



## **Title IX Prohibited Conduct Process in Response to a Formal Complaint**

*Draft updated on August 15, 2023*

If an impacted individual submits a Formal Complaint to the University Title IX Coordinator or designee, the University will initiate the formal grievance process. The Formal Complaint must be a signed or affirmed document, electronic or written, alleging a policy violation of PLU's Prohibited Conduct as outlined in the [PLU Sexual Misconduct Policy](#).

Note: Certain situations may require the Title IX Coordinator to file a Formal Complaint on behalf of the University when Prohibited Conduct is reported that meets the definition of the 2020 Final Rule Title IX regulations specifically "severe, pervasive and objectively offensive", or when there is an assessed threat to campus or individual safety.

There are two different response procedures to a Formal Complaint of sexual misconduct (what PLU refers to as Prohibited Conduct).

1. Title IX procedures are defined by the Department of Education's 2020 Final Rule regulations, and are described within this document.
2. Any conduct that does not meet Title IX criteria or jurisdiction will be processed by [PLU's Student Code of Conduct Procedures](#) or [PLU's Personnel Manual](#).

Prior to and during these processes, 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 process.

### **A. Advisors**

The Complainant and the Respondent in an incident that meets the 2020 Final Rule Title IX criteria will have the right to an Advisor of their choice, who may be, but need not be, an attorney. Parties may only select one advisor per conduct process; and if the party does not have an Advisor present at the live hearing, the university will provide a member of the PLU community to serve in that capacity free of cost or charge. Advisors have very defined roles in a Title IX process. An Advisor's role is to provide guidance through the Formal Process, and conduct cross-examination on the student/employee's behalf, as applicable. Parties are not permitted to conduct cross-examination themselves.

## **B. Investigation**

Upon receipt of a Formal Complaint, 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 applicable evidence. As part of the investigation, PLU will allow all parties to provide witnesses who have firsthand relevant information, and any 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, but privacy is not guaranteed.

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 time deemed appropriate, in the sole discretion of PLU, to review the Formal Complaint, the notice of allegation(s) from Pacific Lutheran University, and any initial evidence submitted with the Formal Complaint prior to an initial interview with the Investigator. 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 (Health Insurance Portability and Accountability Act) practitioners on campus or by any other parties holding protected information and involved in a student conduct process.

## **C. Investigation Findings and Outcomes**

At the conclusion of the investigation, the Investigator will prepare a written report synthesizing the facts and the initial deduction of the investigation. Prior to finalizing the investigation, the Investigator will share all evidence collected and an initial investigative report with each party and their Advisor. Each party will have ten (10) days to review the evidence and submit a final response to the Investigator to be included in the Final Investigative Report. Both parties will receive a copy of the Final Investigative Report at or near the same time. Prior to the commencement of the Formal Hearing, both parties will be given ten (10) days to review the final report and prepare for the hearing. If a party is unable to meet the scheduled due dates, the party must contact the Title IX Coordinator immediately. PLU will, at their sole discretion, make a determination if an extension is warranted. Not adhering to deadlines may be grounds for the process moving forward absent of the party's submission, or further conduct violations and/or interim measures or sanctions being applied.

## **D. Hearings**

The Final Investigative Report will be shared with 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. In cases involving staff or faculty, the Decision Makers may be members from the PLU UDRC. The Decision Makers will not have had previous involvement with the investigation. Their charge is to come to a

determination at the conclusion of the Formal Process. Decision Makers will maintain a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The Title IX Coordinator will screen for potential bias or conflict of interest prior to finalizing the Decision Maker panel.

One Decision Maker will be designated the Lead for the hearing. Each party will be notified of a hearing date and time a minimum ten (10) 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, or "cross-examine" 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 Makers for relevance and appropriateness before the party is prompted to answer. Individuals should plan to be present and on campus for an in person hearing, unless alternate teleconferencing arrangements have been made.

If a party or witness chooses not to submit to cross-examination at the live hearing, Decision Makers must take into consideration any statements and relevant evidence provided by that party or witness during the investigation, and that choice may not have any bearing on the final determination of the Decision Makers.

Incidents not relevant or not directly related to the alleged policy (ies) violations will not be considered. In addition, questions and evidence regarding the Complainant's sexual predisposition, or prior sexual behavior will not be given consideration, unless offered to prove someone other than the Respondent committed the alleged conduct, or are offered to prove consent.

All hearings will be recorded and retained for future examination by either party for purposes of an appeal.

The Decision Makers will make a determination if a policy (policies) have been violated, and determine sanctions, if applicable. Determinations may be one of the following; responsible, not responsible, or inconclusive.

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

### **E. Standard of Proof**

The determination of the alleged violation(s) is based on the ***Clear and Convincing*** standard. This standard requires that the information supporting a determination 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 occur.

### **F. Timeline of Process**

The Title IX Formal Process should normally be completed within 90 calendar days after the

University has obtained “actual knowledge” of the complaint. If the timeline is extended for any reasonable reason, the Title IX Coordinator will communicate with all affected parties.

Specific action deadlines will be applied throughout the formal grievance process. Failure to adhere to these timelines, without prior notice sent to or confirmation from the Title IX Coordinator, may result in the process moving forward absent of the party’s submission.

## **G. 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, or Personnel Manual violations, and a statement and rationale for each determination of responsibility on each allegation listed.

If the Respondent is found responsible for violation of the PLU 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 student 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

For sanctions involving staff or faculty, please refer to the PLU Personnel Manual, or Faculty Handbook.

Remedies to the complainant, if deemed necessary, will also be provided as part of the Determination Letter. The Determination Letter will conclude with an explanation for either party to appeal the determination.

## **H. Appeal Process:**

In the case of a Prohibited Conduct 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 or conflict of interest that substantially impacted the outcome of the investigation or

panel decision

3. New information or discovered evidence, previously unavailable, that would substantially impact the outcome of the investigation
4. The imposed sanctions were disproportionate to the Decision Makers findings

All appeals must be received in writing by the deadline indicated in the written outcome letter, with the deadline typically 72 business hours after the outcome was given. The student or employee 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.

Student appeals will go to the Vice-President of Student Life or a designee, 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.