



June 22, 2018

Sent electronically to _____

PERSONAL AND CONFIDENTIAL

Regarding Case Number: 2017136003

Dear _____

This letter is a follow-up to the SRR investigation regarding the events outlined in Incident Case Number #2017136003. All information provided during the investigation and contained in the Incident Report was considered in making the determination. This Incident Report listed University Policy violations of: *Sexual Misconduct: Non-Consensual Sexual Intercourse*, *Sexual Misconduct: Non-Consensual Sexual Contact* and *Disruption of University Community*. In addition to the initial violations, we are adding *Sexual Misconduct: Coercion*.

Policy Violations and Determinations:

1. Sexual Misconduct: Non-Consensual Sexual Intercourse – Responsible
2. Sexual Misconduct: Non-Consensual Sexual Contact – Responsible
3. Sexual Misconduct: Coercion – Responsible
4. Disruption of University Community – Responsible

Findings and Rationale:

1. Sexual Misconduct: Non-Consensual Sexual Intercourse – Responsible

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.

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 insure 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.*

2. Sexual Misconduct: Non-Consensual Sexual Contact – Responsible

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.*

3. Sexual Misconduct: Coercion – Responsible

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.*

4. Disruption of University Community – Responsible

The university holds as basic the integrity and well-being of every person in the community. It is committed to providing a living, learning and working environment that is fair, consistent, caring, and supportive of intellectual and personal growth. Further, it is committed to protecting the rights of its community members to engage in dialogue and express ideas in an environment that is free from harassment, discrimination, and exploitation. This freedom of expression does not, however, entail the freedom to threaten, stalk, intimidate, harass, or abuse. Students are therefore expected to treat every individual with respect and civility. The university prohibits any activities which cause or threaten physical or mental harm, suffering or exhaustion, which demean the dignity of any individual, and/or which interfere with one's academic progress, living environment or employment responsibilities. Students are also expected to demonstrate respect and good judgment by acting in a manner that is appropriate to the university setting, on campus or while engaged in a University sponsored activity. Disruption or obstruction of teaching, research, administration, or any PLU sponsored activity is prohibited. Individuals who directly or indirectly demand unreasonable access to university resources or disrupt community business by denying others the ability to live, learn and work in the environment that PLU seeks to maintain for all community members may be found responsible for disrupting the university community.

In reviewing Sexual Misconduct incidents, Review Officers are charged with the responsibility to determine, based on a preponderance of evidence standard, what occurred on a given day, at a given time, based largely on students' accounts of what happened, and as a result, whether a violation of PLU's Sexual Misconduct Policy occurred.

In this situation, based on the complete investigation report, including without limitation, the statements of the Complainant and Respondent and several witnesses, the Review Officers find it more likely than not that the Respondent did not seek and receive Consent, as defined in PLU policy, for the given sexual activity.

The Review Officers have identified these points in the report which they believe support a finding that Respondent violated the Student Code of Conduct:

- It is the responsibility of the person who wants to engage in sexual activity to insure that they have the valid consent of the other to engage in the activity. The Review Officers find that, more likely than not, the Respondent initiated repeated sexual contact and intercourse. Consent to one form of sexual activity cannot imply consent to other forms of sexual activity, even within the same intimate situation. Staying in the room and consensual cuddling and kissing are not consent for additional sexual acts including vaginal or anal penetration and intercourse.
- 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. The Review Officers believe that it is more likely than not that the Respondent did not receive consent and that the Respondent misinterpreted body language and words from the Complainant.
- The Review Officers find the Complainant's statements credible that she told the Respondent several times that she did not want to have sex, that she was uncomfortable with what was happening, and that she reiterated her ongoing physical discomfort and her reluctance more than once. Despite Complainant's comments, the Respondent continued.
- The Review Officers also believe that Respondent was unlikely to listen to any of Complainant's comments, though he acknowledges hearing some of them. According to his testimony, the Respondent relies heavily on his own interpretations of body language and conversations. The Respondent seemed unrealistically "self-assured" that he can intuit what others are thinking, without acknowledging the need for the other individual to communicate what s/he is *actually* thinking. One of the examples of this kind of comment is that the Respondent states that he's been shown how to read people and that he can tell the difference between true smiles and fake smiles, what eye contact means, vocal expressions, and inflections in a person's voice. The Review Officers do not believe Respondent's claims that he could with certainty make these determinations about the Complainant's facial expressions and body language, in part because they barely knew one another. The evidence presented in this case is clear that the Respondent knew what *he* wanted, and was willing to let his "intuition" persuade him the Complainant wanted the same thing, and to the extent she didn't, coerce the Complainant into doing what he wanted.
- Another example of the comments by Respondent that support this same premise is that the Respondent made statements to the investigator that sex is "not as dear as some others hold it" and that losing virginity is not a big deal. The Review Officers find the Respondent less credible in his assertions that the Complainant agreed to vaginal intercourse and then anal intercourse because he unrealistically claimed he could instinctually "feel those vibes deep down."
- Based upon the narrative submitted by the Respondent, the Respondent initiated all sexual contact and intercourse with the Complainant. First, when the Complainant shared that she was a virgin, the Respondent stated, "after talking with her about it for a little while longer, she agreed to engage in sexual intercourse." Second, when the Respondent showed signs of discomfort during vaginal intercourse, "I proposed trying anal intercourse." Instead of not engaging in sexual intercourse when the Complainant shared she was a virgin and during the discomfort of vaginal intercourse, the Respondent did not cease his actions, but changed a different sexual positions. The Review Officers regarded these actions and statements as coercive in nature.
- The Complainant told friends shortly after she returned to her residence hall that she "had sex and didn't want to," that she "might have been" sexually assaulted, and asked "what constitutes sexual

assault.” Telling close acquaintances of incidents of sexual assault shortly after the event supports a determination that the Complainant felt she had been assaulted. Further, the next day, the Complainant went to the hospital, and also asked to talk to the Respondent, telling him she was “not okay” with what had happened in their encounter the day before.

- At least one of Respondent’s witnesses provided information that, when they were dating shortly after the incident in question, the Respondent repeatedly attempted to push the witness to have sex even when she had expressed disinterested or even flatly said no. **Sanctions:**
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1. The Review Officers are recommending to Dr. Eva Frey, Dean of Students for Pacific Lutheran University, that you would be suspended effective immediately through the end, at a minimum, of Spring 2020. The earliest you would be eligible to seek reinstatement would be Summer 2020, and only if all terms of your suspension have been met in PLU’s sole discretion. Suspension is the separation of the student from the university for a specified minimum period of time, with conditions imposed for the student’s reinstatement to PLU. Suspended students are not in Good Standing in regards to Student Conduct with the university and will not return to Good Standing in regards to Student Conduct until they have met the conditions of their suspension (see below). The conditions may be imposed by the Conduct Body or the Dean of Students, and may consist of any requirement they deem appropriate under the circumstances. The Dean of Students, at her sole discretion, will determine whether the conditions have been met prior to reinstatement.

Restrictions associated with suspension include:

- The student may not attend classes, use university facilities, attend university events or visit the campus except when engaged in official business approved in writing by the Office of Students Rights and Responsibilities or the Dean of Students.
- Students suspended from the university are required to pay all university fees owed for that semester. Refunds for tuition and/or room and meals will not be issued.
- Parents or guardians of students who have been suspended will be notified as allowed by the Family Educational Rights and Privacy Act (FERPA). A notice of suspension will be placed on the student’s official transcript until the student is reinstated to Good Standing in regards to Student Conduct. If a student is not reinstated to Good Standing in regards to Student Conduct, or chooses not to seek reinstatement, the notice of the suspension will remain on their transcript for three years after the minimum period of time for the suspension has passed.

You will receive a letter from Dean of Students, Dr. Eva Frey, outlining a final decision regarding the recommended Suspension. The request for reinstatement must be received at least 15 business days prior to the start of an academic term to ensure proper processing. Further information about Suspension can be found online at www.plu.edu/conduct in the Student Conduct Procedures. The sanctions associated with the above policy violations are listed below. These must all be completed satisfactorily, in PLU’s sole discretion, prior to seeking reinstatement as a PLU student.

2. You must complete a Behavioral Assessment focused on Intimate Partner Violence and Coercion and complete all recommendations from assessment. The Review Officers believe that you have deficit understanding of consent, and there is a disconnect between your understanding of the words and your actions.

You must engage a third party, state certified provider and comply with all related recommendations. You are responsible for paying fees associated with this assessment or resulting recommendations (if any). You must complete this assessment and comply with all recommendations prior to requesting reinstatement to the University. Prior to your scheduled first meeting, you must sign the attached release for PLU to release your conduct file to the provider for their review. If the entire conduct file is not released to the assessor prior to the start of the assessment, the assessment will be considered invalid by PLU.

You have the right to a self-initiated appeal. This appeal is due by June 29th by 5:00 pm via the online form. The appeal form is available to be completed online [via the Online Appeal Form](#). Should you appeal, all sanctions will be on hold until completion of the appeal process. While in the appeal process, the No Contact Order and Order of Protection remains in effect. You are not to attend any events or be on-campus at Pacific Lutheran University.

Should you have any questions regarding this letter, please contact the Office of Student Rights and Responsibilities at 253.535.7462, or via email at srr@plu.edu.

Sincerely,

Angie Hambrick

Assistant Vice President
Diversity, Justice, and Sustainability

Lace M. Smith

Associate Vice President of
Marketing and & Communications

CC: Dr. Eva Frey, Dean of Students

Simone Smith
Coordinator for DSS and SRR