



Title IX Prohibited Conduct Process in Response to a Formal Complaint

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Formal Complaint

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

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 that conduct meets the conditions articulated in the 2020 Final Rule as being "severe, pervasive, and objectively offensive", or when there is an assessed threat to campus or individual safety.

In PLU's discretion, Formal Complaints may be consolidated where the allegations arise out of the same facts.

The University may dismiss a Formal Complaint of sexual harassment made through its grievance procedures, if applicable, for any of the following reasons:

- (i) After taking reasonable steps to do so, the Respondent is unable to be identified;
- (ii) The Respondent is not participating in PLU's education program or activity, is not employed by PLU, and is not expected to return to active status with the University based on information that is currently known;
- (iii) The party submitting the complaint is not participating in or attempting to participate in PLU's education program or activity, and is not employed by PLU;
- (iv) The University determines the conduct alleged in the complaint, even if proven, would not constitute sexual harassment as defined by Title IX. Prior to dismissing the complaint under this paragraph, the Title IX Coordinator must make reasonable efforts to clarify the allegations with the Complainant; or
- (v) The conduct alleged did not occur in the recipient's education program or activity against a person in the United States.

Upon dismissal of a complaint, the Title IX Coordinator will promptly notify the parties of the basis for the dismissal.

A dismissal of a Formal Complaint may be appealed by the Complainant through submitting a written statement to the Title IX Coordinator. A determination will be made by the Vice President for Student Life, or designee, and the parties will be notified of the result of the appeal and the rationale for the decision within five (5) business days of the appeal submission.

Supportive Measures

Whether a Formal Complaint is submitted or not, the impacted party is afforded supportive measures. These are individualized measures offered as appropriate, and must be reasonably available, without unreasonably burdening either party, and may not be used for punitive or disciplinary reasons. Supportive measures are designed to ensure the continuity of equal educational access, protect safety, and/or deter sexual harassment. Examples include, but are not limited to counseling services, schedule changes, project extensions, etc.

Formal Grievance Process

The University will treat both Complainants and Respondents equitably. For conduct allegations that meet the scope and applicability of the 2020 Title IX regulations, the University will respond by following the federal government's prescribed guidelines. The Title IX formal grievance procedures will apply equally to students, staff, and faculty.

Any conduct that does not meet Title IX criteria or jurisdiction will be addressed by [PLU's Student Rights and Responsibilities Procedures](#) or the grievance procedures described in the [PLU 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.

The University will take reasonable steps to protect the privacy of the parties and witnesses during its grievance process. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consulting with their family members, confidential resources, or advisors; or otherwise preparing for or participating in the grievance procedures. The parties are prohibited from engaging in retaliation, including against witnesses and facilitators of the formal process.

In lieu of resolving a Formal Complaint through formal grievance procedures, the parties may instead elect to participate in an **Informal Resolution** process. Both parties are to enter an Informal Resolution voluntarily, and prior to agreeing to a resolution, each party has the right to withdraw from the Informal Resolution process and to initiate or resume the formal grievance procedures. Once the parties have agreed to a final resolution, that agreement prevents either party from initiating or resuming the formal grievance process for that same allegation. Informal

Resolution options may include, but are not limited to, educational discussions, mediated discussions, or an arbitrated agreement-based resolution.

The 2020 Title IX Final Rule prohibits universities from using Informal Resolution procedures to resolve allegations that an employee sexually harassed a student.

Notice of Allegations

Prior to the initiation of an investigation, or Informal Resolution, the Title IX Coordinator will provide the parties written notice of the alleged conduct that occurred, the policy alleged to have been violated, the Prohibited Conduct response procedures, and the name(s) of the parties involved.

In addition, a follow up document will be sent introducing the university personnel that will directly be facilitating the grievance process as an investigator, advisor, or decision maker. The Title IX Coordinator will screen for any concerns regarding bias, impartiality, or conflict of interest.

Emergency Removal / Administrative Leave

PLU retains the authority to remove a Respondent from PLU's education program or activity on an emergency basis, where PLU:

1. Undertakes an individualized safety and risk analysis;
2. Based on the outcomes, determines that an immediate and serious threat to the health and safety of a Complainant or any community member arising from the allegations of sexual harassment justifies a removal; and
3. Provides the Respondent with notice of and an opportunity to appeal the decision immediately following the removal.

The Respondent may appeal the decision immediately following the removal, by notifying the Title IX Coordinator in writing.

Advisors

The Complainant and the Respondent in a sexual harassment complaint 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 trained member of the PLU community to serve in that capacity free of cost.

Advisors have very defined roles in a Title IX process. An Advisor's role is to provide guidance through the Formal Process, attend meetings and interviews in a non-speaking role, review the investigative report/evidence, and assist the student/employee in preparing for the hearing. In addition, the Advisor on the student/employee's behalf, will conduct the cross-examination.

Questions are to be asked directly, orally, and in real time of the other party during the formal hearing, as applicable. Parties are not permitted to conduct cross-examination themselves.

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, reliable, 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 about the incident of concern, 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.

The University will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedure.

The Title IX Coordinator will collaborate with the Investigator and the parties to establish meeting dates and times. Upon notice of a complaint alleging Prohibited Conduct, the Respondent will have time deemed appropriate, in the sole discretion of PLU, to review the complaint, the notice of allegation(s) from Pacific Lutheran University, and any initial evidence submitted with the 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 that is relevant and not otherwise impermissible. Pacific Lutheran University does not 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 conduct process. Parties may provide evidence from such providers for PLU to access as relevant information, but a written release from the specific student/employee is required prior to information being included or considered.

The individual interviews may be audio or video recorded at the discretion of the Investigator. Transcripts of the recording will be included in the investigative report. PLU is committed to trauma informed practices, although there may be instances when the Investigator may need to re-interview a party, or ask repeated questions to gain clarification.

Investigation Findings and Outcomes

Towards the conclusion of the investigation, the Investigator will prepare a written draft 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 no more than ten (10) business 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 access to the Final Investigative Report at or near the same time. Prior

to the commencement of the Formal Hearing, both parties will be given no more than ten (10) business 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.

If, in the course of an investigation, the University decides to investigate additional allegations of sexual harassment, or other policy violations, by the Respondent toward the Complainant that are not included in the written notice originally provided to the parties, the Title IX Coordinator will provide written notice of the additional allegations to each of the parties.

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, appointed by the University President, and are assigned to cases by the University Title IX Coordinator. The Decision Makers will not have had previous involvement with the investigation. Their charge is to objectively evaluate all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence, and come to a determination at the conclusion of the Formal Process. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.

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, and provide opportunity to the parties to share any concerns they may have 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) business days prior to that hearing being scheduled. This hearing will be conducted live, and each party will have the opportunity for their Advisor to provide follow-up questions, or "cross-examine" the opposing party. All questions will be screened by the Decision Makers for relevance and appropriateness before the questions are answered. Individuals should plan to be present on campus for a live hearing, unless unavoidable alternate teleconferencing arrangements have been made.

If a party or witness chooses not to submit to questioning or cross-examination at the live hearing, Decision Makers will still take into consideration any statements and relevant evidence provided by that party or witness during the investigation, and that choice of non-participation 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 are impermissible and will not be given consideration, unless offered to prove someone other than the Respondent committed the alleged conduct, or are offered to prove the alleged conduct was consensual.

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

The Decision Makers will make a determination if a policy (ies) 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.

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.

Timeline of Process

The Title IX Formal Process should normally be completed within 90 calendar days after the University has obtained receipt of the Formal Complaint. University closures and vacation periods are cause for the process being extended. If the timeline is extended for any reasonable request, 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.

Sanctioning and Remedies

In the Determination Letter for an incident alleging University policy violation(s), 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 complaint, the findings of fact supporting the determination, conclusions of any potential Student Code of Conduct, or Personnel Handbook violations, and a statement and rationale for each determination of responsibility on each allegation listed. When a Respondent is found to have violated University policy, the Decision Makers will include their recommendations for sanctioning.

The sanctioning process is 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 for the Complainant, if deemed necessary, will also be provided as part of the Determination Letter. Remedies are measures provided to restore or preserve the impacted party's access to the education program or activity. Remedies are at the sole discretion of PLU and may include, but are not limited to; class reassignment, housing relocation, no contact orders, etc.

The Determination Letter will conclude with an explanation for either party to appeal the determination.

Appeal Process:

In the case of a Prohibited Conduct investigation, the Respondent and the Complainant have the right to appeal a determination. Appeals may be made on any or a combination of any of these four grounds:

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; or
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 three (3) business days after the outcome was given. The student or employee must submit their narrative and rationale to the Title IX Coordinator. A party will be notified when the other party has submitted an appeal, and may be given an opportunity to submit further statements to the appellate officer.

Student appeals will go to the Vice President for Student Life or a designee, who will make a determination based on all materials provided, including the Investigative Report, supplemental documentation, audio or video of interviews or hearing, and the written appeal submission. Appeal decisions will generally be completed within five (5) business days of the appeal submission, and all parties will be notified of the status of the appeal by the Title IX Office simultaneously.