available appeal bases, procedures, and deadlines.

The parties will be notified simultaneously in writing should any changes be made to the disciplinary actions imposed on the Respondent. The determination regarding responsibility becomes final either on the date that LVHN 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.

10. Appeal of Determination

Each party has the right to appeal the determination of the Panel Committee determination, no more than 10 days from the notification of determination. The parties will be notified simultaneously in writing (a) when either party submits an appeal and (b) of the final outcome, including the rationale, after the appeal is resolved. When an appeal is submitted, both parties will have an opportunity to submit a written statement in support of, or challenging, the original determination. An appeal of a determination of responsibility is submitted to the Vice President of the Department of Education or their designee and may be submitted on the following bases:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter; and/or
- 3) The Title IX Coordinator, investigator(s), and/or panel committee 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.

The Title IX Coordinator will keep accurate, confidential records of all reports for seven (7) years.

11. Retaliation Prohibited

Threats, other forms of intimidation, and other types of discrimination against any member of LVHN community because of their initiation of, or participation in, a report, Formal Complaint, or investigation of conduct implicating this policy is strictly prohibited, and will itself be cause for appropriate disciplinary action. Complaints of retaliation may be filed in accordance with the reporting process set forth above.

12. Education and Prevention Programs

Educational efforts are essential to the establishment of a LVHN environment that is as free as possible from sexual misconduct. Education, which includes training and staff development, has at least three goals:

- (a) ensuring that all persons are aware of their rights and responsibilities in LVHN community;
- (b) advising members of LVHN community of unacceptable behavior; and
- (c) informing all persons about the available mechanisms to address complaints of violations of this policy.

In collaboration with the Title IX Coordinator, various LVHN offices or departments (DEPARTMENTS e.g. Human Resources, etc.) provide educational programming and training opportunities for students, faculty, and staff regarding sexual misconduct. A training session on LVHN's sexual misconduct policy will be included in the orientation required of all new residents and fellows, faculty and other employees.

Follow-up educational efforts, including online training and policy review for all members of LVHN community, occur with such frequency and in such a manner as to carry out the purposes of this policy.

In addition to these prevention and educational responsibilities, EAP Counseling Services is responsible for providing counseling services to students who have experienced sexual misconduct.

The Human Resources Department is responsible for facilitating training on this policy to LVHN employees, including faculty. Human Resources responsibilities include:

- Providing training on this policy at new hire orientation, which will include Pennsylvania's definitions of sexual assault, consent, domestic violence, dating violence, sexual exploitation, and stalking;
- Referring and providing support for employees who experience sexual misconduct to the appropriate law enforcement agency as well as the Employee Assistance Program and other external resources; and
- Providing ongoing educational resources for faculty and staff regarding LVHN's policies and prevention programs related to sexual misconduct.

13. Review

From time to time, the President may appoint an oversight committee comprised of students, faculty and/or staff to monitor and recommend revisions to LVHN's policies, programs, and procedures relating to sexual misconduct, including revisions required to comply with federal and state law.

14. Notice

This policy is published on LVHN's policies and procedures website under the Graduate Medical Education policies. Hard copies are available in the Department of Education and will be provided to students or employees who report they have experienced sexual misconduct whether the conduct occurred on- or off LVHN property. Training materials used for individual involved in the implementation of this process, including, but not limited to, the Title IX Coordinator, investigators, and panel committee members are available upon request at the Department of Education.

15. POLICY NOTES

1. Policy Title: Sexual Misconduct Policy and Procedures
2. Date Created:
3. Dates Revised:
4. Cross References to other policies: e.g. Code of Conduct; Discrimination and Harassment Policies
5. Other: