



## Sexual Misconduct Policy

*Draft updated on July 1, 2020*

### I. Introduction

This policy addresses the responsibilities of Pacific Lutheran University (“PLU”) under Title IX and the Violence Against Women Reauthorization Act of 2013 (“VAWA”). Title IX prohibits discrimination on the basis of sex (gender) in education programs and activities; and, programs that receive federal assistance. VAWA requires that universities have procedures in place to respond to matters of sexual assault, relationship violence and stalking. These laws are completely consistent with PLU’s [Nondiscrimination Policy](#), its prohibition against sex discrimination (including sexual misconduct) and its philosophy of providing an environment in which students can live, work and study free from all types of gender discrimination.

This policy covers student to student-related concerns of ***Sexual Harassment, Sexual Assault and Sexual Misconduct, Dating Violence or Domestic Violence*** (“Relationship Violence”) and ***Stalking***. This conduct will be referred to collectively as “**Prohibited Conduct**.” This policy should be used if both the Impacted Party (who may also be referred to as the ***Complainant***), and the student against whom the allegations are made (the ***Respondent***) are students.

If the Impacted Party is a student and the Respondent is a member of the faculty or staff, the Impacted Party should use the [PLU Human Resources Sexual Misconduct Policy](#). In cases where the Complainant or the Respondent are not PLU students, faculty members, or staff members, PLU will determine, in its sole discretion, the best remedies for the Impacted Party and the community.

If the alleged behavior does not meet the 2020 definitional criteria for a Title IX complaint provided by the U.S. [Department of Education](#), but is an allegation of student misconduct, the report will be referred to the Dean of Students and Student Rights and Responsibilities for further action.

This policy and the Student Conduct procedures set forth the procedures that PLU will follow regarding reports, formal complaints, available support and determine whether a Respondent has violated this policy. When a determination is made that a violation has occurred, PLU will issue sanctions, remedies for the aggrieved party, and take actions that are commensurate with the violation and which reflect PLU’s determination to end such conduct, prevent its recurrence and redress its effects.

***PLU Human Resources Sexual Misconduct Policy***

[http://www.plu.edu/personnel-manual/equal-employment-opportunity/sexual-misconduct](http://www.plu.edu/personnel-manual/equal-employment-opportunity/sexual-misconduct/)  
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## II. Statement of Policy

It is a violation of PLU policy for any PLU student to engage in any conduct defined in this policy as Prohibited Conduct including without limitation *Sexual Harassment*, *Sexual Assault* and *Sexual Misconduct*, *Dating Violence* or *Domestic Violence* (“*Relationship Violence*”) and *Stalking*, whether or not it occurs on campus. This policy is intended to meet the requirements of applicable federal and state laws. Nothing in this policy restricts any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution, deprives a person of the rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution, or restrict any other rights guaranteed against government action by the U.S. Constitution. If this policy becomes inconsistent with any applicable law, it is the University’s intent to update policies to be consistent with applicable laws.

## III. Education Basis for Policy

In addition to and co-equal with its legal responsibilities as set out in the Introduction to this policy, PLU, by its mission, is committed to providing an environment in which students can work, live, and study free from all types of prohibited conduct. Consistent with its [Equal Educational Opportunity Policy](#), PLU prohibits any discrimination in education and employment on the basis of gender or gender identity (see also [PLU Human Resources Sexual Misconduct Policy](#)). Prohibited Conduct, as listed above, has a serious negative impact on the quality of the educational experience. When a formal complaint is filed and a student conduct process concludes, PLU will seek to remedy the aggrieved party and restore the elements of their educational experience to what was experienced before the Prohibited Conduct occurred. All members of the community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The Sexual Misconduct Policy has been developed to reaffirm these principles and to provide recourse for those individuals who believe they may have experienced or witnessed Prohibited Conduct, as defined by this policy. This policy and the [Student Conduct Procedures](#) also provide the standards and process for the University to determine, after the fact, if behaviors violate the PLU Student Code of Conduct. The University will work to prevent and eliminate Prohibited Conduct by providing a multi-faceted educational program to promote awareness of acceptable and unacceptable behaviors. All members of the PLU community are encouraged to play a role in making their community a safe, educational, and just community. This policy is intended to meet the requirements of applicable federal and state laws. If this policy is inconsistent with any applicable law, it is the University’s intent to follow applicable laws.

### ***Equal Educational Opportunity Policy***

<http://www.plu.edu/srr-policy/code-of-conduct/eoo/>

### ***PLU Human Resources Sexual Misconduct Policy***

<http://www.plu.edu/personnel-manual/equal-employment-opportunity/sexual-misconduct/>

## IV. Jurisdiction

Consistent with other provisions of PLU's Student Code of Conduct, this policy and procedures apply to all students enrolled in courses at Pacific Lutheran University. Individuals involved in incidents prior to or during a break between successive terms of enrollment may be subject to action in the Student Rights and Responsibilities system.

The University must obtain notice, or have available "Actual Knowledge", that an alleged violation occurred, that the violation meets the definition of Prohibited Conduct as articulated in the regulations, and that a formal complaint has been filed prior to the University proceeding with any student conduct process.

"Actual Knowledge" is obtained when the Title IX Coordinator, or any official of the University who has authority to institute corrective measures receives notice of the alleged sexual misconduct.

The University reserves the right to follow the procedures outlined in the Student Rights and Responsibilities system if a student's behavior does not meet this criteria, but does violate the Student Code of Conduct, regardless of where the behavior occurs. The University will generally, but not exclusively, respond to off-campus behavior if an alleged violation occurs while a student is engaged in a PLU-sponsored or sanctioned event (i.e. study away, alternative spring break, athletics, music performance, outdoor recreation), the behavior raises concern for the safety of those on-campus, or the behavior jeopardizes the university's interests in the community.

In addition, the university may follow the procedures outlined in the Student Rights and Responsibilities system whenever a student is accused of a criminal act, regardless of the location of its occurrence.

## V. Reporting and Resources

### A. How to Report

Any PLU student who believes they have been subjected to Prohibited Conduct is an Impacted Party, and is encouraged to report such a concern. Students may report Prohibited Conduct in several ways:

- Submit a report online: anyone is able to electronically submit a report via the online [Incident Reporting Form](#). Impacted Parties can remain anonymous; however, the Title IX office will only be able to act on as much information as is given.
- Contacting the Title IX Coordinator or Deputy Coordinators via email or phone:
  - Jennifer Childress-White, Title IX Coordinator ([childrjl@plu.edu](mailto:childrjl@plu.edu), or 253.535.8109)
  - Teri Phillips, Deputy Title IX Coordinator ([phillitp@plu.edu](mailto:phillitp@plu.edu), or 253.535.7187)
  - Eva Frey, Deputy Title IX Coordinator ([eva.frey@plu.edu](mailto:eva.frey@plu.edu), or 253.535.7159)
- Submitting a report via mail to Pacific Lutheran University at:  
Title IX Coordinator  
Pacific Lutheran University  
12180 Park Avenue S

Tacoma, WA 98447

- Students may make a report directly to local law enforcement officials by calling 911, or through contacting Campus Safety at 252-535-7911 , who can assist students in filing a report with local law enforcement
- With the exception of staff who are identified as confidential resources because of their licensure or specific professional role, all faculty, staff, administration, Resident Assistants, and Campus Safety student employees are considered mandatory reporters for all incidents related to Prohibited Conduct and will file a report when information is shared with them alleging potential Prohibited Conduct.

There is no time limit on making a complaint, but prompt reporting is encouraged in order to obtain appropriate evidence and information.

Any person with knowledge of an alleged Prohibited Conduct is encouraged to report concerns or information to any of the above listed individuals.

All of the above individuals are considered private sources. This means the offices will keep the information as private as possible, but certain procedures will need to be followed once reported.

## **B. Confidentiality and Confidential Resources**

- *Confidentiality.* The University will make reasonable and appropriate efforts to preserve an Impacted Party's and Respondent's privacy and to protect the confidentiality of information. Should an Impacted Party request confidentiality, the Title IX Coordinator will inform the Impacted Party that the University's ability to respond may therefore be limited – but that where feasible, the University will take reasonable steps to prevent Prohibited Conduct and limit its effects.

The Title IX Coordinator will further inform the Impacted Party that it is not possible to provide confidentiality in all cases and that the University's decision to share information with others is subject to the balancing test described below in Section VII. In summary, although the University's goal is to limit the number of individuals who may learn about an allegation of Prohibited Conduct or an investigation, the University cannot guarantee confidentiality in all matters.

### **1. Confidential Resources**

Should an individual not be prepared to make a report, but is seeking information and wanting a confidential resource, there are several options available to the student. Individuals can explore different options without initiating further action from the University. The University encourages pastoral counselors and professional counselors, if and when they deem it appropriate, to inform the persons they are counseling of any procedures to report crimes on a voluntary, confidential basis for inclusion in the annual disclosure of crime statistics. These individuals/offices **cannot and will not** report the matter further, and reporting to any of these individuals/offices does not put the University on notice that Prohibited Conduct may have occurred.

- **Pacific Lutheran University Victim Advocate**

- Website: <https://www.plu.edu/gender-equity/advocacy-services/>
- Telephone: 253-538-6034
- Office: Center for Gender Equity, University Center
- **Pacific Lutheran University Counseling Center**
  - Email: [councen@plu.edu](mailto:councen@plu.edu)
  - Telephone: 253-535-7206
  - Office: University Center 300
- **Pacific Lutheran University Student Health Center**
  - Email: [health@plu.edu](mailto:health@plu.edu)
  - Telephone: 253-535-7337
  - Office: 121<sup>st</sup> and Park Avenue
- **Pacific Lutheran University Campus Ministry**
  - Email: [cmin@plu.edu](mailto:cmin@plu.edu)
  - Telephone: 253-535-7464
  - Office: University Center 190
- **Pierce County Sexual Assault Center**
  - Website: [www.sexualassaultcenter.com](http://www.sexualassaultcenter.com)
  - Telephone: 253-474-7273 or 800-756-7273
- **Pierce County Domestic Violence Helpline**
  - Website: [www.familyjusticecenter.us](http://www.familyjusticecenter.us)
  - Telephone: 253-798-4166 or 800-764-2420

## 2. Private Resources

A report to the University may be made to any of the following offices or individuals. These are trained individuals who will initiate the University's responsive action to a sexual misconduct complaint. While not bound by confidentiality, these resources will maintain the privacy of an individual's information within the confines of the Title IX resolution process.

- **Pacific Lutheran University Campus Safety**
  - Email: [campussafety@plu.edu](mailto:campussafety@plu.edu)
  - Telephone: 253-535-7441, emergencies: 253-535-7911
  - Office: Basement of Harstad Hall
- **Pacific Lutheran University Title IX Coordinator**
  - Website: [www.plu.edu/title-ix](http://www.plu.edu/title-ix)
  - Telephone: 253-535-7018
  - Office: Lee House
- **Pacific Lutheran University Student Rights and Responsibilities**
  - Email: [srr@plu.edu](mailto:srr@plu.edu)
  - Telephone: 253-535-7462
  - Office: Lee House
- **Pacific Lutheran University Residential Life**
  - Email: [rlif@plu.edu](mailto:rlif@plu.edu)

- Telephone: 253-535-7200
- Office: University Center 161

### **3. Reports to Law Enforcement**

The University encourages anyone who believes they have experienced a violation of this Sexual Misconduct policy to make a report through the Police Department. PLU Campus Safety is willing and able to assist with referring students to this resource. The University also encourages Impacted Parties to be aware of the importance of preserving evidence that may assist in providing information that an alleged criminal offense occurred or may be helpful in obtaining a protection order. An Impacted Party may also, in their discretion, decline to notify law enforcement officials.

Impacted Parties also have the right to seek other forms of relief from civil authorities, such as no contact orders, restraining orders, or similar. As set out in Section VI: A below, the University may enter such no contact orders and take such other Interim Measures to assist the Impacted Party.

### **4. Anonymous Reports**

The University welcomes students to submit anonymous reports of Prohibited Conduct, however, the University may not be able to fully address anonymous reports unless sufficient information is furnished thus enabling the University to conduct a meaningful and fair investigation. The University takes anonymous reports seriously and will address the concern in whatever steps it deems appropriate, in the University's sole discretion, in the best interest of the overall University community.

The University will take steps to protect the confidentiality of the Impacted Party and others involved in the reporting process. Publicly available recordkeeping, including Clery Act reporting and disclosures will be done without personal identifying information about the Impacted Party. Additionally the University will maintain as confidential any accommodations or protective measures provided to the Impacted Party, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations or protective measures.

Certain situations may require the Title IX Coordinator to file a formal complaint on behalf of the university when Prohibited Conduct is reported that impacts multiple individuals or when there is an assessed threat to campus or individual safety. In these situations, anonymous reports may be included in those formal complaints.

### **5. Advisors**

The above resources can be utilized by both the Complainant(s) and the Respondent(s) for cases involving allegations of Sexual Misconduct. Throughout all Title IX reporting and grievance policies, individuals are allowed to be accompanied by an Advisor of their choice. If an individual does not have an Advisor, they may elect for an individual provided by the university. These trained Advisors are able to provide the following: emotional support, act as a liaison for academic and campus services, serve in a formal review meeting, and provide referrals to counseling and support groups.

## **6. Respect for Medical Amnesty Provisions**

It is in the best interest of the PLU community for students to report cases of Sexual Misconduct; because of that, an individual who reports Sexual Misconduct, either as a Complainant or a Reporter, will have the focus on the investigation on the Prohibited Conduct.

## **VI. Response Procedure**

Upon receipt of a report, PLU will take immediate steps to ensure that services have been offered to the Impacted Students and Interim Steps have been taken for the safety and security of the Impacted Parties and the PLU community. Then PLU will generally proceed as described below. Exceptions to this policy will be documented for individuals involved in a report or grievance process.

### **Supportive Measures**

- a. Upon receipt of a report, the Title IX Coordinator will promptly contact the Impacted Part(ies) to offer supportive measures and outline the process for filing a Formal Complaint.
- b. The Title IX Coordinator will inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Impacted Part(ies) the process for filing a formal complaint.
- c. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The University reserves the right to take any measures it believes, in its sole discretion, are in the best interests of the parties and the University community.

### **B. Initial Title IX Assessment**

Reports of Prohibited Conduct will not, on their own, trigger a Title IX grievance process. A Formal Complaint is required to be submitted to Pacific Lutheran University to begin a grievance process under this policy and as outlined in the U.S. Department of Education Title IX Regulations. Pacific Lutheran University is obligated by federal regulations to dismiss Formal Complaints that fail to meet the definitions below or are outside of its prescribed jurisdiction, which is limited to: an individual who is participating in or attempting to participate in the education program or activity of Pacific Lutheran University, in the United States. "Educational program or activity" includes locations, events, or circumstances over which Pacific Lutheran University exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned

or controlled by a student organization that is officially recognized by Pacific Lutheran University.

For a Formal Complaint to proceed through PLU's Sexual Misconduct grievance process, it must meet several criteria. The Prohibited Conduct must be:

- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30). (See below for formal definitions.)

Nothing in this part precludes Pacific Lutheran University from removing a respondent from an educational program or activity on an emergency basis, pending an individualized safety and risk analysis and determination that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. In situations like this, Pacific Lutheran University will provide the respondent with notice and an opportunity to appeal the decision immediately following the removal. This provision may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

If a report is formally dismissed by the Title IX Coordinator or their designee, the report will be referred to the Office of Student Rights and Responsibilities for evaluation if the reported behavior is otherwise a violation of the Pacific Lutheran University Code of Conduct and impacted parties will be notified of the dismissal in writing.

The dismissal of a report does not preclude a reporting party from utilizing any of the supportive measures outlined in this policy.

### **C. Prohibited Conduct**

If the Formal Complaint is within the jurisdiction of Pacific Lutheran University and meets the definitional criteria of Prohibited Conduct, then PLU is obligated to respond to the formal complaint with an investigation. When this grievance process is initiated on the basis of a Formal Complaint, the individual alleged to have engaged in the Prohibited Conduct and who must respond to the allegations is designated as the Respondent. The impacted part(ies) who submit the formal complaint will be designated as the Complainant(s). Prior to and during this investigation, Pacific Lutheran University presumes that the Respondent is not responsible for the alleged conduct and does not make a determination regarding responsibility until the conclusion of the grievance process.

### **D. Investigation**

The Title IX coordinator will designate an unbiased, trained investigator to investigate each allegation of Prohibited Conduct. The investigator will conduct a thorough, fact-finding investigation, which will typically include interviews with the Complainant(s), the Respondent(s), and witnesses. The interviews

will be supplemented by the gathering of any physical, documentary, or other evidence. As part of the investigation, PLU will allow all parties to provide witnesses and other evidence as appropriate. The investigation is designed to be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect. The investigation will be conducted in a manner that is respectful of individual privacy concerns.

All meetings during an investigation will be documented before the meeting occurs . Upon notice of a formal complaint alleging Prohibited Conduct, the Respondent will have ten days to review the Formal Complaint, notice from Pacific Lutheran University, and any initial evidence submitted with the Formal Complaint prior to an initial interview. Each party will have an equal opportunity to present fact and expert witnesses and other inculpatory and exculpatory evidence. Pacific Lutheran University does not and will not ever access information provided to HIPAA-protected practitioners on campus by any other parties holding protected information and involved in a student conduct process.

Throughout the investigation, any person participating may have an Advisor present at any meeting related to the review of the reported Prohibited Conduct. Advisors have very defined roles in a Title IX process. See the definition of Advisor for additional information.

#### **E. Investigation Findings and Outcomes**

At the conclusion of the investigation, the Investigator will prepare a written report synthesizing the facts and the conclusions of the investigation. Prior to the conclusion of the investigation, the investigator will share all evidence collected with each party and any individuals selected to serve as advisors for the party. Each party will have ten days to review the evidence and submit a final response to the investigator to be included in the investigative report.

#### **F. Hearings**

The report will be passed on to the Decision Makers. The Decision Makers are three faculty/staff/administrators who have been trained in conduct and Title IX procedures, and are designated by the Office of Student Rights and Responsibilities. One individual will be designated the chair for the hearing and of the Decision Makers. Each party will be notified of a hearing date and time at least ten days prior to that hearing being scheduled. This hearing will be conducted live, and each party's advisor will have the opportunity to provide follow-up questions to the opposing party. Only a party's advisor is permitted to participate in these questions, and any and all questions will be screened by the Decision Maker chairing the hearing for relevance and appropriateness before the party has to answer it. Individuals should be present at the hearing, unless alternate teleconferencing arrangements have been made.

If a party or witness does not submit to cross-examination at the live hearing, Decision Makers will not rely on any statement of that party or witness in reaching a determination regarding responsibility and will not have any bearing on the final determination of the Decision Makers.

All hearings will be recorded and retained for future examination by either party.

The Decision Makers will make a determination if a policy (policies) have been violated, and determine sanctions, if applicable.

Both Complainant(s) and Respondent(s) will be notified at or near the same time when the decision is made, in writing.

### **G. Standard of Proof**

The Decision Makers will make a decision of the alleged violation(s) based on the Clear and Convincing standard. This standard requires that the information supporting a finding of responsible demonstrates that a particular fact is substantially more likely than not to be true. Under this standard, individuals are presumed to have not engaged in a policy violation of sexual misconduct unless it is “substantially more likely than not” based on the information provided that a violation of the Prohibited Conduct did not occur.

### **H. Timeline of Process**

A Title IX Investigation should normally be completed within 90 calendar days after the University has notification of the complaint. If the timeline is extended for any reasonable reason, the Title IX Coordinator will communicate with all affected parties.

### **I. Sanctioning**

In the determination letter for an incident of violating the Prohibited Conduct, the Decision Makers will include an identification of the allegations that constituted sexual misconduct, a description of the procedural steps the university had taken in response to the report and formal complaint, the findings of fact supporting the determination, conclusions of any potential Student Code of Conduct violations, and a statement and rationale for each allegation determining responsibility for each allegation listed.

If the Respondent is found responsible for violation of this Sexual Misconduct policy, the University will initiate a sanctioning process designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting the University’s educational mission and Title IX obligations. Sanctions or interventions may also serve to promote safety or deter students from similar future behavior. Potential sanctions can include, but are not limited to:

- Expulsion from Pacific Lutheran University
- Suspension from Pacific Lutheran University for a designated period of time
- Removal from campus housing
- Mandated assessment and compliance with all recommendations
- Letter of Mutual Understanding
- Removal of Privileges
- Disciplinary Probation

Remedies to the complainant will also be provided as part of the determination letter. The determination letter will conclude with an explanation for either party to appeal that determination.

#### **J. Appeal Process:**

In the case of a Sexual Misconduct investigation, the Respondent and the Complainant have the right to appeal a determination. Grounds for Appeal are:

1. Procedural error that substantially impacted the outcome of the investigation process
2. Bias unknown at the beginning of the investigation or panel that substantially impacted the outcome of the investigation or panel decision
3. New Information, previously unavailable, that would substantially impact the outcome of the investigation
4. Severity of sanction

All appeals must be received in writing by the deadline indicated in the written outcome letter, with the deadline typically 72 hours after the outcome was given. The student should complete the Appeal Form and submit it to the Title IX Coordinator. Each party will be notified when a party has submitted an appeal and be given an opportunity to submit further statements to the appellate officer.

Appeals will go to the Vice-President of Student Life, who will make a determination based on all materials provided, including the Investigative Report, supplemental documentation, audio interviews, and the appeal form. Appeal decisions will generally be completed within 5 business days of the Appeal Form submission, and all parties will be notified of the status of the appeal by the Title IX Office simultaneously.

#### **K. Coordination with Concurrent Legal Proceedings:**

Students may engage criminal prosecution procedures and/or civil litigation in connection with the same behavior that forms the basis of a sexual misconduct report under this policy. In such cases, the University will cooperate and assist with coordination with local law enforcement and may, if requested and appropriate, share information with those agencies. The University will fulfill its legal and ethical obligation to take immediate and appropriate action to investigate possible violations of this policy, even if there are external processes or procedures pending in connection with that same report of Prohibited Conduct.

Standards for criminal investigations are different than the standards for a violation of this policy, and therefore the University will not base its decisions under this policy solely on law enforcement reports and/or action. The University will take every possible step to coordinate with law enforcement and also will take steps to resolve the Formal Complaint to the university in a timely manner.

## **L. Reporting Prohibited Conduct to Law Enforcement and for Statistical Disclosure**

Students who believe any Prohibited Conduct they have experienced may be criminal in nature will receive support and assistance in contacting law enforcement and/or reporting the conduct for Statistical Disclosure under the Clery Act. PLU encourages accurate and prompt reporting of all crimes to Campus Safety and the appropriate police agencies.

As a part of its prevention and awareness programs for incoming students and new employees, and its ongoing prevention and awareness programs for students and employees, PLU includes the definitions of sexual misconduct, the definition of consent in reference to sexual activity, and the definitions of domestic violence, dating violence and stalking that are used by the criminal laws in applicable jurisdictions. The criminal law definitions used in Washington State are described in Appendix A for the sake of information only. However, PLU utilizes its own definitions of these prohibited behaviors for purposes of this policy that are consistent with the Clery Act, as amended effective 2014 (and expand upon the Clery Act as noted above), and determines responsibility for violations of PLU policy through its own procedures and standards of proof.

## **VII. Immediate Help/Steps for Victims**

If you believe you or someone you know has been impacted by Sexual Misconduct, you are urged to immediately notify the police and/or seek medical attention.

### **A. Confidential Health and Safety**

**Medical Treatment:** Students who believe they have been sexually assaulted may seek medical attention without reporting the crime to police. The hospital emergency room will assist in treatment of injuries, prevention of sexual transmitted infections and pregnancy, and crisis intervention and emotional support services. Physical evidence can also be collected at this time.

### **Tacoma General Hospital**

315 Martin Luther King Way, Tacoma 98405

Telephone: 253-403-1000

Hours: 24 hours a day, 7 days a week

Sexual Assault Center of Pierce County emergency hotline

Telephone: 1-800-756-7273

Hours: 24 hours a day, 7 days a week

### **St. Clare Hospital**

11315 Bridgeport Way SW, Lakewood, WA 98499

Telephone: 253-985-1711

Hours: 24 hours a day, 7 days a week

**Pacific Lutheran University Student Health Center**

121st. Street and Park Avenue, Tacoma

Email: [health@plu.edu](mailto:health@plu.edu)

Telephone: 253-535-7337

Hours: Monday – Friday, 8:00am – 5:00pm

**Any local hospital of one’s choice**

**Emotional Support:** Students who believe they have been sexually assaulted may seek emotional support without reporting the crime to the police or PLU.

**Sexual Assault Center of Pierce County**

Website: [www.sexualassaultcenter.com](http://www.sexualassaultcenter.com)

Location: 101 E. 26th Street, Suite 200, Tacoma, WA 98421

Telephone: 253-597-6424, or emergency hotline: 800-756-7273

**Pacific Lutheran University Center for Gender Equity**

Anderson University Center, Tacoma WA 98447

Email: [cge@plu.edu](mailto:cge@plu.edu)

Telephone: 253-535-8759

Hours: Monday – Friday, 9:00am – 5:00pm

**Pacific Lutheran University Counseling Center**

University Center 300

Email: [councen@plu.edu](mailto:councen@plu.edu)

Telephone: 253-535-7206

## **VIII. False Reports**

Pacific Lutheran University takes all allegations of Prohibited Conduct very seriously and will not tolerate intentional false reporting of incidents. It is a violation of the Student Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws. Any false reports will be addressed using the Student Rights and Responsibilities Procedures.

## **IX. Student Rights and Expectations**

Federal law requires Pacific Lutheran University to afford the Complainant and the Respondent rights throughout the Sexual Misconduct Investigation process. Additionally, Pacific Lutheran University has a commitment to all students, and is committed to creating an environment that still serves the student's educational rights during the Sexual Misconduct Investigation Process. Basic rights include:

### **A. Respect for Privacy**

Information regarding sexual misconduct reports, and any investigation or review of these reports, including sanctioning determinations, will be shared among University employees on a "need to know" basis only, and only under applicable law.

### **B. Choice to Participate**

All Complainants, Respondents, Reporters, or witnesses may choose to participate or decline to participate in the Title IX Investigation process. However, even if the Complainant or Respondent decline to participate, the University, in its sole discretion, may continue to investigate the matter and make sanctioning decisions based on the incident and information gathered.

### **C. Confidential Assistance and Resources**

All Complainants, Respondents, Reporters, and witnesses have the right to seek additional, confidential resources if needed. Confidential services include the Health Center, Counseling Center, Victim Advocate, and Campus Ministry. All information shared with these offices and individuals will remain confidential to the extent permitted by law and University policy. Discussions with these individuals will not be considered a report to the University as it relates to the investigation.

### **D. A Fair Process**

The University will take appropriate steps to ensure that the Respondent and the Complainant are treated fairly throughout the process, without bias.

## **X. Retaliation is Prohibited**

Pacific Lutheran University will take appropriate steps to ensure that a person who, in good faith, reports, complains about, or participates in a sexual misconduct investigation will not be subjected to retaliation by the Respondent or by others with knowledge of the incident and/or report. Anyone who believes they are experiencing retaliation is strongly encouraged to report that concern to SRR.

## **XI. Definitions - General**

Pacific Lutheran University, for the purposes of this policy, defines the following terms as follows. Please note that some of these terms may also be used in other contexts, and that they may have different meanings in those contexts.

**Complainant:** The individual complaining of Sexual Misconduct who has filed a Formal Complaint. See also *Respondent*.

**Respondent:** The individual accused of Sexual Misconduct. See also *Complainant*.

**Formal Complaint:** A signed or affirmed document, electronic or written, alleging a policy violation of PLU's Prohibited Conduct as outlined in this Title IX policy.

**Informal Resolution:** An option for addressing the formal complaint facilitated by a trained, unbiased third party facilitator. This option requires both impacted parties to agree to this process.

**Sexual Activity:** Intentional contact with the breast, buttock, groin, or genitals, or touching another with any of these body parts, or making someone touch another person with or on any of these body parts; any other intentional bodily contact in a sexual manner. Intercourse (anal, oral, or vaginal), however slight, with any object. In the context of this policy, Sexual Activity may also include the conduct preliminary to or involved in Sexual Harassment, Sexual Exploitation, and Sexual Intimidation.

**Consent:** Consent is permission explicitly granted by an individual who is physically and mentally capable of providing it. It is the responsibility of the person who wants to engage in Sexual Activity to ensure that they have the valid Consent of the other to engage in the activity. PLU further defines Consent to include the following:

- Consent is informed, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as Consent. Consent can be given by words or actions, as long as those words or actions create clear and mutually understandable permission regarding the conditions of sexual activity.
- Consent to one form of Sexual Activity cannot imply Consent to other forms of Sexual Activity, even within the same intimate situation. Previous relationships or Consent cannot imply Consent to future Sexual Activity.
- Consent cannot be procured by use of force, threats, intimidating behavior, or coercion.

- Some individuals are unable to give Consent by reason of Incapacity or Physical Helplessness (defined below). It is a violation of this policy to engage in Sexual Activity with someone you know to be, or should have known to be, Incapacitated or Physically Helpless.

***Incapacity:*** For the purpose of this policy, Incapacity is a condition existing at the time of the incident which prevents a person from understanding the nature or consequences of the Sexual Activity whether that condition is produced by the influence of a substance, or from some other cause. Incapacity is a state where one cannot make a rational, reasonable decision because that individual lacks the ability to understand the who, what, when, where, why or how of the sexual interaction.

The use of alcohol or drugs can prevent an individual from giving valid Consent, even if the person appears to agree to Sexual Activity in the moment. Incapacity may also result from the influence of substances commonly known as “date rape” drugs. Possession, use, and/or distribution of any “date rape” substances, including, without limitation, Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of PLU policy. Incapacity may also result from, without limitation, developmental disability, mental disorder, chemical dependency, and/or age.

***Physical Helplessness:*** Physical Helplessness refers to a person who is asleep, unconscious or for any other reason is physically unable to communicate, verbally or nonverbally, valid Consent.

***Coercion:*** Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to obtain Consent from another. When someone makes it clear that they do not want to engage in Sexual Activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive if Consent is not voluntarily or freely given, or if the individual giving it is not capable of doing so.

***Investigator:*** An appropriately trained individual, who may be a PLU employee, who reviews and investigates reports of Prohibited Conduct under this policy.

***Reporter:*** An individual who reports to the University a concern regarding possible Prohibited Conduct. A Reporter does not need to be a Complainant.

***Advisor:*** An individual or individuals chosen by the Complainant, Respondent, Reporter to provide support during the investigation of a report of possible Prohibited Conduct under this policy. The chosen may not already be directly involved in the investigative process (Example – cannot be a witness, or Reporter). An advisor’s role is to provide guidance through the Review Meeting process, and conduct cross-examination of the other party, as applicable. Parties are not permitted to conduct cross-examination themselves.

***Responsible Employee/Mandatory Reporter:*** An individual who is a PLU employee who has the authority to redress sexual violence, who has the duty to report incidents of sexual violence or other student misconduct, or who a student could reasonably believe has this authority or duty. A responsible employee must report any information about Prohibited Conduct, a Title IX complaint or incident to the Title IX Coordinator on-campus. Responsible Employees on the PLU campus include all

faculty/staff/administrators, including Campus Safety student employees and Residential Life student employees.

**Title IX:** Title IX of the Education Amendments of 1972 is a federal law that prohibits sex-based discrimination. This includes sexual harassment and sexual assault, and applies to all programs that receive federal financial aid.

**Title IX Coordinator:** The University official charged with ensuring PLU's overall compliance with Title IX and related University Policy.

## **XII. Definitions – Violations of Sexual Misconduct, VAWA Informed**

Prohibited Behavior defined under the PLU policy include, but are not limited to the following prohibited behaviors:

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, the frequency of interaction between the persons involved in the relationship.

**Domestic Violence:** A pattern of abusive behavior that is used by an intimate partner to gain or maintain power and control over the other intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone.

Washington State additionally defines domestic violence as physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; sexual assault of one family or household member by another; or stalking of one family or household member by another family or household member.

**Non-Consensual Sexual Intercourse:** Non-Consensual Sexual Intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another regardless of gender, without consent.

**Non-Consensual Sexual Contact:** Non-Consensual Sexual Contact is any intentional sexual touching, however slight, with any object, by a person upon another regardless of gender, without consent.

**Relationship Violence:** Dating Violence and/or Domestic Violence

**Sexual Assault:** Any type of sexual contact or behavior that occurs by force or without consent of the recipient of the unwanted sexual activity. Falling under the definition of sexual assault is sexual activity such as forced sexual intercourse, sodomy, child molestation, incest, fondling, and attempted rape. It includes sexual acts against people who are unable to give consent either due to age or lack of capacity.

**Sexual Harassment:** Sexual Harassment is gender-based verbal or physical conduct that unreasonably interferes with or deprives someone of educational access, benefits or opportunities. There are three

types of Sexual Harassment:

1. *Quid Pro Quo Sexual Harassment*: This exists when there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and submission to or rejection of such conduct results in adverse educational or employment action.
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

***Sexual Exploitation: A form of Sexual Harassment:*** Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other Sexual Misconduct offenses. Examples of behavior that could rise to the level of sexual exploitation include:

1. Prostituting another person
2. Recording images (e.g. video, photography) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent.
3. Distributing images (e.g. video, photography) or audio of another person's sexual activity, intimate body parts, or nakedness, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not Consent to such disclosure and objects to such disclosure.
4. Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without the person's consent, and for the purpose of arousing or gratifying sexual desire.

***Sexual Intimidation: A Form of Sexual Harassment:*** Sexual Intimidation involves, without limitation, threatening another person with a sex act against them, stalking, (including cyber-stalking), and/or engaging in indecent exposure.

***Sexual Misconduct:*** Sexual Misconduct includes Sexual Harassment, Sexual Assault and Sexual Misconduct, Dating Violence or Domestic Violence ("Relationship Violence"), and Stalking.

***Stalking:*** A pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear.

## **XII. Retaliation**

Pacific Lutheran University prohibits retaliation against any person who reports a Sexual Misconduct violation, any witness who testifies in an investigation related to allegations of Sexual Misconduct, or anyone who engages in any similarly protected activity. Retaliation is an adverse action taken against another for reporting a complaint or supporting another's complaint. Anyone who believes they are

experiencing retaliation is strongly encouraged to report that concern to the Dean of Students.

### **XIII. Miscellaneous Provisions and Record Keeping**

When a report of Prohibited Conduct is received, PLU will provide written notification to Impacted students and employees that services listed in this policy, and about possible legal assistance, visa and immigration assistance, student financial aid, and other services available for Impacted Parties, both within the University and in the community. While the Investigation is in progress, all students involved will be supported in continuing their educational endeavors at PLU to the best of their abilities.

The University will provide written notification to Impacted Parties about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures. The University will make such accommodations or provide such protective measures if an Impacted Party requests them and if they are reasonably available, regardless of whether the Impacted chooses to go through the student conduct process or the legal process with local law enforcement.

All records pertaining to a report, formal complaint, investigation, determination, and all other information related to the Title IX office will be retained for seven years following the exit of an impacted party from the university. All materials and information used for the training of Decision Makers and investigators and the Title IX coordinator will be available for review on the Title IX website.