

LINDENWOOD

SEXUAL MISCONDUCT POLICY

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I. INTRODUCTION AND SCOPE

Lindenwood University (the “university” or “Lindenwood University”) is committed to maintaining an environment that is free from sexual discrimination, sexual and gender-based harassment and violence, relationship violence, stalking and retaliation. The university does not discriminate on the basis of sex in matters of education, extracurricular activities, programs, athletics, admissions, housing, services, financial aid, or in the context of employment (collectively, the “programs and employment”). Sexual harassment that denies or limits a person’s ability to participate in or benefit from the university’s programs and employment is a form of prohibited discrimination.

The university is required to comply with Title IX of the Education Amendments of 1972 (“Title IX”), which prohibits discrimination on the basis of sex, and provides as follows

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.

Sexual- and gender-based harassment are similarly prohibited by the Missouri Human Rights Act, Title VII of the Civil Rights Act of 1964, and other applicable law and statutes.

The university seeks to create a supportive climate that will encourage individuals to report incidents of sexual misconduct. Reporting provides the opportunity for the university to provide compassionate, effective intervention, support and remediation, and most importantly, to prevent such incidents from occurring in the future and address any effects of the conduct on the reporting party or the university community.

This policy provides the campus community with the appropriate process for handling reports of sexual misconduct that occur to members of the university’s community. Due to the nature of the offense, this procedure may be different from other Lindenwood policy violations.

This policy applies to all acts where the conduct

- Occurs on campus;
- Occurs in the context of university programs and employment; and/or
- Occurs off campus and has continuing adverse effects on the campus and/or university or in the context of university programs and employment.

This policy applies to all behavior in which the accused party is a student, faculty, staff, or a non-university-affiliated party. In the event the accused party is a third party or other non-university-affiliated party, the university will take appropriate corrective action and determine the appropriate manner of response consistent with the goals of this policy.

II. PURPOSE

The procedures outlined in this policy are designed to achieve the following goals:

- Provide prompt and compassionate support services;
- Utilize a comprehensive framework in which the needs and decisions of all parties concerned are central in determining further administrative response and assistance;
- Create a campus environment that facilitates and expedites the prompt reporting of sexual misconduct;
- Cultivate a climate of community empowerment and education in which behaviors that contribute to sexual misconduct are not tolerated;
- Ensure that appropriate steps are followed when sexual misconduct is reported; and
- Protect the rights of the reporting party, the accused party, and other parties involved in or affected by the case.

III. CONSENT

What is Consent:

- Consent is an affirmative, knowing, and voluntary decision—clearly communicated through mutually understandable words (e.g., saying “yes”) and/or actions – to willingly engage in mutually acceptable sexual activity.
- Consent must be given freely, willingly, consciously and knowingly by each participant to any desired sexual contact.
- Consent may be withdrawn by any consenting party at any time during the sexual activity. Withdrawal of consent must be demonstrated by words and/or actions that indicate a desire to end sexual activity. Once an individual has communicated withdrawal of consent, all sexual activity must end.

When is there NOT Consent:

- When no clear consent (either verbal or nonverbal) is given, there is not effective consent.
- Consent cannot be given by someone who is incapacitated.
- Consent cannot be given if it is done through intimidation, force or coercion.

- A current or previous dating or sexual relationship, by itself, does not constitute consent. Even in the context of a relationship, there must be mutually understandable communication (verbal or nonverbal) that clearly indicates a willingness to engage in sexual activity.
- Consent cannot be inferred from silence, passivity or lack of resistance. Without outward communication or action, consent does not exist.
- Consent cannot be inferred from an individual's attire or physical appearance.
- A verbal "no," even if perceived to be indecisive, constitutes a lack of consent.
- A person is not able to give valid consent if her or she is under the age of 17.
- A person is not able to give valid consent if his or her physical condition or disability impairs his or her ability to give consent. A person could lack capacity to give consent for reasons such as voluntary or involuntary consumption of alcohol or drugs, being in a state of unconsciousness, sleep, or other state in which the person is unaware that sexual activity is occurring.

IV. DEFINITIONS

For the purposes of this policy, the following definitions shall apply:

"Accused Party." Accused party refers to any individual who is identified by a reporting party as the perpetrator of sexual misconduct.

"Confidential." Confidentiality means that information shared by an individual with certain campus or community professionals (such as with confidential resources) *cannot* be revealed to any other individual without express permission of that individual, unless there is an imminent threat of harm to self or others, or the conduct involves suspected abuse of a minor (which requires notifying child protective services and/or local law enforcement).

"Confidential Resource." Confidential resources are those campus and community professionals that *must* keep information confidential shared by an individual without express permission of that individual. These campus and community professionals include clergy, physicians, and mental health providers, all of whom have privileged confidentiality that has been recognized by the law of Missouri and/or Illinois.

"Consent." Consent is defined as set forth above.

“Force or Coercion.” In some situations, an individual’s ability to freely, willingly, and knowingly give consent is taken away by another person or circumstances. Examples include, but are not limited to

- When an individual is physically forced to participate. Force is the use or threat of physical violence and/or imposing on someone physically in order to gain sexual access. There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. Any sexual activity that is forced is by definition without consent.
- When an individual is intimidated, threatened (perceived or otherwise), isolated, or confined. Such intimidation could involve the use or threat of a weapon.
- When an individual is coerced or unreasonably pressured to participate in sexual activity. When someone makes clear that they do not want to engage in sexual activity, wants something to stop, or does not want to go past a certain point of sexual interaction – continued pressure past that point can be considered coercive behavior. When evaluating coercive behavior, factors such as the frequency, duration, location (isolation of recipient of unwanted contact), and intensity of coercive behaviors will be considered. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity.

“Incapacitation.” A person violates this Policy if they have sexual contact with someone they know, or should know, to be mentally incapacitated or to have reached the degree of intoxication that results in incapacitation.

An individual who is incapacitated cannot communicate consent to sexual activity. Incapacitation is the inability, temporarily or permanently, to give consent or communicate unwillingness, because an individual is mentally and/or physically helpless, unable, unconscious, asleep or unaware that the sexual activity is occurring.

Evaluating incapacitation requires an assessment of how the consumption of drugs and/or alcohol affects an individual’s decision-making ability, awareness of consequences, ability to make informed judgments, capacity to appreciate the nature and quality of the act, or level of consciousness.

Warning signs that a person may be so impaired by alcohol and/or drugs that they no longer have the capacity to give consent may include, but is not limited to

- Difficulty walking, stumbling, or falling down;
- Being unable to stand or walk without assistance;
- Slurred speech or inability to communicate clearly;

- Inability to focus or confusion about what is happening;
- Vomiting; or
- Combativeness, emotional volatility or other marked change in demeanor.

The test of whether an individual should know about another's incapacitation is whether a reasonable, sober person in the same position would know or should have been aware of the reporting party's incapacitation. An accused party cannot rebut a violation of this policy merely by asserting that he or she was drunk or otherwise impaired and, as a result, did not know that the other person was incapacitated. Alcohol, drugs, or other intoxicants do not negate or diminish the responsibility of an individual to obtain consent.

“Intimidation.” Intimidation is implied or expressed threats or acts that cause fear of harm in another.

“Privacy.” Privacy generally means that information related to a report made under this policy will only be shared with a limited number of individuals who “need to know” in order to assist in the active review, investigation, institution of remedial or protective measures, and determination of responsibility concerning the report. While not bound by confidentiality, these individuals are trained and/or instructed to be discreet and to respect the privacy of all individuals involved in the process.

“Reporting Contact.” Reporting contact refers to individuals or entities across the university who have been designated to receive a report of sexual misconduct. The university's reporting contacts are designated below under “Reporting Sexual Misconduct.”

“Reporting Party.” A reporting party refers to any individual who makes a report about an incident involving sexual misconduct. A reporting party does not need to be a victim and may act as a third-party to file a report on someone else's behalf. To avoid confusion, however, in most contexts within this policy, “reporting party” refers to a person who has experienced the sexual misconduct.

“Relationship Violence.” Relationship violence is also known as **dating or domestic violence**. It includes any act of violence or threatened act of violence, expressed or implied, that occurs between individuals who are involved or have been involved in a romantic, sexual, dating, spousal, domestic, or intimate relationship.

“Retaliation.” Retaliation is defined in detail below under the section on prohibited conduct.

“Sexual Assault.” Sexual assault refers to engaging or attempting to engage in any form of sexual contact or sexual intercourse with another without consent and/or by intimidation, force or coercion.

Sexual Contact is

- Any intentional contact with the breasts, buttocks, groin, genitals or mouth with any object or body part, whether it is over or under clothing;
- Making another touch you or themselves with or on any of these body parts; or
- Any other intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

Sexual Intercourse is

- Vaginal penetration, however slight, by a penis, object, tongue, or finger;
- Anal penetration, however slight, by a penis, object, tongue, or finger; or
- Oral copulation (mouth to genital or anal contact or genital or anal-to-mouth contact).

“Sexual Exploitation.” Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the person being exploited, and that behavior does not otherwise constitute any other violation of this policy. Examples of sexual exploitation include, but are not limited to

- Invasion of sexual privacy, including observing or allowing another individual to observe another’s nudity or sexual activity without the consent of all individuals involved;
- Prostituting another person;
- Non-consensual video or audio-taping of sexual activity;
- Engaging in voyeurism;
- Knowingly exposing another individual to a sexually transmitted infection or virus without that individual’s knowledge of the exposure;
- Exposing or inducing another to expose their genitals without consent; or

- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

“Sexual Harassment.” Sexual harassment refers to (1) unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature, and/or (2) harassment based on gender, gender identity, gender transition, gender expression, or sexual orientation, which may include acts of verbal, nonverbal, or physical aggression, intimidation or hostility based on sex, gender, or gender-stereotyping, even if the acts do not involve conduct of a sexual nature. In addition, a hostile environment will be found to be created, if

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s participation in the university’s programs and/or employment;
- (2) Submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual’s participation in the university’s programs and/or employment; or
- (3) Such conduct has the purpose or effect of unreasonably interfering with an individual’s educational performance, in that it is sufficiently serious, persistent or pervasive that it creates an intimidating, hostile, offensive, or abusive environment for that individual’s participation in the university’s programs and/or employment under both an objective and subjective standard.

Conduct reported as sexual harassment will be evaluated by considering the totality of the particular circumstances, including the nature, frequency, intensity, location, context, and duration of the conduct at issue.

Sexual Harassment

- May be committed by or against anyone, regardless of sex, gender, sexual orientation, gender expression, or gender identity;
- May occur between people of the same sex or different sexes;
- Does not have to be “directed at” a specific person or persons to constitute harassment;
- Often includes a power differential between the parties based on differences in age or educational, employment, or social status;

- Some examples of sexual harassment may include, but are not limited to (1) unwelcome touching, kissing, hugging or massaging; (2) pressure for sexual activity; (3) sexual innuendos or sexual humor; (4) obscene gestures; (5) sex-based stalking; (6) sexually explicit profanity; (7) sexual graffiti, pictures or posters, etc.

“Sexual Misconduct.” Sexual misconduct is defined in detail below under the section on prohibited conduct.

“Stalking.” Stalking occurs when any person engages in a course of conduct or repeatedly commits acts toward another individual under circumstances that would cause a reasonable person to fear for their own safety or the safety of others, or to suffer substantial emotional distress.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

Examples of stalking may include, but are not limited to

- Unwelcome and repeated visual or physical proximity to a person;
- Repeated oral or written threats;
- Unwelcome/unsolicited written communication, including letters, cards, emails, instant messages, texts, and messages on online bulletin boards;
- Unwelcome/unsolicited written communications about a person or the person’s family, friends or co-workers;
- Sending/posting unwelcome and/or unsolicited messages with another’s username;
or
- Implicitly or explicitly threatening physical conduct or any combination of these behaviors toward an individual person.

V. TITLE IX COORDINATOR

The university has designated a Title IX coordinator to oversee all reports of sexual misconduct at the university and to facilitate the university’s compliance with Title IX. The Title IX coordinator is also responsible for

- Conducting a review of all reports to identify and address any patterns or systemic problems within the university community;

- Overseeing the prompt and equitable investigation and determination of responsibility for all reports in violation of this policy involving all members of the university community;
- Evaluating the need for, and imposing, reasonably available remedial and protective measures;
- Assuring that sanctions and remedies are reasonably designed to eliminate violations of this policy, prevent their recurrence, and address their effects on the reporting party and the university community;
- Knowing and training the university community in policies and procedures and relevant state and federal laws;
- Ensuring that individuals, including the reporting party, accused party, and third parties, are advised about the courses of action available at the university and in the community;
- Evaluating a reporting party's request for anonymity or that no investigation or disciplinary action be taken;
- Providing assistance to university staff and faculty regarding how to respond appropriately to report violations of this policy;
- Monitoring compliance with all procedural requirements and time frames outlined in this policy;
- Keeping records of reporting under this policy;
- Reviewing complaints of sex discrimination, including discrimination related to pregnancy or parental status; and
- Training, prevention, and education efforts and periodic review of climate and culture.

The Title IX coordinator may delegate certain responsibilities to the Title IX deputy coordinator(s) or others, as appropriate. The University's deputy Title IX coordinator, if any, is responsible for assisting the Title IX coordinator. He or she will be stationed at the Lindenwood University-Belleville campus and will facilitate communications and reporting at the Belleville campus.

Questions about the applicability of this policy or the university's compliance with Title IX can be directed to the university's Title IX coordinator, the university's deputy Title IX coordinator, or the Office for Civil Rights:

- Title IX Coordinator. Kelly R. Moyich, J.D., Library and Academic Resource Center (LARC) Suite 221, 209 S. Kingshighway, St. Charles, MO 63301, Ph: 636.255.2275, k moyich@lindenwood.edu
- Deputy Title IX Coordinator. Annie C. Reis, J.D., Lynx Arena Athletic Offices, 2600 W. Main Street, Belleville, IL 62226, Ph: 618.239.6037, areis@lindenwood.edu
- Office for Civil Rights, Kansas City Office, U.S. Department of Education. One Petticoat Lane, 1010 Walnut Street, Suite 320, Kansas City, MO 64106, Ph: 816.268.0550, OCR.KansasCity@ed.gov.

VI. PROHIBITED CONDUCT

The university prohibits all forms of sexual misconduct. The university similarly prohibits any acts of retaliation for reporting violations of this policy or participating in the investigation or hearing process.

A. Sexual Misconduct

Sexual misconduct refers to a wide range of behaviors and encompasses any sexual behavior that was committed without consent. Sexual misconduct may vary in severity, but may include any of the following:

- Sexual Harassment;
- Relationship Violence;
- Sexual Assault;
- Sexual Exploitation;
- Retaliation; and/or
- Stalking

Any of the above behaviors, which are defined in detail above, are considered a violation of this policy and are considered prohibited conduct.

B. Retaliation

Retaliation refers to any adverse action or threats of adverse action, including harassment, threats, intimidation, or force or coercion that would discourage a reasonable person from reporting sexual misconduct or participating in the investigation or hearing process set forth in this policy. Retaliation also refers to any acts, threats, or attempts to seek retribution against a reporting party,

the accused party, or any individual or group of individuals involved in the investigation, and/or determination of responsibility for sexual misconduct under this policy.

The university will not tolerate retaliation against any student, employee, or third party who makes a report of sexual misconduct, participates in an investigation related to a report of sexual misconduct, or participates in a hearing or appeal process relating to such a report. Any incidents of retaliation should be reported to the Title IX coordinator or a designated reporting contact and may be subject to the same investigation, hearing, and appeal process set forth below. The university will take prompt and corrective action against all acts of retaliation.

C. Sexual Discrimination

In addition, the university does not allow sexual discrimination in its programs and employment, including unlawful discrimination related to pregnancy, parental status, gender expression, gender identity, or sexual orientation. Any student or employee wanting to file a report of sexual discrimination should do so by reporting such discrimination to the Title IX coordinator, the deputy Title IX coordinator, the vice president for human resources, the dean of students, and/or the Office of Public Safety & Security.

The investigation and evaluation of such reports will be overseen by the Title IX coordinator, and will be investigated and determined promptly and equitably, as set forth below and in the same manner (where possible) for “sexual misconduct.”

VII. REPORTING SEXUAL MISCONDUCT

The university encourages all university members to promptly report all incidents of sexual misconduct as soon as possible in order to maximize the university’s ability to respond promptly and effectively. **The university does not, however, limit the time frame for reporting.**

If the accused party is not a member of the university community at the time of the report, the university will not be able to take disciplinary action against the accused party. The university will, however, provide support for the reporting party, identify any information relevant to pattern or climate, and assist the reporting party in identifying external options.

A reporting party may choose to make a report to the university and may choose to make a report to law enforcement. The reporting party may pursue either or both of these options at the same time. When making a report, a reporting party need not know whether to request any particular course of action, nor how to label what happened or the violation. Choosing to make a report and deciding how to proceed after making the report can be a process that unfolds over time.

The university will encourage the reporting party to report sexual misconduct to law enforcement. However, the reporting party will not be required to do so. If the reporting party chooses to file a complaint with law enforcement, the university will do its best to assist law enforcement where possible and, if the reporting party wishes, the university can help him or her in notifying law enforcement. However, should the matter be subject to both the formal investigation process and

law enforcement, the university will complete its own independent investigation and will not rely solely upon law enforcement investigations and/or conclusions.

A. Reporting Contacts

While a student is encouraged to report an incident of Sexual Misconduct to a person of his or her choice, the university has designated the following reporting contacts to receive such reports. The designated reporting contacts have been trained to make the reporting party aware of available options and alternatives, to aid the reporting party in making an informed decision as to a course of action, and to enable the reporting party to follow through in that decision. The reporting contacts are private – but not confidential – resources, as defined above. The designated reporting contacts are

- Title IX Coordinator. Kelly R. Moyich, J.D., Library and Academic Resource Center, Suite 221, 209 S. Kingshighway, St. Charles, MO 63301, Ph: 636.255.2275, kmoyich@lindenwood.edu
- Deputy Title IX Coordinator. Annie C. Reis, J.D., Lynx Arena Athletic Offices, 2600 W. Main Street, Belleville, IL 62226, Ph: 618.239.6037, areis@lindenwood.edu
- The Dean of Students. Dr. Shane Williamson, Office of Student Life and Diversity, Evans Commons Room 3030, 209 S. Kingshighway, St. Charles, MO 63301, 636.949.4728, swilliamson@lindenwood.edu
- Director of Residential Life. Dr. Terry Russell, Evans Commons Room 3010, 209 S. Kingshighway St. Charles, MO 63301, 636.949.4980, trussell@lindenwood.edu
- Public Safety & Security. Spellmann Center, 4th floor, 209 S. Kingshighway, St. Charles, MO 63301, 636.949.4911, jbowman@lindenwood.edu
- Vice President for Human Resources (for employees). Dr. Deb Ayres, Stumberg Hall, 209 S. Kingshighway, St. Charles, MO 63301, Ph. 636.949.4405, dayres@lindenwood.edu.

Although certain individuals or entities are designated reporting contacts, **all** employees, including but not limited to faculty and staff, who are aware of sexual misconduct are **required** to report the information to the Title IX coordinator unless otherwise designated as a confidential resource.

B. Amnesty

To encourage reporting, individuals who in good faith report sexual misconduct, either as a reporting party, witness, or bystander, will not be subject to disciplinary action by the university for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that such violations did not and do not place the health or safety of any other person at risk. The

university may, however, initiate an education discussion or pursue other educational remedies regarding alcohol or other drugs.

C. Response Protocol

The university will respond to all reports of sexual misconduct in a timely and effective manner consistent with this policy. In addition

- All university employees who are aware of sexual misconduct, through first-hand knowledge, receipt of a disclosure, or other indirect means, are required to immediately report all known information to the Title IX coordinator (unless otherwise designated as a confidential resource), including the names of the individuals involved, the date and location of the alleged incident, the nature of the report and any supporting evidence and/or documentation.
- All reporting contacts who receive a report of sexual misconduct will immediately share all known information with the Title IX coordinator. The reporting contact or Title IX coordinator will make notifications to appropriate university officials, and, where possible, limit the information provided to such officials by taking the reporting party's preferences into consideration (consistent with the section on privacy and confidentiality).
- The reporting contact will assist the reporting party in getting to a safe place, if necessary. In doing so, the reporting contact will coordinate with Public Safety or the Title IX coordinator as needed.
- The reporting contact, Public Safety, and/or the Title IX coordinator will encourage the reporting party to seek immediate medical attention for treatment of injuries and preservation of evidence, discuss the reasons why prompt medical treatment is important, and arrange for transportation to the hospital if the reporting party agrees to such treatment.
- The Title IX coordinator will inform Public Safety of all reports of Sexual Misconduct consistent with the university's Clery Act obligations.
- The reporting party will be given the option to file a criminal report with the St. Charles Police Department or other appropriate jurisdiction. A reporting party's decision not to notify the police at the time of the initial report does not preclude the reporting party from filing a criminal report at a later date, provided the conduct is within Missouri's applicable statute of limitations.
- If the reporting party so wishes, the reporting contact or Title IX coordinator will coordinate with a campus or off-campus counselor. The counselor and/or any advocate

of the reporting party's choosing will be allowed to accompany the reporting party at each state of the reporting, investigation, or hearing process, if requested by the reporting party.

- The reporting contact and/or Title IX coordinator will provide the reporting party a copy of available resources both on and off campus.
- If the reporting party does not wish to pursue a report through university processes, the Title IX coordinator will evaluate the request not to pursue in light of the university's obligations to campus safety, as set forth below.
- The Title IX coordinator will notify the accused party if a report was filed and an investigation by the university has been requested. Resources will be made available to the accused party by the Title IX coordinator and/or public safety.

VIII. REQUESTS FOR ANONYMITY OR THAT NO REPORT BE PURSUED

Recognizing that sexual misconduct can include criminal acts that violate the security of the entire campus community, there may be instances where the university has a responsibility to investigate or disclose information regarding the circumstances related to a specific incident, despite a reporting party's request to the contrary. The university will balance individual and community safety considerations with a reporting party's request, the privacy interests and autonomy of a reporting Party, as well as the applicable legal requirements, when making decisions regarding such investigations and disclosures.

In addition, when the accused party is a faculty or staff member and/or under the control of the university, the university will weigh a reporting party's request not to investigate or disclose information, but the university may likely decide to do so in light of its obligations to the university community as a whole, its control and responsibility relating to the faculty or staff member, and in order to prevent future incidents of sexual misconduct. If the reporting party does not want to go through the formal complaint process, however, that choice will be taken into account. If the reporting party does not want to go through the formal complaint process, the faculty or staff member may still be subject to investigation, discipline, and sanctions at the vice president for human resources' discretion. In addition, the university reserves the right to impose discipline for conduct that does not constitute sexual misconduct but still violates other university policies included in the Employee Guidebook.

The university's ability to act to protect the interests of the reporting party and other students is limited by the information provided to it. For example, the university's ability to respond to a report of sexual misconduct may be limited if the reporting party requests that their name, or other identifiable information, not be disclosed to the accused party, that no investigation occur, or that no disciplinary action be taken. Additionally, while the reporting party is under no obligation to reveal the identity of the accused party, the reporting party will be encouraged to do so in the

interest of protecting all members of the university community and preventing future incidents of sexual misconduct.

Where a reporting party chooses not to participate in university processes, the Title IX coordinator, with input from whatever administrators he or she deems advisable, will nevertheless assess whether to pursue the university formal investigation procedures or remedial measures for the safety of the reporting party and the university community. In assessing the appropriate university action(s), the Title IX coordinator will consider the reporting party's preference(s) in light of the following factors:

- The seriousness, persistence, or pervasiveness of the sexual misconduct;
- The respective ages and roles of the reporting party and accused party;
- Whether the accused party has been arrested and/or charged with a crime;
- Whether there have been other reports of sexual misconduct against the accused party;
- The right of the accused party to receive notice and relevant information before disciplinary action is sought;
- Whether the circumstances suggest there is an increased risk of the accused party committing additional acts of sexual misconduct;
- Whether the accused party has a history of arrests or prior conduct violations (at the university or elsewhere) indicating a history of violence or sexual misconduct;
- Whether the accused party threatened further acts of sexual misconduct or other violence against the Reporting Party or others;
- Whether the sexual misconduct was committed by multiple individuals;
- Whether the accused party is faculty, staff, and/or under the control of the university;
- Whether the circumstances suggest there is an increased risk of future acts of sexual misconduct; and
- Whether the university possesses other means to obtain relevant information (e.g., security cameras, witnesses, physical evidence, etc.).

The Title IX coordinator will evaluate a request for anonymity and/or to not pursue an investigation in the context of its responsibility to provide a safe and non-discriminatory environment for the campus community, but where possible, will give deference to the reporting party's request(s).

Where the Title IX coordinator determines that action should be taken that is inconsistent with the request of the reporting party, the Title IX coordinator will inform the reporting party about the chosen course of action, which may include the university initiating disciplinary action against an accused party. Where the university determines that university disciplinary action is appropriate, the university will not require the reporting party's participation in any investigation or determination of responsibility if the reporting party does not wish to participate in any such action. Alternatively, the course of action may also include steps to limit the effects of the alleged harassment and/or prevent its recurrence that does not involve disciplinary action against an accused party or disclosing the identity of the reporting party.

IX. PRIVACY AND CONFIDENTIALITY

The difference between confidentiality and privacy is defined in the Definitions section above. Regardless of whether a party is designated as a confidential or private resource, the university seeks to respect the privacy of all parties involved. The university will treat information that it receives in a manner that respects both the reporting party and the accused party. Recognizing that sexual misconduct can include criminal acts that violate the entire campus community, there may, however, be instances where the university has a responsibility to investigate and/or disclose information regarding the circumstances related to a specific incident. Individual and community safety considerations will be balanced with the privacy interests of all involved, as well as the applicable legal requirements, when making decisions regarding such investigations and disclosures.

A. Employee Reporting Responsibilities

All university staff and faculty who are aware of sexual misconduct are considered responsible employees and are required to report this information to Lindenwood's Title IX coordinator unless otherwise designated as a confidential resource.

B. FERPA

FERPA limits the extent to which the university may disclose personally-identifiable information in student records. Whenever it is necessary to comply with FERPA, the university reserves the right to redact or limit information provided under this policy. To the extent any provision of this policy is inconsistent with FERPA, the university will follow FERPA.

C. The Clery Act and Record Keeping

The Clery Act requires the university to maintain anonymous statistical information in the university's daily crime log and Annual Security Report regarding reports of Clery-identified crimes. The information contained in the Clery report tracks the number of Clery-reportable offenses occurring at campus locations and does not include the names or any other identifying information about the persons involved in the incident. The university may also share non-identifying information about reports received in aggregate form, including data about outcomes and sanctions. In addition, if a report of a violation of this policy discloses a serious and continuing

threat to the campus community as defined in the Clery Act, the university will issue a timely warning notification to the community to protect the health or safety of the community.

At no time will the university release the name of the reporting party to the general public without the express consent of the reporting party or as otherwise permitted or required by law.

X. PRESERVATION OF EVIDENCE

If a reporting party is a victim of relationship violence or sexual assault, in particular, time and preservation of evidence may be a critical factor for criminal prosecution or for obtaining an order of protection. If a reporting party is a victim of relationship violence or sexual assault, his or her first priority should be to get to a place of safety. In addition, in order to preserve evidence, do not (a) wash, clean, or change clothes, (b) shower, (c) use sanitary products, (d) use the restroom, (e) touch anything that the accused party may have touched, and/or (f) cover up injuries, if any, with make-up, lotions, or creams.

XI. REMEDIAL AND PROTECTIVE MEASURES

After a report of sexual misconduct, the university will offer reasonable and appropriate measures to protect a reporting party, an accused party and facilitate the either party's continued access to university programs and employment. The university offers a wide range of remedial and protective measures for students and employees, whether as reporting parties or accused parties, to provide support and guidance throughout the university's response to a report of sexual misconduct. These measures may be both remedial (designed to address either party's safety and well-being and continued access to educational opportunities) or protective (involving action against either party). Remedial and protective measures may be imposed on an interim basis or may be extended permanently.

In every report under this policy, the Title IX coordinator will discuss the need for potential remedial measures with the dean of students (in the cases where the accused party is a student) or the vice president for human resources (in the cases where the accused party is faculty or staff) – or their designee. Upon receiving information regarding the nature of the report, the dean of students or vice president for human resources (or designee) will make an immediate assessment of any risk of harm to the reporting party, the accused party or the broader campus community, and may institute measures he or she deems advisable to protect the reporting party, the accused party or broader campus. These steps will include considering and/or implementing remedial and/or protective measures, where deemed advisable and at his or her sole discretion.

Potential remedial and protective measures include, but are not limited to

- Imposition of a No Contact Order, which prohibits the accused party and/or the reporting party from communicating through any manner or medium with the other. parties will be notified of such orders in person or via their university email accounts, and failure to comply with such orders may result in disciplinary action;
- Suspension from athletic teams;

- Rescheduling of exams and assignments;
- Change in class schedules, including the ability to transfer course sections or withdrawal from a course;
- Change in seating assignment;
- Change in an employee's work schedule or job assignment;
- Change in a student's university-sponsored or controlled housing;
- Assistance from university support staff in completing housing relocation;
- Limit of an individual's or organization's access to certain university facilities or activities pending the outcome of the matter;
- Leaves of absences;
- Providing an escort to ensure safe movement between classes and activities;
- Providing access to medical services;
- Providing academic support services;
- University-imposed administrative leave or separation;
- Interim suspension or leave;
- Assistance in obtaining a civil protection order; and/or
- Any other remedy, which can be tailored to the involved individuals to achieve the goals of this policy.

Remedial and protective measures are available regardless of whether a reporting party pursues a report or investigation under this policy. The university will maintain the privacy of any remedial and protective measures provided under this policy to the extent practicable and will promptly address any violation of the remedial or protective measures.

The university will also provide reasonable remedial and protective measures to third parties as appropriate and available, taking into account the role of the third party and the nature of any relationship with the university.

A civil order of protection may also be available from the St. Charles County Courthouse located at 300 N. 2nd Street, St. Charles, MO 63301 or other appropriate jurisdiction. The Title IX coordinator or Department of Public Safety is available to assist with this process.

XII. THE INVESTIGATION AND PROCEDURES AFTER THE REPORT

The university's process for resolving reports of sexual misconduct will be prompt and equitable and conducted with the oversight of the Title IX coordinator. If the Title IX coordinator decides to go forward with a formal investigation and report process, even if no complaint has been filed by a reporting party, the process shall be as set forth below.

A. Formal Investigation

Where the Title IX Coordinator has decided to pursue a formal investigation, a trained investigator (or trained investigators) will conduct a prompt, thorough, and impartial investigation of reports of sexual misconduct. All parties and witnesses are expected to provide truthful information. Knowingly providing false or misleading information is a violation of university policy and can subject a student or employee to disciplinary action. The investigator and/or the Title IX coordinator will provide timely updates to the reporting and accused parties, as appropriate or requested, about the timing and the status of the investigation.

It is the responsibility of the investigator – not the parties – to gather relevant evidence, to the extent possible. The investigator will conduct a fair and reliable fact-gathering process in light of the circumstances. The investigator will be responsible for interviewing the reporting party and the accused party, interviewing potential witnesses, collecting relevant documentation and physical evidence, creating a timeline (to the extent possible), and preparing a written report documenting the complete investigation.

The reporting party and accused party will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information during the formal investigation process. Witnesses must have observed the acts in question or have information relevant to the incident, and cannot be participating solely to speak about an individual's character.

The investigator will determine the relevance of any proffered information, and will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any party's general reputation for any character trait, including honesty.

Medical and counseling records of a reporting party or accused party are privileged and confidential records that individuals are not required to disclose. However, these records may contain relevant and material information and a party may voluntarily choose to share such records with the investigator. Any records provided by a party becomes part of the file and may be available to review by the opposing party, if deemed relevant to the formal investigation.

A reporting party's prior sexual history will never be used as evidence of character or reputation, and will only be considered during an investigation under limited circumstances. For example, where there is a current or ongoing relationship between the parties, and the accused party asserts

that the conduct was consensual, the prior sexual history between the parties may be relevant to assess the manner and nature of communications between the parties. However, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Any prior sexual history of the reporting party with other individuals is not typically relevant and will only be permitted if it is probative of a material fact, for example, to explain an injury or physical finding.

In gathering information, the investigator may also consider other reports of, or findings of responsibility for, similar conduct by the accused party to the extent such information is relevant and available. Such information may be relevant to prove motive, intent, absence of mistake, pattern or other material fact.

Where a sufficient informational foundation exists, the investigator, in consultation with the Title IX coordinator, will assess the relevance, form, and reliability of the information and determine if it is appropriate for inclusion in the written investigation report for consideration by the hearing officer in its determination of responsibility and/or assigning of a sanction.

The investigator and Title IX Coordinator have the discretion to consolidate multiple reports against an accused party or reports where the parties are accusing one another (cross complaints) into one investigation if the evidence related to each incident would be relevant and probative in reaching a determination on the other incident.

At the conclusion of the investigation, the investigator will prepare a written report (the “investigative report”) that summarizes the complaint (even if not filed officially by a reporting party), details the information gathered, and synthesizes the areas of agreement and disagreement between the parties. In preparing the investigative report, the investigator will review all facts gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. The investigator will also include a written recommendation at the conclusion of the investigative report detailing whether there is or is not, in his or her opinion, sufficient evidence to support a finding that sexual misconduct occurred using the preponderance of the evidence standard. This recommendation is non-binding on the hearing officer, who bears the ultimate responsibility of determining whether the accused party is responsible for committing sexual misconduct in violation of this policy by a preponderance of the evidence standard.

The reporting party and accused party will have reasonable and equal access to any information or evidence obtained by the investigator and that may be used or reviewed by the hearing officer. Should the reporting party or accused party want to review any such information or evidence, such request should be made to the Title IX coordinator, who will make such information or evidence available for review.

The investigator will seek to finalize the investigative report within 25 business days of receiving the reporting party’s report, but this timeframe may be extended due to the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, to comply

with a request by external law enforcement, to accommodate the availability of witnesses, to account for university breaks or vacations, and/or to address other legitimate reasons.

B. Right to an Advisor

Throughout the process, a reporting party and/or accused party may have an advisor of their choice present at any meeting related to the investigation or disciplinary proceeding. An advisor of choice may include an attorney retained by a party at their own expense. Any party requesting such advisor may be required to execute an appropriate FERPA waiver.

Any person who serves as an advisor should plan to make themselves available for meetings throughout the process. Advisors may participate in an advisory capacity to the party they are advising, but they may not take part directly in any portion of the proceedings, including taking part of the investigation, meeting with the hearing officer, or the appeal (although the advisor may be present with the party he or she is advising at any time). If a party wishes to speak privately with their advisor during the investigation or meeting with the hearing officer, that party may request a brief recess from the meeting or proceeding. The advisor may not be a fact witness or otherwise have any conflicting role in the process, as determined by the Title IX coordinator. The university may only discuss the report and status of the report with the chosen advisor if consented to by the party selecting the advisor.

XIII. DETERMINATION PROCEDURE

The hearing officer is an administrator designated by the university to determine responsibility (by a preponderance of the evidence standard) of the accused party and impose, as appropriate, any sanctions. If the accused party is a student of the university, the hearing officer will be the dean of students or his or her designee (as approved by the Title IX coordinator). If the accused party is faculty or staff, the hearing officer will be the vice president for human resources or his or her designee (as approved by the Title IX coordinator). If the hearing officer has a conflict of interest or bias against the reporting party or accused party, as determined by the Title IX coordinator, the Title IX coordinator will appoint another hearing officer, at his or her discretion. Any such proposed conflict may be raised by the Title IX coordinator, the hearing officer, the accused party or the reporting party by notifying the Title IX coordinator in writing of such conflict and the factual basis for any alleged conflict.

The hearing officer and investigators will be trained at least annually by the Title IX coordinator and/or outside sources on issues relating to sexual misconduct and how to conduct an investigation and hearing process that protects the safety of reporting parties and promotes accountability.

Upon its completion, the Title IX coordinator or investigator will provide the investigative report to the hearing officer. The Title IX coordinator will notify the reporting party and accused party that the investigation has closed, and the hearing officer will make a determination within 15 university business days (unless there is good cause for limited delay, such as the availability of the accused or reporting party). During that time, the parties will be given an opportunity, if they

choose, to meet with the hearing officer to separately discuss the investigation, evidence and/or the underlying facts. The reporting party and accused party will not be present together during the determination procedure or interviews at any time. Each party's advocate may be present during any such interview.

In addition, if the hearing officer has questions with answers not contained in the final investigative report, the hearing officer may contact any party or witness, during the determination procedure and at his or her discretion, via telephone, email, and/or in person. During any such communication, the party is entitled to have his or her advisor present. However, it is expected that most hearings will not require additional evidence or testimony.

Alternatively, the parties may submit a written statement in lieu of an in-person meeting with the hearing officer. Any party may also submit written questions that the party wants to be asked by the hearing officer of another party. The hearing officer will review the questions prior to asking the other party to ensure that they are appropriate and relevant. At the conclusion of the individual meetings (if any), or upon receipt of additional written comment, the hearing officer will make a determination as to whether, based on the preponderance of the evidence standard, the accused party committed an act or acts of sexual misconduct in violation of this policy.

If the hearing officer determines that the accused party is responsible for one or more forms of prohibited conduct, the hearing officer will determine the appropriate sanctions. A determination of sanctions will be based on the facts and circumstances of each case.

Sanctions for violations of this policy may include those listed under Remedial and Protective Measures, and are included, but are not limited to expulsion, suspension, disciplinary probation, mandated counseling, assessment, alcohol, sexual harassment, and/or drug education program, restrictions on campus privileges, restrictions on campus housing, restrictions on participating in student activities or sports, community service, educational sanctions, No-Contact Orders, changes to employees' work schedules or job assignments, leaves of absence, university-imposed administrative leave or separation, employee counseling, termination, and/or any other sanction which can be tailored to the involved individuals to achieve the goals of this policy.

In determining the appropriate sanction, the hearing officer may consider the following factors:

- The nature and violence of the conduct at issue;
- The impact of the conduct on the reporting party;
- The impact of the conduct on the university community;
- Prior misconduct by the accused party, including the accused party's relevant prior discipline history, both at the university or elsewhere, and any criminal convictions or arrests;
- How the university has previously sanctioned similar conduct;

- Whether the accused party has accepted responsibility for the conduct;
- Maintenance of a safe and respectful learning, living and working environment;
- Protection of the university community; and
- Any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate outcome in each case.

Both the reporting party and accused party will simultaneously receive a written notice of the outcome of the hearing officer's findings, any sanctions imposed, when such results become final, and the right to appeal (the "determination letter"). The determination letter will be provided via the party's Lindenwood email account, the party's personal email account or via hand-delivery.

If the accused party is suspended and later wishes to return to campus after completing his or her period of suspension, the university shall notify the reporting party if (a) the accused party's request to return has been approved, and (b) when the reporting party is currently enrolled in the university.

XIV. THE APPEAL PROCESS

Either party may appeal the determination letter. All appeals are due, in writing, to the Title IX coordinator within five university business days following the determination letter being sent. If a request is not received within five university business days, the determination letter shall be final. Limited extensions to appeal will only be given for extraordinary circumstances and shall be approved by the appeal officer in his or her discretion.

If a party appeals, such appeal shall consist of the accused party's name, the email address where he or she can be reached, a plain, concise and complete written statement outlining the basis for the appeal (see below) and all relevant information to substantiate the grounds for appeal.

The appeal will be decided by an appeal officer. The appeal officer will be the Vice President for Academic and Student Affairs or his or her designee (as approved by the Title IX coordinator).

The grounds for appeal may only be one or more of the following:

- There was a material deviation from the procedures set forth in this policy that would significantly impact the outcome of the case or may have resulted in a different finding;
 - including that the sanction is disproportionate to the violation;
- and/or
- New or relevant information, not available at the time of the investigation or determination of responsibility, has arisen that would significantly impact the outcome of the case.

Dissatisfaction with the outcome of the investigation or the determination letter, or failure of a party or witness to attend or participate in the investigation or hearing process, are not grounds for appeal.

The other party will have an opportunity to review the appeal and may submit a written response to the appeal to the appeal officer within three university business days following the appeal being sent to that party.

Except in extraordinary circumstances, appeals will be resolved by the appeal officer within seven university business days following receipt of the request for appeal, but only after the other party has had three university business days to respond. All parties will receive written notification following the final determination of any appeal.

The decision of the Appeal Officer is a final determination.

XV. TIMEFRAME

Except for good cause, the university will attempt to conclude its formal investigation, hearing and appeal process between 60-75 university business days following receipt of a report. Best efforts will be made to complete the process in a timely manner by balancing principles of thoroughness, fairness, and impartiality. The university may extend this timeframe for good cause and will communicate any delay in the process in writing to the parties, including an updated timeframe for completion and the reason(s) for the delay. Good cause may exist for a variety of factors, including but not limited to the complexity of the circumstances of each allegation, the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for university breaks or vacations, and/or to address other legitimate reasons.

XVI. RESOURCES

Any individual who has experienced sexual misconduct is strongly encouraged to seek immediate emergency assistance from law enforcement, medical professionals, and/or crisis counseling resources. Individuals are encouraged to use all available resources, regardless of when or where the incident occurred.

The university is committed to treating all members of the community with dignity, care, and respect. Any individual affected by sexual misconduct, whether as a reporting party, accused party, witness, or third party, will have equal access to support consistent with the individual's needs and available university resources. This section provides contact information for university resources, resources in the St. Charles and St. Louis community, and national resources.

Prompt intervention can do much to mitigate trauma associated with acts of sexual misconduct and enhance recovery. Reporting parties are encouraged to utilize appropriate resources, whether or not they report the sexual misconduct to law enforcement or the university. Any campus community member in need of resources or assistance relating to any of the matters covered by

this policy is encouraged to contact one of the on-campus or off-campus resources or reporting contacts listed in this policy.

A. Emergency Resources

The priority response to any report of sexual misconduct is to address the safety of the reporting party. The university will help the reporting party get to a safe place and assist him or her in contacting law enforcement, seeking immediate medical treatment, and accessing crisis counseling resources and will assist the party in taking steps to preserve evidence.

For emergency assistance, reporting parties are strongly encouraged to contact the Office of Public Safety & Security (“Public Safety”), the local police department, and emergency medical or counseling services.

EMERGENCY ASSISTANCE AND MEDICAL CARE

9-1-1

St. Charles Police Department

1781 Zumbahl Road, St. Charles, Missouri
636.949.3300
(911 if emergency)

Lindenwood University Public Safety & Security Office

209 S. Kingshighway, Spellman Center, 4th floor St. Charles, Missouri
63301-1695
24/7 Security Direct Line: 636.949.4911

Student Counseling and Resource Center

Evans Commons, 3rd Floor
636.949.4525

Private but non-anonymous reports can also be submitted on the Office of Title IX university website at: www.lindenwood.edu/title-ix

Anonymous reports can also be submitted on the university website at: <http://www.lindenwood.edu/student-life/campus-security/reporting-crime/>. Sexual misconduct submitted through the anonymous website will be shared with the Title IX coordinator.

B. Confidential Resources

The *only* university resources that afford complete confidentiality (assuming no other conditions require mandatory disclosure, *i.e.*, suspected child abuse or neglect or imminent risk of harm to self or others) are

- Disclosure to a licensed counselor at the Student Counseling and Resource Center;
- Disclosure to a medical professional in the context of the physician-patient relationship; and
- Disclosure to a member of the clergy when the communication is made in the clergy member's professional capacity of giving religious or spiritual advice.

Speaking confidentiality with a licensed counselor in the Student Counseling and Resource Center (or any other confidential resource) does not require a report to Public Safety, the Title IX coordinator, or any other reporting body, without the consent of the reporting party.

- University Resources.
 - **Student Counseling and Resource Center**, Evans Commons, Third Floor, (636) 949-4525
 - **Student Health Center**, Evans Commons, Third Floor, (636) 949-4525
 - **Lindenwood University Chaplain's Office**, Rev. Dr. Nichole Torbitzky, (636) 949-4651, chaplain@lindenwood.edu

- Medical Services in the Community.
 - **SSM Health St. Joseph Hospital – St. Charles**, 300 1st Capitol Drive, St. Charles, MO 63301, (636) 947-5000
 - **AWARE (Barnes-Jewish Hospital South)**, 1 Barnes Jewish Hospital Plaza – BNO, St. Louis, MO (314) 362-9273
 - **St. John's Mercy**, 607 S. New Ballas Road, St. Louis, MO 63141, (314) 251-6000

- Additional Confidential Resources in the Community
 - **Bridgeway Behavioral Health**, Sexual Assault Program, 1601 Old S. River Rd, St. Charles, MO, 24-hour Hotline: 1 (877) 946-6854 or (636) 946-6854
 - **The St. Louis Anti-Violence Project**, Serving the Lesbian, Gay, Bisexual, and Transgender Community, P.O. Box 15067, St. Louis, MO, Hotline: (314) 503-2050
 - **YWCA – St. Louis Regional Sexual Assault Center**, 140 N. Brentwood Blvd., St. Louis, MO (314) 726-6665, (314) 531-7273 (24-hour access)
 - **Alternatives to Living in Violent Environments (ALIVE)**, (314) 993-2777 (24-hour access/crisis line)

- **Safe Connections**, (314) 531-2003 (crisis hotline), (314) 646-7500 (counseling and support services)

C. Campus Resources (private, but not confidential)

The following campus departments can provide resources, guidance and assistance to students. These departments are required to share all reports of Sexual Misconduct with the Title IX Coordinator.

- Office of the Dean of Students, Dr. Shane Williamson, Office of Student Life and Diversity, Evans Commons, Room 3030, (636) 949-4728, swilliamson@lindenwood.edu
- Department of Housing and Residential Life, Dr. Terry Russell, Evans Commons Room 3010, (636) 949-4980, trussell@lindenwood.edu
- Public Safety, Spellmann Center, 4th floor 209 S. Kingshighway, St. Charles, MO, , (636) 949-4911

D. Staff and Faculty Resources

The university is concerned with the well-being of its staff members, its faculty, and their families. An Employee Assistance Program (EAP) is a benefit set up by Lindenwood to provide employees assistance for themselves and their immediate family members in dealing with personal concerns. Assessment, short-term counseling, and referral services are available for concerns such as domestic violence, anxiety, marital issues, relationship issues, etc. To use the services, contact

- www.paseap.com or Call (800)356-0845 or
- Candace Terry, Human Resources, (636) 627-2589, cterry@lindenwood.edu

E. Online Resources

The following chart outlines national resources available online. These resources may help identify available resources in other communities outside of St. Charles, Mo.

NotAlone.gov	https://www.notalone.gov
National Domestic Violence/ Sexual Assault Hotline	1 (800) 799-SAFE (24-hour) http://www.thehotline.org
Domestic Abuse Helpline for Men and Women	1 (888) 743-5754 http://www.dahmw.org
Stalking Resource Center	http://www.victimsofcrime.org/our-programs/stalking-resource-center
Rape, Abuse, and Incest National Network (RAINN)	1 (800) 656-HOPE (24-hour) http://www.rainn.org

XVII. TRAINING

The university will offer students and employees with primary prevention and awareness programming, initiatives, strategies and campaigns that promote awareness of and seek to end sexual harassment, relationship violence, sexual assault, sexual exploitation, retaliation, and stalking (“awareness programming”). Such awareness programming will include (a) a statement that sexual misconduct is prohibited, (b) definitions of those offenses, (c) the definition of consent, (d) safe and positive options for bystander intervention to prevent harm or intervene in risky situations, (e) recognition of signs of abusive behavior and how to avoid potential attacks, and (f) ongoing prevention and awareness campaigns.