



## Non-Title IX Harassment and Discrimination Investigation and Adjudication Process

### Department

Compliance

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### Narrative

Lees-McRae College prohibits discrimination and harassment on the basis of race, sex, sexual orientation, gender identity, color, age, religion, national and ethnic origin, disability, genetic information, protected veteran status, or other individual distinctions in its programs and activities (collectively, "protected status"). This prohibition includes discrimination or harassment based upon the perception of an individual's protected status, even if the perception is mistaken.

If you want to report any sex-based misconduct, including harassment or discrimination based on sex, sexual orientation, gender identity, or genetic information, please refer to the Lees-McRae Title IX webpage.

### Purpose

This document explains the reporting process if you believe an employee or student or someone else associated with the College (volunteer, vendor, lessee, etc.) has violated the College's discrimination and harassment policies not covered under Title IX and that are based upon one or more of the protected statuses listed in Lees-McRae's "Non-Discrimination Policy."

The process is designed to provide all members of the College community with a forum for reporting incidents of discrimination or harassment, and to provide for prompt and effective response to and resolution of reports of discrimination or harassment. It supports the College's commitment to meaningful equal opportunity and diversity at the college.

*Lees-McRae College reserves the right to update this process as needed.*

### Retaliation

Retaliation against the complainant or any person who participates in the complaint process is expressly forbidden. The College will safeguard the complainant's rights against retaliation by taking prompt and

appropriate corrective action when necessary. An individual who is subjected to retaliation (e.g. threats, intimidation, reprisals, or adverse employment or educational actions) for having made a report of discrimination or harassment in good faith, for having assisted someone with a report of harassment or discrimination, or for having participated in any manner in an investigation or resolution of a report of harassment or discrimination, is encouraged to report any such retaliation under this process.

## **Timelines and Reporting Options**

*"Days" as described in this procedure represent college business days.*

This procedure does not waive any statutory timelines for legal remedies available under and Title (including but not limited to Titles III, VI, and VII) of the Civil Rights Act of 1964 as amended, or any other state or federal statutory timelines.

Individuals with complaints covered by this procedure have the right to file a complaint with the U.S. Department of Education Office for Civil Rights, the U.S. Equal Employment Opportunity Commission, or the North Carolina Civil Rights Division:

- U.S. Department of Education's Office for Civil Rights (OCR) Complaint Forms
- U.S. Equal Opportunity Employment Opportunity Commission
- North Carolina Civil Rights Division Office of Administrative Hearings

The College encourages individuals to file complaints of inappropriate conduct, discrimination, and/or harassment as close in time to the event as possible. Reports of incidents more than one year old may be more difficult for the College to investigate and remediate than reports received closer in time to the events. Although the College will accept all complaints under this procedure regardless of the date of the alleged misconduct, it will not investigate events that occurred more than twelve months prior to filing the complaint unless the alleged facts, if true, constitute a violation of a federal or state statute.

An investigation of a formal complaint is set up to take no more than thirty (30) days from the date the formal Notice of Investigation and Allegations is issued. Informal procedures may take less or more time to resolve.

## **Impartial Process**

Both the complainant and the respondent are entitled to a thorough and impartial investigation and decision-making process. The Executive Director of Compliance, at the President's sole discretion, will supervise the complaint process and will conduct an impartial and unbiased investigation that will result in the creation of a fact-based Investigative Report, with a recommendation and rationale of findings and, as needed, remedial actions (including sanctions) related to each properly identified allegation that falls under Lees-McRae's Non-Discrimination policy. The Executive Director of Compliance has the discretion to appoint an independent investigator.

Any complainant or respondent who believes that either the Executive Director of Compliance or the appointed complaint investigator cannot be impartial should immediately notify the President in writing of their concerns. Allegations of bias should be based on the individual's belief and report of specific actions and/or conflicts of interest that the person alleged to be biased has evinced AND that such contact or involvement prevents the person from assessing the facts impartially. Written notice to the President that there is a concern regarding potential bias must be received within five (5) working days of the date the objecting participant is notified of the name of the designated investigator (most frequently, the Executive Director of Compliance). If the President believes the objection has merit, the matter will be promptly re-assigned to another designated Administrator or an alternative investigator. The President may also reassign complaint responsibilities on the basis of subsequently discovered facts or subsequently occurring events that present a presumption of bias or incapacity by anyone involved in the investigation process.

## Privacy and Confidentiality

The College will protect the privacy of individuals involved in a report of discrimination or harassment under this process to the extent allowed by law and College policy. However, there may be times when disclosure of information is required. For example, when a written complaint is investigated, the respondent will receive a copy of the allegations, including the name of the individual(s) who filed the complaint, except when disclosure is prohibited by law or when grades are still pending for students. In all cases, efforts will be made to protect the privacy of individuals.

An individual who has made a report of discrimination or harassment may be advised of a sanction imposed against the respondent when the individual needs to be aware of the sanction in order for it to be fully effective (such as restrictions on communication or contact with the individual who made the report). However, information regarding disciplinary action taken against the respondent shall not be disclosed unless it is necessary to ensure compliance with the action or the safety of individuals. Findings made pursuant to this procedure may be used as evidence in a disciplinary proceeding in other College forums (e.g., Student Conduct cases).

## Records

The only College record that will be kept of an informal complaint for early resolution will be by type of incident, department, and the relationship of those involved. All records of the formal complaint process, including the complaint form and all reports and findings as well as all documentation concerning the post-complaint review processes, will be delivered to the Office of Human Resources and placed in a secure and confidential complaint file, excepting records of student-to-student harassment complaints will be maintained in a secure and confidential file in the Office of Student Affairs.

Any composite reporting (e.g., annually) that summarizes all informal reports and formal complaints and resolution by type of incident and/or the relationship of those involved shall identify the specific parties involved.

## Anonymous Complaints

The College will respond to the extent possible to anonymous reports of discrimination or harassment or reports made by third parties not directly involved in the discrimination or harassment. However, the response to such reports may be limited if information contained in the reports cannot be verified by independent facts.

## Options for Reporting

**1. Informal Reports:** The Executive Director of Compliance may identify and enlist any help needed to resolve a complaint on an informal basis. Informal reports are intended to resolve concerns at the earliest stage possible.

Resolution of informal reports may include discussions with the parties, making recommendations for resolution, and conducting a follow-up review after a period of time to assure that the resolution has been implemented effectively. Complainants opting for the informal process can choose to abandon it at any time and pursue the formal process. An informal report is appropriate when there is no dispute regarding the relevant facts and the parties desire to resolve the situation cooperatively.

The College encourages early resolution of a complaint. However, the formal report process will be used when there is a factual dispute or if the complaint includes allegations of serious misconduct, such as reports of a pattern of inappropriate behavior, alleged criminal acts, or allegations of violations of state or federal discrimination or harassment laws.

## What is the informal reporting process?

**Step 1:** Discuss the incident with the Executive Director of Compliance, who has been trained in discrimination and harassment complaint procedures. Discussion of the incident(s) can be arranged in person or virtually.

**Step 2:** Consider the informal options for early resolution that may be proposed by the Executive Director of Compliance. In some situations, it may be possible for the Executive Director of Compliance to resolve the concern without the direct involvement of the complainant. Early resolution of informal reports could encompass a full range of possible appropriate outcomes including but not limited to: mediating an agreement between the parties; separating the parties; referring the parties to counseling programs; conducting targeted educational and training programs; or working with appropriate administrators to provide remedies acceptable to the complainant.

**Step 3:** Decide on the course of action. If a complainant chooses to attempt to informally resolve the problem, the complainant and Executive Director of Compliance must decide how to proceed. After discussing the incident with the Executive Director of Compliance, the complainant may also decide to go no further with the complaint or abandon the informal complaint process and pursue the formal complaint process (see below).

**Step 4:** Take the action decided upon. The Executive Director of Compliance will inform the complainant and all parties with a right to know about the complaint concerning the actions taken to resolve the complaint through the informal process.

**Step 5:** If a complainant is not satisfied with the results of the informal resolution, the option to use the formal complaint process remains available.

**Step 6:** The Executive Director of Compliance will review the informal complaint resolution at various post-complaint intervals of one, three and six months to confirm the effectiveness of the resolution in preventing discriminatory and/or harassing behavior and to ensure that the parties have not been subjected to any retaliatory behavior.

**Step 7:** The Executive Director of Compliance will ensure that complaint information regarding the type of incident, department, and the relationship of those involved in the informal complaint process is made to the Office of Human Resources Department, the Clery Officer, Academic Affairs, and/or Student Affairs, as applicable, for inclusion in any relevant composite reporting.

**2. Formal Reports:** The Formal Report process will be used when the informal report for early resolution is inappropriate (e.g., when the facts are in dispute regarding allegations of serious misconduct or there are reports of a pattern of inappropriate behavior/alleged criminal acts such as stalking or physical assault) or in cases where the informal process is unsuccessful. The formal process involves a written statement of allegations and an independent investigation of the disputed facts.

## What is the formal process?

**Step 1: Consultation with the Executive Director of Compliance.** Contact the Executive Director of Compliance to discuss concerns and the appropriateness of informal and formal options. The Executive Director of Compliance will supply in person or electronically a Formal Complaint of Discrimination Form.

**Step 2: Complainant submits a written formal complaint.** Complete the Formal Complaint of Discrimination Form and return it to the Executive Director of Compliance.

**Step 3: College reviews complaint.** Within five (5) working days of the date that both the formal complaint has been received by the Executive Director of Compliance and the complainant and the Executive Director of Compliance have met to discuss the nature and background of the formal complaint, the Executive Director of Compliance will determine whether an investigation is necessary. Complaints will be investigated if they allege actual evidence-based violations of the College's Non-Discrimination Policy. If the Executive Director of Compliance determines that an investigation is not needed, that person shall inform the complainant in writing of the determination and the reasons for that determination.

The determination to forgo an investigation may be appealed in writing within five (5) working days of its issuance to the Executive Director of Compliance's immediate supervisor (currently, the Vice President for Business Affairs) for automatic review. This Supervising Administrator may ratify or overturn the Executive Director of Compliance's determination, and this decision is final.

**Step 4: Notice to parties.** Should it be determined by the Executive Director of Compliance or, on appeal, by that person's Supervising Administrator that an investigation is necessary, the Executive Director of Compliance will send a written notice to the complainant and the respondent. This notice will identify the alleged incidents to be investigated and will include a copy of the written formal complaint. Both parties will be informed of the name of the assigned investigator (typically the Executive Director of Compliance), the time frame during which the investigation process will take place, and a copy of the complaint procedure.

Complainants and respondents have a right to obtain an advisor of their choice present during investigatory or appeals meetings.

**Step 5: Investigation of disputed facts.** The Executive Director of Compliance shall determine the scope of the investigation and ensure that a timely investigation of the complaint is completed. In most cases, this person shall conduct the investigation or appoint another College administrator or appoint an outside investigator to investigate disputed facts. The investigator's function is fact-finding. Decisions regarding the import and consequences, if any, of the confirmed facts will remain the responsibility of the Executive Director of Compliance.

During the investigation process, the complainant and the respondent are not to contact each other. All parties to a complaint are expected to fully cooperate with any investigation in a timely manner. If the complainant refuses to cooperate, the complaint may be deemed withdrawn at the sole discretion of the Executive Director of Compliance. If the respondent refuses to cooperate, the investigation will nevertheless continue as thoroughly as possible.

**Step 6: Investigation.** The investigation will include interviewing individuals having first-hand knowledge of alleged incidents, including both the complainant and the respondent. Other evidence will be reviewed as determined appropriate by the investigator. Disclosure of facts to parties and witnesses will include all information that is reasonably necessary to conduct a fair and thorough investigation. The respondent will be given the opportunity to respond to any new allegations that emerge during the course of the investigation.

Participants in an investigation will be advised that maintaining confidentiality is essential to protect the integrity of the investigation. The statements of witnesses contained in the investigator's report will be kept as confidential as possible. The investigator, if it is someone other than the Executive Director of Compliance, will prepare a summary of the facts for the Executive Director of Compliance. All persons

interviewed by the investigator will be provided the opportunity to review the investigator's record of their own statements before the final report is prepared.

If the Executive Director of Compliance determines that additional investigation is required, the Executive Director of Compliance will inform the parties to the complaint in writing of the extension of timelines, the names of any additional witnesses to be interviewed or evidence to be sought and will advise the complainant and the respondent concerning any other timeline changes that will be necessary as the result of this extension.

**Step 7: Preliminary Notice of Findings and Recommendations.** Within thirty (30) working days of the date of issuance of the Notice of Investigation and Allegations, the Executive Director of Compliance will provide written notice of preliminary findings of facts to all parties to the complaint. This preliminary notice of findings will include a description of the complaint process; an explanation of the findings of fact; and an analysis of whether the facts constitute any violations of Lees-McRae's Non-Discrimination Policy.

The Executive Director of Compliance will also make recommendations for any remedial action indicated by any finding of violations. The respondent will be informed of any recommended remedial actions to be taken. The complainant will be informed only of those recommended remedial actions that are directly related to the complainant (such as an order of no contact). The complainant may generally be informed that the matter has been recommended for disciplinary action but shall not be informed of any specific disciplinary action unless such information is necessary in order to assure compliance with the findings and recommendations. Either the complainant or the respondent may request a meeting with the Executive Director of Compliance following receipt of the written notice of findings for the sole purpose of clarification.

**Step 8: Determination and Official Notification of Investigative Findings.** After the complainant and the respondent have been notified of the Executive Director of Compliance's preliminary findings and recommendations, the Executive Director of Compliance will forward the entire investigative file to the Executive Director of Compliance's immediate supervisor (currently, the Vice President for Business Affairs) for automatic review and finalization of all determinations. This Supervising Administrator may adopt, overturn, or reformulate the Executive Director of Compliance's findings and/or recommendations.

This Supervising Administrative Officer will then instruct the Executive Director of Compliance to issue an Official Notification of Investigative Findings to the parties, reflecting the Supervising Administrator's determinations. This Official Notification shall be issued within five (5) working days of receipt of the Preliminary Notice of Findings and Recommendations by the Supervising Administrator, who will maintain the entire investigative file pending possible appeal (see below for Procedural Appeals Process).

When a violation of Non-Discrimination Policy is substantiated in a final decision, the findings will include a recommendation for appropriate remedial action. Whether or not the alleged behavior is sufficiently severe or pervasive to be judged a violation of Lees-McRae's Non-Discrimination Policy, the College may take action to address a complainant's concerns and to ensure that Lees-McRae, as a workplace and an academic institution, maintains a respectful environment.

**Step 9: Post-Complaint Review of Informal and Formal Complaints.**

Following the closure of a formal or an informal complaint, the College will review the actions it has taken. When there are recommendations for remedial actions, the Executive Director of Compliance will review the effectiveness of any remedial actions at the following post-complaint intervals.

**1. Two to four weeks** after the Official Notification of Investigative Findings or resolution of an informal complaint, the Executive Director of Compliance or their designee will contact the respondent to confirm that the resolution, if any, has been implemented and that neither the complainant nor the respondent has experienced any new problematic conduct that is of concern and that neither the respondent nor any other employee has engaged in conduct towards the complainant that is motivated by retaliation.

**2. Three months** after a finding of responsibility in the Official Notification of Investigative Findings or resolution of the informal complaint, the Executive Director of Compliance or their designee will contact the complainant and the respondent to confirm that no new problematic conduct has occurred and that neither the respondent nor any other employee has engaged in conduct that is motivated by retaliation.

The Executive Director of Compliance will document the post-complaint review procedures and contacts with the complainant and the respondent. All documentation developed by the Executive Director of Compliance in the post-complaint review process shall be incorporated in the secure, confidential official investigative file.

### **Procedural Appeal Process**

Either the complainant or the respondent may file an appeal of the Official Notification of Investigative Findings. Any such appeal is limited in scope to whether the College followed its own process. Any appeal must be submitted in writing to the President of Lees-McRae within five (5) working days of the issuance of the Official Notification of Investigative Findings

This appeal must allege a procedural violation. The appeals process is not for the purpose of disputing the findings. It is the President's responsibility to make sure that the process was followed and the investigation was conducted fairly for all parties involved. No new evidence may be submitted through the appeals process.

**Step 1:** Upon receipt of the written request for an appeal, the President or their designee will first assess whether the appeal documents procedural concerns that, if substantiated, would constitute violations of, or exceptions to, this Non-Title IX Investigation and Adjudication process. If the President or their designee determines that the appeal poses credible procedural concerns, the President or their designee will then review the original Formal Complaint, the Executive Director of Compliance's Preliminary Notice of Findings and Recommendations (including statements of witnesses and documentary evidence), and the Supervising Administrator's Official Notification of Investigative Findings.

The President or their designee may, at their sole discretion, invite brief written statements (not to exceed 750 words) from the complainant and the respondent. Confidentiality will be maintained to the greatest extent allowed by law with regard to the appeals process.

**Step 2:** The President or their designee will have up to ten (10) working days from the date of the Appeal to submit a written decision to the complainant and respondent, as well as the Executive Director of Compliance and the Supervising Administrator. The appeals review is limited to whether or not the College properly followed the complaint procedure.

The President or their designee will either determine the need for a correction or verify that the original process was completed properly. The determination is final.

If the President or their designee finds that the complaint procedure was not followed, the President or their designee may recommend that the investigation be corrected but will not conduct this procedural

correction. Procedural corrections will be implemented by the Executive Director of Compliance or another person of the President's or their designee's determination.

The College President or their designee shall ensure delivery of the final decision to the complainant and the respondent. This final decision may be delivered through the College's official email system (to parties with Lees-McRae email accounts) or by the U.S. Postal Service, depending on the circumstances and the parties' locations.

If no procedural appeal is filed after the Determination of Investigative Findings is issued by the Supervising Administrator of the Executive Director of Compliance, or if no further action is recommended after appeal, all records will then be placed in a secure, confidential file and the matter will be considered resolved.