



# PACIFIC UNION COLLEGE

## Sex Nondiscrimination and Sexual Harassment Policy

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BASED ON THE ATIXA 2021 TWO POLICIES, ONE  
PROCEDURE MODEL.

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# Religious Exemptions

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Pacific Union College, a part of the Seventh-day Adventist system of higher education, is a religious institution of higher education that takes seriously anti-discrimination provisions under federal and statelaw. As such, the Institution is committed to providing a learning and living environment that promotes student safety, transparency, personal integrity, civility, and mutual respect. Pacific Union College is exempted by the state from California Education Code 66270, to the extent the application of California Education Code 66270 is not consistent with the institution’s religious tenets. Furthermore, the College is exempt from Title IX to the extent the application of Title IX is not consistent with the institution’s religious tenets. For more information, see 20 U.S. Section 168(a)(3).

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*PUC exemptions from California Education Code 66270 and regulatory exemption under Title IX, 34 C.F.R. section 106.12.*

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The exemptions stated above allow the College to create and enforce policies consistent with its religious tenets, even when those tenets may otherwise conflict with California Education Code 66270 or Title IX. The exemptions may apply to, but are not limited to, College practices or policy requirements addressing student or employee conduct, employment, housing, admissions, marriage, sports participation, and facilities use. For more information, see the following the student, faculty, and employee handbooks may be found on the PUC website.

In some cases, the College’s religious tenets, policies, and practices on matters of sexual orientation, sexual conduct outside marriage, same-sex marriage, and gender identity and expression may conflict with interpretations of California Education Code 66270 and Title IX, and these exemptions allow the College to do so. For more information about the Seventh-day Adventist Church’s position on matters involving marriage, sexual orientation, and gender identity and expression, see the Church’s official statements at <http://www.adventist.org/en/information/official-statements/statements/>.

# Introduction

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This policy addresses PUC's responsibilities regarding Title IX, the Violence Against Women Reauthorization Act of 2013; Sec 304, and California Education Code section 66281.8. Title IX of the Educational Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal assistance. The Violence Against Women Reauthorization Act expects that colleges have procedures in place to respond to matters of sexual assault, domestic violence, dating violence, and stalking. California Education Code section 66281.8 clarifies the process for adjudicating complaints of sexual or gender-based violence, including dating or domestic violence, at postsecondary educational institutions in the State of California.

This policy and subsequent grievance process are maintained and coordinated by the Title IX office. Not all prohibited misconduct rises to the level of sexual harassment as defined by Title IX regulations, 34

C.F.R. §106.30(a) or state law; however, the College views acts of sex discrimination, sexual harassment, and retaliation to be inconsistent with its mission and intolerable and remains committed to addressing them appropriately. This policy and procedures may be found online at [puc.edu/titleixpolicy](http://puc.edu/titleixpolicy). Online reporting is available at [puc.edu/ixreportform](http://puc.edu/ixreportform). If you have any questions regarding this policy, please contact the Title IX Coordinator.

## **Title IX Coordinator**

Stacy Nelson, AVP for Human Resources  
Human Resources 121A  
Financial Administration  
(707) 965-6226 (24 hours)  
[titleix@puc.edu](mailto:titleix@puc.edu)

# I – Sex Nondiscrimination and Harassment Policy

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Pacific Union College (PUC) prohibits sex discrimination, sexual harassment, and/or retaliation. Any attempt or threat to commit an act identified in this policy, as well as assisting or willfully encouraging any such act, are also considered a violation of this policy.

Nothing in this policy is intended or should be construed to waive or relinquish any constitutional or statutory rights PUC possesses as a nonprofit religious institution. Neither should this policy be considered an alternate or replacement for the criminal or civil justice systems. Rather, this policy provides methods for the campus community to work together in creating and maintaining a respectful learning, living, and working environment.

## I.A – Rationale for Policy

Pacific Union College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are safe and free from discrimination and harassment based on sex and gender, and retaliation for engaging in a protected activity.

The College values and upholds the dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, the College has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis sex and gender, and for allegations of retaliation.

## I.B – Scope of Policy

Pacific Union College's primary concern is student and employee safety, and the core purpose of this policy is the prohibition of discrimination on the basis of sex. Sometimes, discrimination involves exclusion from or difference treatment in activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged violation of this policy is reported, the allegations are subject to resolution using the College's formal grievance process as detailed in this document.

When the Respondent<sup>1</sup> is a member of the College community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant<sup>22</sup>, who may or may not

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<sup>1</sup> Respondent is defined as an individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination or sexual harassment; or retaliation for engaging in a protected activity such as the grievance process.

<sup>2</sup> Complainant is defined as an individual who is alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment; or retaliation for engaging in a protected activity such as the grievance process.

be a member of the College community. This community includes, but is not limited to, students,<sup>3</sup> student organizations, faculty, administrators, staff, and third parties such as guests, volunteers, invitees, and campers. The procedures provided in this document may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed and investigated in accordance with this Policy.

The College recognizes that reports and/or Formal Complaints under this Policy may include multiple forms of discrimination and harassment as well as violations of other College policies; may involve various combinations of students, employees, and other members of the College community; and may require the simultaneous attention of multiple College departments. Accordingly, College departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable College policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination and harassment or retaliation.

## **I.C – Dissemination**

Pacific Union College provides this policy and procedures on its website and in each handbook or catalog provided to applicants for admission and employment, students, employees. The College also provides this policy and procedures to each volunteer who regularly interacts with students and each individual or entity under contract with the College to perform any service involving regular interaction with students at the institution.

The College provides training to all employees on the identification of sexual harassment, including the person to whom it should be reported.

## **I.D – Title IX Office**

Stacy Nelson serves as the Title IX Coordinator and oversees implementation of this Policy. The Title IX Coordinator has the primary responsibility for coordinating the College's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sex-based discrimination, sexual harassment, and retaliation prohibited under this Policy. Inquiries about or concerns regarding this policy and procedures should be made to the Title IX Coordinator. The Title IX Coordinator understands how the institution's grievance procedures operate and has received training on what constitutes sexual harassment and trauma-informed investigatory and hearing practices.

The Deputy Title IX Coordinator serves on behalf of the Title IX Coordinator in the event the Title IX Coordinator is unavailable.

Title IX Coordinator  
Stacy Nelson, AVP for Human Resources  
Human Resources 121A  
Financial Administration  
(707) 965-6226 (24 hours)

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<sup>3</sup> For the purpose of this policy, the College defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the College.

[titleix@puc.edu](mailto:titleix@puc.edu)

### I.D.1 – Independence and Conflict-of-Interest

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures.

The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the President by emailing [president@puc.edu](mailto:president@puc.edu) or calling (707) 965-6211. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct committed by the Title IX Coordinator should be reported to the College president by emailing [president@puc.edu](mailto:president@puc.edu) or calling (707) 965-6211. Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator.

## I.E – Administrative Contact Information

Complaints or notice of alleged policy violations or inquiries about or concerns regarding this Policy and procedures may be made internally to:

### **Title IX Coordinator**

Stacy Nelson, AVP for Human Resources

Human Resources 121A

Financial Administration

(707) 965-6226 (24 hours)

[titleix@puc.edu](mailto:titleix@puc.edu)

[puc.edu/ixreportform](http://puc.edu/ixreportform)

### I.E.1 – Title IX Team

The Title IX Team is composed of individuals from across campus dedicated to providing an equitable resource on this campus. Also known as the Grievance Process Pool (“the Pool”). Members of the Title IX Team have the authority when working within the procedures described in this Policy to investigate complaints; institute corrective measures such as sanctions, accommodations, or other forms of resolution of the complaint; assist Complainants with contacting resources; and serve as process Advisors to both Complainants and Respondents as well as recommend proactive policies and serve in an educative role for the community. For further information on the roles and training of the of the Title IX Team, see [§II.H.2\(d\)](#). A list of the Title IX Team may be found at [puc.edu/titleix](http://puc.edu/titleix). For more information regarding Advisors, see [§II.G](#).

### I.E.2 – Officials with Authority

Pacific Union College has determined that the following individuals are Officials with Authority (OWA) to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team



members listed on [puc.edu/titleix](http://puc.edu/titleix), these OWAs may also accept notice of complaints on behalf of the College. PUC Officials with Authority include:

- the president, vice presidents, and associate vice presidents of the College;
- the Title IX Coordinator, Deputy Coordinator, and Grievance Pool Advisors;
- Director of Residential Life and all residence hall deans;
- Public Safety employees;
- Athletic Director and all coaching staff;
- all academic department chairs and directors;
- all program directors; and
- all service department directors.

Upon receiving notice, OWAs will promptly inform the Title IX Office.

### I.E.3– Responsible Employees

Pacific Union College has also classified all employees as Mandated Reporters of and knowledge they have that a member of the community is experiencing sexual harassment, sex discrimination, and/or retaliation. Mandated Reporting, [§I.M](#), provides more information on this responsibility and Responsible duties, accordingly.

Complainants may want to carefully consider whether they share personally identifiable details with Responsible Employees, as those details must be shared with the Title IX Coordinator.

### I.E.4 – External Inquiries

External inquiries or reports can be made at any time to:

#### **Office for Civil Rights (OCR)**

U.S. Department of Education 400 Maryland Avenue, SW Washington, DC 20202-1100

Customer Service Hotline: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: [OCR@ed.gov](mailto:OCR@ed.gov) Web: [ed.gov/ocr](http://ed.gov/ocr)

For complaints involving employee-on-employee conduct:

#### **Equal Employment Opportunity Commission (EEOC)**

450 Golden Gate Avenue 5 West, P.O. Box 36025

San Francisco, CA 94102-3611 Facsimile: (415) 522-3415

TDD#: (800) 669-6820

ASL Video Phone: (844) 234-5122

Web: [eeoc.gov](http://eeoc.gov)

## I.F – Jurisdiction<sup>4</sup> of Pacific Union College

This policy applies to the education program and activities<sup>5</sup> of Pacific Union College, to conduct that takes place on the campus or on property owned or controlled by the College, at College-sponsored events, or in buildings owned or controlled by the College's recognized student organizations. The Respondent must be a member of the College community in order for this policy to apply.

This policy may also apply to the effects of off-campus misconduct that effectively deprives a person of access to the College's educational program or activities. The College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest.

Regardless of where the conduct occurred, the College will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus (including virtual learning and employment environments) or in an off-campus sponsored program or activity. A substantial College interest includes:

1. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
2. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
3. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
4. Any situation that substantially interferes with the educational interests or mission of the College.

If the Respondent is unknown or is not a member of the College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options. If criminal conduct is alleged, the College can assist in contacting local law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, PUC may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from the College's property and/or events.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers.

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<sup>4</sup> CA Educ. Code, Section 66281.1 requires institutions take reasonable steps to respond to each incident of sexual harassment. The College shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the College's policies that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student's access to education.

<sup>5</sup> Including the College's employees' work environment.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **I.G – Notice/Complaints of Sex Discrimination, Sexual Harassment, and/or Retaliation**

Campus personnel are available 24 hours a day, seven days a week, to provide support, assistance, and resources as well as assist in contacting other resources both on and off campus, including law enforcement. Ongoing support in the days and weeks following instances of sex discrimination, sexual harassment, and/or sexual misconduct is available whether or not an official report is filed, or an investigation is implemented. The College encourages the use of resources available, free of charge, at the **Wellness Center** and the **Title IX Office**.

The College encourages anyone to report incidents of alleged policy violations such as sex discrimination, sexual harassment, and/or retaliation. One does not need to have experienced the incident in order to report it. All College employees are expected to report actual or suspected discrimination to appropriate officials immediately, with the exception of those designated confidential resources (see [I.M.1](#)).

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

1. File a complaint with, or give verbal notice to:
  - the Title IX Coordinator, Title IX Deputy Coordinator, or members of the Title IX Team;
  - Officials with Authority; or
  - Responsible Employees.

Such a report may be made at any time (including during non-business hours) by telephone, email, or by mail to the office address listed for the Title IX Coordinator and Deputy Coordinator, or any of the Title IX Team members listed on the website or one of the Officials with Authority.

### **Title IX Coordinator**

Stacy Nelson, AVP for Human Resources  
Human Resources 121A  
Financial Administration  
(707) 965-6231  
[titleix@puc.edu](mailto:titleix@puc.edu)

2. Report online, using the reporting form posted at [www.puc.edu/ixreportform](http://www.puc.edu/ixreportform).

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used

in this Policy, the term **Formal Complaint** means a document submitted or signed by the Complainant that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the College investigate the allegations. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

### **I.G.1 – Time Limits on Notice/Complaints**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint. Typically, this Policy is only applied to alleged incidents that occurred after August 14, 2020. For Alleged incidents that occurred prior to August 14, 2020, previous versions of this Policy will apply. Those versions are available from the Title IX Coordinator.

### **I.G.1 – Anonymous Reporting**

Anonymous reports are accepted but can give rise to a need to investigate. The College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.

Anonymous reporting is available via the Title IX section of the LiveSafe app.

## **I.H – Prevention and Outreach Programs**

The College has implemented comprehensive prevention and outreach programs to address issues of sexual harassment, sexual violence, domestic violence, dating violence, and stalking. These programs include, but are not limited to, information about the College's policies and procedures, rights and responsibilities, the practical implications of an affirmative consent standard, empowerment programming, awareness raising campaigns, primary prevention, bystander intervention, and risk reduction programs. Prevention and outreach programs are included as part of incoming student and new employee orientation. In addition, all employees must complete ongoing prevention and intervention training and education.<sup>6</sup>

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<sup>6</sup> California harassment law AB 1825 requires employers to provide supervisory employees (including faculty) with at least two hours of sexual harassment prevention training every two years, and non-supervisory employees at least one hour of training every other year in compliance with SB 1343.

## I.I – PUC’s Response

All parties will be provided with a comprehensive brochure detailing options and resources, which the Title IX Coordinator may also review with the parties in person.

### I.I.1 – Promptness

All allegations are acted upon promptly by the College once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in the grievance procedures will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

### I.I.1 – Privacy and Confidentiality

Every effort is made by the College to preserve the privacy of reports<sup>7</sup>. The College will not share the identity of any individual who has made a report or formal complaint of sex discrimination, sexual harassment, and/or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination, sexual harassment, and/or retaliation; any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA)<sup>8</sup> or its implementing regulations<sup>9</sup> or as required by law; or to carry out the purposes of 34 CFR Part 106 106or California Education Code section 66281.8, including any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The College reserves the right to determine which College officials have a legitimate educational interest in being informed about incidents that fall under this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

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<sup>7</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of College employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the College’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the College’s Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The College has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see [§I.M.1](#) When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

<sup>8</sup> 20 U.S.C. 1232g

<sup>9</sup> 34 C.F.R. §99

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Human Resources, Student Life, CARE Team, and Public Safety. Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The College may contact parents/guardians of students to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically in [§I.M.](#)

### I.I.3 – Supportive Measures<sup>10 11</sup>

The College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sex discrimination, sexual harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge to the parties, to restore or preserve access to the College's education program or activity, including measures designed to protect the safety of all parties and/or the College's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, the Title IX Office will inform the Complainant, in writing, that they may file a formal complaint with the College either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. The College will act to ensure as minimal an academic/occupational impact on the parties as possible. The College will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)

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<sup>10</sup> CA Educ. Code Sect. 66281.8 (SB 493) requires institutions to consider and respond to requests for accommodations relating to prior incidents of sexual harassment that could contribute to a hostile educational environment or otherwise interfere with a student's access to education where both individuals are, at the time of the request, subject to the institution's policies.

<sup>11</sup> CA Educ. Code, Sect. 66281.8 requires institutions to outline the possible interim measures that may be in place during the pendency of an investigation, the supportive measures that may be provided in the absence of an investigation, and the disciplinary outcomes, remedial measures, and systemic remedies that may follow a final finding of responsibility.

- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact directives) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- No trespass directives
- Timely warnings (as required by the Clery Act)
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

When requested by a Complainant or otherwise determined to be appropriate, the College will issue an interim no-contact directive prohibiting the Respondent from contacting the Complainant during the pendency of the investigation. The institution will not issue an interim mutual no-contact directive automatically, but instead will consider the specific circumstances of each situation to determine whether a mutual no-contact directive is necessary or justifiable to protect the noncomplaining party's safety or well-being, or to respond to interference with an investigation. A no-contact directive issued after a decision of responsibility has been made as a remedy will be unilateral and only apply against the party found responsible.

Upon the issuance of a mutual no-contact directive, the institution will provide the parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the institution will provide the parties with an explanation of the terms of the directive.

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing complaint under this Policy.

#### I.I.4 – Memoranda of Understanding for Referrals and Services<sup>12</sup>

When feasible, The College will enter into memoranda of understanding, agreements, or collaborative partnerships with institutional and community-based organizations to assist and/or provide services to Complainants and Respondents. This includes referrals and services related to counseling, health, mental health, advocacy, and legal resources. For information on any memoranda that are in place, please contact the Title IX Coordinator.

#### I.I.5 – Emergency Removal

The College can act to remove a student Respondent or a student organization<sup>13</sup> from its education program or activities—partially or entirely—on an emergency basis when an individualized safety and

<sup>12</sup> Under CA Educ. Code Sect. 67386 (SB 967) this information is not required to be included in the College's policy however, the bill requires institutions to enter into memoranda of understanding, agreements, or collaborative partnerships with existing on-campus and community-based organizations, to the extent feasible, to receive state funds for student financial assistance.

<sup>13</sup> Student organization is defined for the purposes of this policy as clubs officially recognized by Student Life.

risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with CARE Team using its standard objective violence risk assessment procedures.

When an emergency removal is imposed, the student, or two (2) representatives from a student organization, will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner<sup>14</sup>, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline with the student or employee conduct processes, which may include expulsion.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, who may consult appropriate campus authorities as deemed necessary, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure minimal academic impact as possible on the parties.

Where the Respondent is an employee, or student employee, accused of misconduct in the course of their employment, existing provisions under Human Resources for interim action are applicable instead of the emergency removal process.

## **I.J – Online Harassment and Misconduct**

The policies of the College are written and interpreted broadly to include online and manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College's

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<sup>14</sup> A request for a meeting received within five (5) business days will be considered timely.



education program and activities or when they involved the use of College networks, technology, or equipment.

Although the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College community.

Any online postings or other electronic communication by students, including cyber-stalking, cyber-harassment, etc. occurring completely outside of the College's control (e.g. not on College networks, websites or between College email accounts) will only be subject to this Policy when those online behaviors can be shown to cause a substantial in-program disruption or infringement on the rights of others. Reports of online harassment found not to be motivated by the actual or perceived membership of the Complainant's sex or gender will be referred to the College's Student Conduct Office or Human Resources as appropriate.

## **I.K – Nondiscrimination Policy**

Pacific Union College adheres to all applicable federal and state civil rights laws prohibiting discrimination on the basis of sex or gender in private institutions of higher education.

This policy covers nondiscrimination on the basis of sex or gender in both employment and access to educational opportunities.

**Discrimination**, defined as:

- a. actions that deprive, limit, or deny
- b. other members of the community
- c. of educational or employment and/or social access, benefits, and/or opportunities,
- d. including disparate treatment
- e. on the basis of actual or perceived sex or gender.

When brought to the attention of the College, any such discrimination in violation of this policy will be promptly and fairly addressed and remedied by the College according to the grievance process described below.

Pacific Union College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

## **I.L – Discriminatory Harassment Policy**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational

content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under College policy. When speech or conduct is protected by academic freedom, it will not be considered a violation of College policy, though appropriate supportive measures will be offered to those impacted. All offense definitions encompass actual and/or attempted offenses.

### I.L.1 – Discriminatory Harassment

Discriminatory harassment—defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived sex or gender—is a form of prohibited discrimination under College policy.

PUC does not tolerate discriminatory harassment of any employee, student, visitor, or third-party. The College will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.”

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities<sup>15</sup>. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, the College may also impose sanctions on the Respondent through application of the appropriate grievance process.

The College reserves the right to address offensive conduct and/or harassment that does not rise to the level of creating a hostile environment.

### I.L.2 – Sexual Harassment

The Department of Education’s Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of California regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

The College has adopted the following definitions of sexual harassment, in order to address the unique environment of an academic community. One definition is required by state law (California Education Code section 66281.8), and the other by federal law (Title IX). Both apply, and while they overlap, they are not identical. Under both laws, Sexual Harassment is considered an umbrella category that includes specific definitions of sexual harassment.

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<sup>15</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Recipients Investigative Guidance.](#)

**California Sexual Harassment** includes definitions of sexual harassment, sexual battery, sexual violence, and sexual exploitation.

**California Sexual Harassment**, defined as:<sup>16</sup>

- a. unwelcome sexual advances, or
- b. requests for sexual favors, or
- c. other verbal, visual, or physical conduct of a sexual nature,
- d. made by someone from in the work or educational setting,<sup>17</sup>
- e. under any of the following conditions:
  - submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or
  - submission to, or reject of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or
  - the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, or
  - submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

**Sexual Violence**, defined as:

- a. physical sexual acts,<sup>18</sup>
- b. perpetrated against a person without the person's affirmative consent.

**Sexual Exploitation**, defined as:

- a. a person taking sexual advantage of another person,
- b. for the benefit of anyone other than that person,
- c. without that person's consent,
- d. including, but not limited to, any of the following acts:
  - the prostituting of another person,

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<sup>16</sup> This definition of sexual harassment will be used in addition to and when formal complaints of Title IX Sexual Harassment are mandatorily dismissed.

<sup>17</sup> <sup>17</sup> The Department of Housing and Urban Development (HUD) Fair Housing Act requires — when an institution provides student and/or faculty/staff housing and sexual harassment occurs in an institution-owned residence — that the FHA/Title VII definition of sexual harassment will also apply in addition to the Title IX definition.

<sup>18</sup> A "physical act" includes both of the following:

**Rape:**

penetration,  
no matter how slight,  
of the vagina or anus,  
with any part or object,  
or oral copulation of a sex organ  
by another person  
without the consent of the victim.

**Sexual Battery:**

the intentional touching of another person's intimate parts without consent, or  
intentionally causing a person to touch the intimate parts of another without consent, or  
using a person's own intimate part to intentionally touch another person's body part without consent.

- the trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion,
- the recording of images, including video or photograph, or audio of another person’s sexual activity or intimate parts, without that person’s consent,
- the distribution of images, including video or photograph, or audio of another person’s sexual activity or intimate parts, 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 the disclosure, or
- The viewing of another person’s sexual activity or intimate parts, in a place where the other person would have a reasonable expectation of privacy, without that person’s consent, for the purpose of arousing or gratifying sexual desire.
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure without legitimate purpose of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Knowingly creating, possessing, or disseminating child pornography

**Title IX Sexual Harassment**<sup>19</sup> includes definitions of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex, or that is sexual in nature, that satisfies one or more of the following:

**1. Quid Pro Quo:**

- a. an employee of the College,
- b. conditions<sup>20</sup> the provision of an aid, benefit, or service of the College,
- c. on an individual’s participation in unwelcome sexual conduct.

**2. Sexual Harassment:**

- a. unwelcome<sup>21</sup> conduct,

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<sup>19</sup> See [85 FR 30026](#) for further information regarding OCR’s regulations regarding the definition of sexual harassment.

<sup>20</sup> Implicitly or explicitly

<sup>21</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent, which is 18 in California). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the College’s education program or activity.

3. **Sexual assault**, defined as:

- a. Sex Offenses, Forcible:
  - i. Any sexual act<sup>22</sup> directed against another person<sup>23</sup>,
  - ii. without the consent of the Complainant,
  - iii. including instances in which the Complainant is incapable of giving consent.
- b. Sex Offenses, Non-forcible:
  - i. Incest:
    - 1) Non-forcible sexual intercourse,
    - 2) between persons who are related to each other,
    - 3) within the degrees wherein marriage is prohibited by California<sup>24</sup> law.

<sup>22</sup> A “sexual act” is specifically defined by federal regulations to include one or more of the following:

**Rape:**

- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,
- without their consent,
- including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.”

**Sodomy:**

- Oral or anal sexual intercourse with a Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Sexual Assault with an Object:**

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of the Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Fondling:**

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>23</sup> Including, but not limited to, having another person touch sexually, forcibly, or without their consent, or other non-consensual sexual activities such as non-consensual condom removal or tampering, commonly known as “stealthling.”

<sup>24</sup> For more information regarding the California state definition for incest.

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=285.&lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=285.&lawCode=PEN)

ii. **Statutory Rape:**

- 1) Non-forcible sexual intercourse,
- 2) with a person who is under the statutory age of consent (18 years of age in California).

4. **Dating Violence**, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic and/or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
    - 1) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - 2) Dating violence does not include acts covered under the definition of domestic violence.

5. **Domestic Violence**<sup>25 26</sup> defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant, or
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of California

6. **Stalking**<sup>27</sup>, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
  - i. would cause a reasonable person to fear for the person's safety, or
- d. the safety of others; or

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<sup>25</sup> California defines "domestic violence" as abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. In California, dating violence is included within the definition of domestic violence.

<sup>26</sup> To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

<sup>27</sup> The California definition of stalking is "any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking," which is applicable to criminal prosecutions, but may differ from the definition used on campus to address policy violations.

- e. suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

Pacific Union College reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

### I.L.3 – Force, Coercion, Consent<sup>28</sup>, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” “Okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. **Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance.** While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is **unreasonable** pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain 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.

**Affirmative Consent<sup>29</sup>** is:

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<sup>28</sup> The state definition of consent is “positive cooperation in act or attitude pursuant to the exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act and the transaction involved.” A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is an issue. This definition of consent is applicable to criminal prosecutions for sex offenses in California but differs slightly from the definition used on campus to address policy violations.

<sup>29</sup> The California Education Code Section 67386 /SB 967 establishes an affirmative consent standard in the determination of whether consent was given by both parties in postsecondary institutions. “Affirmative consent” means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent. This definition is applicable to criminal prosecutions for sex offenses in California. For additional information:

[https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB967](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB967)

- Knowing (conscious), and
- voluntary, and
- provides clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways; therefore, it is the responsibility of each party to make certain that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Affirmative consent must be ongoing throughout the sexual activity. Reasonable reciprocation can be implied consent. For example, if being kissed, one can kiss the other individual back (if they want to) without the need to explicitly obtain *their* consent to be kissed back.

Consent can also be withdrawn once given. The withdrawn consent should be reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonably immediate time. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent.

The presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced. **Lack of protest, or the absence of resistance alone does not mean consent, nor does silence mean consent.**

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

**In California, a minor (meaning a person under the age of 18 years) cannot consent to sexual activity.** This means that sexual contact by an adult with a person younger than 18 years old may be a crime, and a potential violation of this policy, even if the minor wanted to engage in the act.

Proof of consent or non-consent is not a burden placed on either party involved in a complaint. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.



Consent in relationships must also be considered in context. When both parties consent to BDSM<sup>30</sup> or other forms of non-conventional sexual practices, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the practice and thus consensual, so the College’s evaluation of communication in non-conventional sexual practice situations should be guided by reasonableness, rather than strict adherence to policy that assumes conventional sexual relationships as a default.

**Incapacitation:** A person cannot consent if they are **unable to understand what is happening** or are **disoriented, helpless, asleep, or unconscious** for any reason, including by alcohol, medication, or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent as a partner must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

In the evaluation of complaints, it shall not be a valid defense that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

1. The Complainant was asleep or unconscious.
2. The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity.
3. The Complainant was unable to communicate due to a mental or physical condition.

Thus, it is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

In the evaluation of complaints, it shall not be a valid defense to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

1. The Respondent’s belief in affirmative consent arose from the intoxication or recklessness of the Respondent.
2. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). A person may appear to be giving consent without the capacity to do so, in which case, the apparent consent is not effective. If anyone has any doubt as to a partner’s capacity to give consent, one should assume the partner is incapacitated.

Incapacitation is determined through consideration of all relevant indicators<sup>31</sup> of an individual’s state and is *not* synonymous with intoxication, impairment, blackout, and/or being drunk.

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<sup>30</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

<sup>31</sup> <sup>31</sup> Some indicators of incapacitation include but are not limited to:

- A lack of full control over physical movements (e.g., difficulty walking or standing without stumbling or assistance);
- A lack of awareness of circumstances or surroundings (e.g., lack of awareness of where one is, how one got there, who one is with, or how or why one became engaged in a sexual interaction);

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

### **I.L.4 – Retaliation Policy**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

The College and any member of the College community are prohibited from taking or attempting materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, may constitute retaliation.

Pursuing a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

### **I.M – Mandated Reporting**

All College employees (faculty, staff, administrators) are expected to report actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions, noted below.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting institutional resources. Within the institution, some resources may maintain confidentiality and are not required to report actual or suspected harassment, discrimination,

or retaliation in a way that identifies the parties. They may offer options and resources without any obligation to inform the Title IX Office unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or policy violations, and these

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- An inability to effectively communicate for any reason (e.g., slurring speech, difficulty finding word).

employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe the College reporting options for a Complainant or third party (including parents/guardians when appropriate):

### I.M.1 – Confidential Resources<sup>32</sup>

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following campus resources:

- On-campus licensed professional counselors, health providers, and staff at the **WellnessCenter**.
  - (707) 965-6226 (health services);healthservices@puc.edu;
  - (707) 965-7080 (counseling services);counseling@puc.edu;
  - (707) 965-6789 (after hours);
- **Chaplain Kent Rufo** (ordained ministers hired by PUC as faculty or non-chaplain staff are not confidential resources);
  - (707) 965-7190;
  - krufo@puc.edu.

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Institutional counselors and the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Employees who have confidentiality as described above, and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

### I.M.2 – Anonymous Notice to Mandated Reporters

At the request of a Complainant, notice may be given anonymously (i.e., without identification of the Complainant) to the Title IX Coordinator by a Mandated Reporter. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by the College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

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<sup>32</sup> CA Educ. Code, Sect. 66281.8 (SB 493) requires on-campus confidential resources to inform students who provide information about sexual harassment of their ability to report the alleged sexual harassment to a responsible employee and direct the student to those specific reporting resources. Individuals who have a confidential relationship with a student by law is exempt from having to report sexual harassment concerns to the Title IX Coordinator or other designated employee, unless otherwise required by law.

However, anonymous notice typically limits the College's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator.

### I.M.3 – Mandated Reporters and Formal Notice/Complaints

All College employees (including Resident Hall Assistants), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Failure of a Mandated Reporter, as described above in this section, to report an incident of sexual harassment, discrimination, or retaliation of which they become aware is a violation of College Policy and can be subject to disciplinary action for failure to comply/failure to report.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though the College is technically not on notice simply because a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

The Clery Act, a federal reporting law, designates certain employees, including student employees, as Campus Security Authorities, and have alternate reporting requirements. More information is provided in [§I.Q.4](#).

Upon receiving notice from a Mandated Reporter, the Title IX Coordinator will reach out to the Complainant via College-issued email, text, phone, or in person.

### I.M.4 – Residence Hall Assistants Reporting Requirements

Residence hall assistants (RAs) are considered Mandated Reporters at all times, whether they are on duty or not and are expected to report as soon as possible to the Title IX Office, to the residence hall dean on duty, or residence hall director. The dean or residence hall director can then contact the Title IX Office on their behalf.

### **I.M.5 – Reporting Requirement Exceptions**

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as Denim Day or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the College.

Supportive measures may be offered as the result of such disclosures without formal College action.

### **I.N – False Allegations and Evidence Policy**

Deliberately false and/or malicious accusations under this policy, are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence or deliberately misleading an official conducting an investigation can be subject to discipline from Student Conduct or Human Resources.

### **I.O – Amnesty Policy<sup>33</sup>**

The College encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to College officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons. It is in the best interests of the College community that Complainants choose to report misconduct to College officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the College maintains a policy of offering parties and witnesses amnesty from minor policy violations—such as underage consumption of alcohol or the use of illicit drugs—related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. If a decision is made to not offer amnesty to a Respondent, the decision will not be based on sex or gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty—the incentive to report serious misconduct—is rarely applicable to a Respondent with respect to a Complainant.

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the Title IX Office, Residence Life, or Public Safety). The

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<sup>33</sup> CA Educ. Code, Section 66281.8 requires any disciplinary measures imposed by the institution for violations of the institution's student conduct policy at or near the time of the incident being investigated shall be consistent with paragraph (10) of subdivision (b) of Section 67386, which provides that an individual who participates as a complainant or witness in an investigation of sexual assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of the institution's student conduct policy at or near the time of the incident, unless the institution determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

College maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, the College may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

## **I.P – Non-Fraternization Policy**

This policy acknowledges the “Faculty-Student Non-Fraternization Policy” in the PUC Faculty Handbook which states:

The faculty and staff of Pacific Union College assist the College in meeting its mission of providing a quality higher education in a Christian environment for its students. Students should be assured that the relationships they develop with faculty and staff members will always be built upon the highest ethical precepts of the educational profession.

In order to promote the efficient and fair operation of the College and to avoid misunderstanding, complaints of favorites, supervision problems, security problems, morale problems, questions regarding academic achievement, and possible claims of sexual harassment, faculty are strictly prohibited from fraternizing with students, including but limited to, dating, pursuing to date, and pursuing or having romantic or sexual relationships with students. Faculty who violate this policy will be subject to discipline, up to and including termination of employment. (*PUC Faculty Handbook §1.35*)

The Faculty-Student Non-Fraternization Policy is under the scope of the Office of Human Resources and allegations of prohibited conduct will be investigated and processed by the Associate Vice President of Human Resources or designee. The AVP of Human Resources may consult with the Title IX Office on allegations that the Faculty-Student Non-Fraternization Policy has been violated. Allegations of the Faculty-Student Non-Fraternization Policy which intersect with prohibited behavior in the PUC Sexual Nondiscrimination and Harassment Policy will be investigated and processed by the Title IX Office. In such an instance, the Office of Human Resources may choose to suspend their investigation until a resolution is completed in the Title IX Office.

## **I.Q – External Reporting Obligations**

### **I.Q.1 – Notice to Law Enforcement**

There may be circumstances where the College is obliged to report an incident of violent crime, hate crime, or sexual assault immediately, or as soon as practicably possible, to local law enforcement.

All College employees are required to immediately report any suspected child abuse and neglect, including any and all incidents of sexual misconduct involving minors to Napa County Child Protective Services at 1 (800) 464-4216 and the Napa County Sheriff’s Office at (707) 253-4440. The source of the abuse need not be known. It is not the responsibility of anyone other than Child protective Services and law enforcement to investigate suspected abuse. Employees are required to also report the suspected abuse to the Title IX Coordinator.

### I.Q.2 – Requests for Confidentiality with Respect to Reporting to Law Enforcement

Complainants have the right to decide if they want to make a report to the police and/or speak with the police. The College will honor requests for confidentiality. Institutional and local law enforcement agencies are prohibited from disclosing information about most sexual assaults if the Complainant requests anonymity. When information is shared with law enforcement, such reports will include (when the Complainant has consented to being identified):

- The name and characteristics of the alleged victim.
- The name and characteristics of the alleged perpetrator, if known.
- Description of the incident, including location and date and time.
- Any report number assigned to the police incident report documenting the investigation being conducted by the jurisdictional agency.

### I.Q.3 – Mandatory Reporting Requirements for Health Practitioners in California

Any licensed health care provider in the State of California providing services in a health facility, clinic or physician's office is required to make a report if they provide *medical treatment for a physical condition* to a patient whom they know or reasonably suspect is the victim of assaultive or abusive conduct or a firearm injury. The health practitioner is required to make a report by telephone as soon as practically possible and send a written report to a local law enforcement agency within two working days. The report must be made to the enforcement agency that has jurisdiction over the location in which the injury was sustained. This includes any health care practitioners in the Wellness Center.

### I.Q.4 – Federal Statistical Reporting Obligations

Certain campus officials—those deemed campus security authorities (CSAs)— have a duty to report the following for federal statistical reporting purposes (Clery Act):

1. All “primary crimes,” which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson.
2. Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property.
3. VAWA-based crimes,<sup>34</sup> which include sexual assault, domestic violence, dating violence, and stalking.
4. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations.

All personally identifiable information is kept confidential, but statistical information must be passed along to PUC's Department of Public Safety regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety.

The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

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<sup>34</sup> <sup>34</sup> VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

CSAs include: student life, student conduct, PUC Public Safety, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

For more information regarding the Clery Act and CSAs contact Jennifer Schooley, Clery Coordinator and Public Safety Site Supervisor at (707) 965-6551.

### I.Q.5 – Federal Timely Warning Obligations

The College must issue timely warnings for reported incidents that pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### I.Q.6 – Parental Notification (allegations involving dependent students)

The College reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly alcohol and other drug violations. PUC may also notify parents/guardians of non-dependent students who are under age 18 of alcohol and/or drug policy violations. Where a student is non-dependent, the College will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk.

## I.R – Preservation of Evidence

The preservation of evidence in incidents of sexual harassment, such as sexual assault and stalking, is critical to potential criminal prosecution, the pursuit of civil action against a Respondent, and to obtaining restraining/protective orders and is particularly time sensitive. Regardless of whether an incident of sexual misconduct is reported to the police or the College, PUC strongly encourages the preservation of evidence to the greatest extent possible as this will best maintain all legal options for the future.

Additionally, such evidence may be helpful in pursuing a complaint with the College. While the College does not conduct forensic tests for parties involved in a complaint of sexual misconduct, the results of such tests that have been conducted by law enforcement agencies and medical assistance providers may be submitted as evidence and may be considered in a College investigation or proceeding provided they are available at the time of the investigation or proceeding.

The College will inform the Complainant of the importance of preserving evidence by taking actions such as the following (it is important that each action may not apply in every situation):

### I.R.1 – General Evidence Preservation

- Do not alter, dispose of, or destroy any physical evidence.
- If there is suspicion that a drink may have been drugged, inform a medical assistance provider and/or law enforcement as soon as possible so they can attempt to collect possible evidence (e.g., from the drink, through urine or blood sample).
- Preserve evidence of electronic communications by saving them and/or by taking screenshots of text messages, instant messages, social networking pages, or other electronic communications,



and by keeping pictures, logs, or copies of documents that relate to the incident and/or the Respondent.

- Take photographs or have photographs taken with a date stamp on the photo of any physical injuries.
- Record the names of any witnesses and their contact information. This information may be helpful as proof of a crime, to obtain an order of protection, or to offer proof of a campus policy violation.
- Try to memorize details (e.g., physical description, names, license plate number, car description, etc.), or even better, write notes to remind you of details, if you have time and the ability to do so.
- If you obtain external orders of protection (e.g., restraining orders, injunctions, protection from abuse), please notify Public Safety or the campus Title IX Coordinator so that those orders can be observed on campus.

### I.R.2 – Evidence Preservation Specific to Sexual Assault

- Seek forensic medical assistance, ideally within 120 hours of the incident (sooner is better).
  - Some evidence, particularly evidence that may be located on the body, dissipates quickly.
  - **Queen of the Valley Hospital** is Napa County's designated facility for performing sexual assault forensic exams (rape kits).
    - Go to the ER front desk and request to meet with SART (Sexual Assault Response Team).
    - A sexual assault forensic exam can be performed without cost as VAWA mandates that rape victims cannot be forced to pay for their own rape examination or for services of protective order.
    - A sexual assault evidence collection kit may not be released by a California hospital without written consent from the Complainant.
- If possible, do not bathe, douche, smoke, brush teeth, eat, drink, or change clothes or bedding before going to the hospital or seeking medical attention. Evidence may still be collected even if you do.
- If clothes or bedding is changed, place soiled clothes or bedding in a paper bag (plastic destroys evidence) or other non-plastic container and take it with you to the hospital or police.
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

In California, individuals who have been sexually assaulted may allow the collection of evidence even if they choose not to make a report to law enforcement after the evidence is collected. Police can obtain evidence from the scene, so it is best to leave things undisturbed until their arrival. They will gather bedding, linens or unlaundered clothing, and any other pertinent items that may be used for evidence. It is best to allow police to secure items in evidence containers, but if the Complainant is involved in the transmission of items of evidence, such as to the hospital, it is important to remember to secure the evidence in a clean **paper** bag or clean bedsheet to avoid the destruction or contamination of the evidence.

In Napa County, the police pay for and authorize sexual assault forensic exams. It will be necessary to share enough information with the police for an exam to be authorized; however, individuals have the right to participate or not to participate in an investigation.

### I.R.3 – Evidence Preservation Specific to Stalking

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
  - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
  - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail or social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence including notes, gifts, etc. in place when possible.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

(PUC reserves the right to modify the above policy when necessary.)

## II – Grievance Process

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The College will act on any formal notice/complaint of violation of the Sex Nondiscrimination and Sexual Harassment policy that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as the Formal Grievance Process.

The procedures below apply to all allegations of harassment or discrimination on the basis of sex or gender involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations may proceed using these same grievance procedures, clarifying which Policy provisions above are applicable. Although the effect of the Title IX regulations can be confusing, these grievance procedures apply to all Policy offenses.

At the discretion of the Title IX Coordinator, the procedures below may be used to address alleged collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. In such cases, the Title IX Coordinator may consult with the institution officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs, etc.) to provide input as needed. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

The investigation and adjudication of alleged misconduct is not an adversarial process between the complainant, the respondent, and the witnesses, but rather a process for the College to comply their obligations under existing law. The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation or allegations of misconduct.

### II.A – Disabilities Accommodation in Grievance Process

The College is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the Grievance Process.

Anyone needing such accommodations or support should contact the Director of Disability Services at the Wellness Center, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process

### II.B – Allegation Withdrawal

At any time during a grievance process, the Complainant may withdraw the allegation(s) by contacting the Title IX Coordinator in writing. However, even if the Complainant decides to withdraw the allegation, the College reserves the right to investigate and take appropriate measures, if necessary, to protect the interests and safety of the Complainant and the community. If the Complainant withdraws the allegation(s) and refuses to cooperate, the likelihood of a meaningful conclusion is severely diminished.

## II.C – Notice/Complaint <sup>35</sup>

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the College needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint. This contact with the Complainant will include the following information:

- The College has received a report that the Complainant may have been subjected to sexual harassment.
- A statement that retaliation for filing a complaint or participating in a complaint process, or both, is prohibited.
- Counseling resources within the institution or the community.
- Notice that the Complainant has the right, but not the obligation, to report the matter to law enforcement.
- College's investigation procedures.
- A list of potential supportive measures, such as no-contact directives, housing changes, and academic schedule changes.
- The importance of preserving evidence.
- A request for Complainant to meet with the Title IX Coordinator to discuss options for responding to the report.
- Information on how College responds to reports of sexual harassment and a description of potential disciplinary consequences.

The Title IX Coordinator will then initiate at least one of three responses:

1. Offering supportive measures (see [§1.1.3](#) for more information on supportive measures) because the Complainant does not want to file a formal complaint;
2. An informal resolution, upon submission of a formal complaint (informal resolutions may not be offered to resolve allegations where the Complainant is a student and the Respondent is a College employee);
3. Formal Grievance Process, upon submission of a formal complaint, which includes an investigation and hearing.

The investigation and grievance process will determine whether or not the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

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<sup>35</sup> CA Educ. Code, Sec. 66281.8 provides regardless of whether or not a complaint has been filed under the institution's grievance procedures, if the institution knows, or reasonably should know, about possible sexual harassment involving individuals subject, it shall promptly investigate to determine whether the alleged conduct more likely than not occurred, or otherwise respond if the institution determines that an investigation is not required. If the institution determines that the alleged conduct more likely than not occurred, it shall immediately take reasonable steps to end the harassment, address the hostile environment, if one has been created, prevent its recurrence, and address its effects. A postsecondary institution shall be presumed to know of sexual harassment if a responsible employee knew, or, in the exercise of reasonable care, should have known, about the sexual harassment. The institution may rebut this presumption of knowledge if it shows all of the following:

- i. The institution provides training and requires all nonconfidential responsible employees to report sexual harassment.
- ii. Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question was provided training and direction to report sexual harassment.
- iii. Each nonconfidential responsible employee with actual or constructive knowledge of the conduct in question failed to report it.

If the Title IX Coordinator receives notice from a third party who is not the actual Complainant, the Coordinator will take appropriate steps to address and remedy any potential hostile environment, to the extent possible based on the information received.

## II.D – Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>36</sup> engages in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator assesses if the allegations indicate a potential policy violation. The Title IX Coordinator may consult with another member of the Title IX Office if deemed necessary.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers (Option 1) a supportive and remedial response,<sup>37</sup> (Option 2) an informal resolution option, or a (Option 3) formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determines appropriate supports, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred,<sup>38,39</sup> the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and if so, which informal mechanism may serve the situation best and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of the 2020 Title IX regulations:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:

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<sup>36</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

<sup>37</sup> Per CA Educ. Code, Section 66281.8, an institution will not require a Complainant enter a voluntary resolution agreement or any other form of resolution as a prerequisite to receiving remedial measures from the institution which safeguard the Complainant's access to education.

<sup>38</sup> Per the 2020 Title IX regulations, recipients are prohibited from Informal Resolution of a complaint by a student against an employee.

<sup>39</sup> Per CA Educ. Code, Section 66281.8, an institution may not mandate mediation to resolve allegations of sexual harassment, and will not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence. Other forms of informal resolution that are not mediation are permitted.

- an incident, and/or
  - a pattern of alleged misconduct, and/or
  - a culture/climate issue.
- If the alleged misconduct does not fall within the scope of the Title IX regulations, the Title IX Coordinator determines that the regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, and refers the matter accordingly. Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX, and does not limit the College’s authority to address a complaint with an appropriate process and remedies.

### II.D.2 – Violence Risk Assessment

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the CARE Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

1. Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
2. Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
3. Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment;
4. To help identify potential predatory conduct;
5. To help assess/identify grooming behaviors;
6. Whether it is reasonable to try to resolve a complaint through informal resolution, and what approach may be most successful;
7. Whether to permit a voluntary withdrawal by the Respondent;
8. Whether to communicate with a transfer institution about a Respondent;
9. Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
10. Whether a Clery Act Timely Warning/Trespass order is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

A VRA requires specific training and is conducted by the CARE team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the CARE team; however, the CARE Team may also consult or refer a matter to outside consultants if deemed appropriate by the CARE Team Chair and the Title IX Coordinator. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

## II.D.2 – Dismissal (Mandatory and Discretionary)<sup>40</sup>

The College **must** dismiss a formal complaint or any allegations therein as a Title IX complaint if, at any time during the investigation or hearing, it is determined that:

1. The conduct alleged in the formal complaint would not constitute Title IX sexual harassment as defined in [§I.L.2](#), even if proved; and/or
2. The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by the College and recognized student organizations), and/or the College does not have control of the Respondent; and/or
3. The conduct did not occur against a person in the United States; and/or
4. At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the College. <sup>41</sup>

The College **may** dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by the College; or
3. Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

Upon any dismissal, the College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal (see [§II.H.2\(t\)](#)). The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate and should be submitted to the Title IX Coordinator in writing in a timely manner.

## II.E – When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so and may require a violence risk assessment to help determine whether to proceed. The Title IX Coordinator may sign a formal complaint to initiate a grievance process after reviewing any violence risk assessment results and weighing the following factors:

- a. Multiple or prior reports of sexual misconduct against the Respondent.
- b. The Respondent reportedly used a weapon, physical restraints, or engaged in battery.
- c. The Respondent is a faculty or staff member with oversight of students.

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<sup>40</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

<sup>41</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable unless the Title IX Coordinator signs the complaint in the event the Complainant cannot/will not do so.

- d. There is a power imbalance between the Complainant and Respondent. The Complainant believes that the Complainant will be less safe if the Complainant's name is disclosed, or an investigation conducted.
- e. The institution is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation.

In instances where the Complainant's request for confidentiality or no investigation is granted, the College will provide supportive measures to the Complainant and take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged Respondent or revealing the identity of the Complainant. These steps may include but are not limited to:

- Increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred;
- Providing additional training and education materials for students and employees;
- Conducting climate surveys regarding sexual violence.

The College will also take immediate steps to provide for the safety of the Complainant while keeping the Complainant's identity confidential, as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. The Complainant will be notified that the steps the College will take to respond to the complaint will be limited by the request for confidentiality.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony. The College will inform the Complainant prior to initiating the formal resolution process and take immediate steps to provide for the safety of the Complainant, where appropriate. In the event the Complainant requests that the College inform the Respondent that the Complainant asked the College not to investigate or seek discipline, the College will honor this request.

Note that the College's ability to remedy and respond to notice may be limited if the Complainant does not want the College to proceed with a formal grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the College to honor that request, the College will offer supportive measures (see [§1.1.3](#)) and remedies to the Complainant and the community where appropriate, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the College, and to have the incidents investigated and



properly resolved through the formal grievance process. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## II.F – Counterclaims

The College is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the formal grievance procedures. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy. For more information regarding retaliation, see [§I.L.4](#).

## II.G – Advisors

The parties may each have an Advisor<sup>42</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>43</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

### II.G.1 – Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the College community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the Pool available from the College, the Advisor will be trained by the College and be familiar with the College's resolution process. A current list of trained Advisors is available at [puc.edu/titleix](http://puc.edu/titleix).

If the parties choose an Advisor from outside the Pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with College policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process.

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<sup>42</sup> Witnesses are not entitled to Advisors within the process, though they can be advised externally.

<sup>43</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

## II.G.2 – Advisor’s Role

The parties may be accompanied by their Advisor in all meetings, interviews, and hearings at which the party is entitled to be present, including intake. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

The College cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney.

## II.G.3 – Advisors in Hearings/College-Appointed Advisor

Under the Title IX Regulations, a form of indirect questioning is required during the hearing but must be conducted by the parties’ Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the parties and witnesses.

## II.G.4 – Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and PUC’s policies and procedures.

## II.G.5 – Advisor Violations of College Policy

All Advisors are subject to the same policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the College. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address College officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding during questioning.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the grievance process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy, or who refuses to comply with the College’s established rules of decorum for the hearing will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting, interview, or hearing may be ended, or other appropriate measures implemented, including the College requiring the party to use a different Advisor or providing a different College-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor’s non-compliance and future role.

## II.G.6– Sharing Information with the Advisor

The College expects that the parties may wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their

Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The College also provides a consent form that authorizes the College to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before College is able to share records with an Advisor. The parties should note that in accordance with federal regulations,<sup>44</sup> the final investigative report will be made available to party advisors.

### II.G.7 – Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. PUC may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College’s privacy expectations.

### II.G.8 – Expectations of an Advisor

The College generally expects an Advisor to adjust their schedule to allow them to attend meetings, interviews, and hearings when planned, but the College may change scheduled meetings, interviews, and hearings to accommodate an Advisor’s inability to attend, if doing so does not cause an unreasonable delay.

The College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting, interview, or hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

### II.G.9 – Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

### II.G.10– Assistance in Securing an Advisor

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

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<sup>44</sup> 2020 Regulations 34 CFR 106.45 (b)(5)(vii)

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim’s Bar Association.
- The Time’s Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

## II.H – Grievance and Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with College policy.

Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the parties agree not to disclose as part of an Informal Resolution. PUC encourages parties to discuss any sharing of information with their Advisors before doing so.

The Formal Grievance Process is the College’s primary resolution approach unless Informal Resolution is elected by all the parties and the College. The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual’s status or participation as a Complainant, Respondent, or witness.

The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by a preponderance of the evidence.

### II.H.1– Informal Resolution<sup>45 46</sup>

Three options for Informal Resolution are detailed in this section.

1. **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation;
2. **Alternative Resolution.** When the parties agree to resolve the matter through an alternate resolution mechanism such as facilitated resolution or restorative practices resolution, usually before a formal investigation takes place;
3. **Accepted Responsibility.** When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the resolution process (usually occurs post-investigation, see [§II.H.2\(m\)](#)).

To initiate Informal Resolution, a Complainant must submit a formal complaint, as defined in [§I.G](#). A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The

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<sup>45</sup> Per the 2020 Title IX regulations, recipients are prohibited from Informal Resolution of a complaint by a student against an employee.

<sup>46</sup> Per CA Educ. Code, Section 66281.8, an institution may not mandate mediation to resolve allegations of sexual harassment, and will not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence. Other forms of informal resolution that are not mediation are permitted.

parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

The parties may not enter into an agreement that requires the College to impose specific sanctions, though the parties can agree to certain restrictions or other courses of action. For example, the parties cannot require a student be suspended, but the parties can agree that the Respondent will temporarily or permanently withdraw. The only Informal Resolution Process that can result in sanctions levied by the institution is “Accepted Responsibility.” The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing an Informal Resolution, the College will provide the parties with **written notice** of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

The College will obtain **voluntary, written confirmation** that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

### **II.H.1(a) - Alternate Resolution Mechanism**

Alternate Resolution is an informal approach, including facilitated resolution and restorative practices resolution, by which the parties reach a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of an Alternate Resolution mechanism.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties’ amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The nature and severity of the alleged misconduct;
- The parties’ motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history of the Respondent;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of allegation;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.).

The ultimate determination of whether Alternate Resolution is available or successful is to be made by

the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions including sanctions (e.g., referral for formal resolution, referral to the conduct process or Human Resources for failure to comply). Results of complaints resolved by Alternative Resolution are not appealable.

### **II.H.1(b) – Facilitated Resolution<sup>47</sup>**

Facilitated Resolution is a voluntary, structured dialogue between the Complainant and the Respondent— the parties may be accompanied by their advisor (see §II.G for information on advisors). During Facilitated Resolution meeting(s), the Title IX Coordinator, or another assigned facilitator, will facilitate a dialogue with the parties to an effective resolution, if possible. If the parties do not wish to meet with each other, the Title IX Coordinator, or assigned facilitator, will meet with the parties separately to negotiate and implement an agreement to resolve the allegations that satisfies all parties and the College. Facilitated Resolution may not be used to resolve allegations of sexual violence.

### **II.H.1(c) – Restorative Resolution**

The Restorative Justice Resolution is a conference-based cooperative resolution founded on four core principles: inclusive decision-making, active accountability, repairing harm, and rebuilding trust. In a restorative justice conference, the Title IX Coordinator, or another assigned facilitator will facilitate a dialogue with the parties to an effective resolution, if possible. The Title IX Coordinator may assign an additional facilitator to aid the process.

A restorative justice conference will be confined to the Title IX Coordinator, an additional facilitator as needed (or other assigned facilitator(s)), the Complainant, the Respondent, advisors, and any other identified harmed parties that have agreed to participate in the conference. The facilitator/s will lead the participants in both structured and unstructured dialogue which includes harm identification and a collaborative agreement process which explores solutions for the Respondent to make amends in order to repair harm and rebuild trust. Elements of amends include:

- **Apology:** a written or verbal apology that includes acknowledgement, affect, and vulnerability;
- **Changed behavior:** plans to help the Respondent support behavioral change, such as change of environment, education, rewards for positive change, and accountability check-ups to monitor progress and provide positive reinforcement;
- **Generosity:** services performed by the Respondent (often unrelated to the Complainant) as evidence of a sincere apology—can be related to education;
- **Restitution:** direct service to the Complainant or other harmed persons or organizations.

### **II.H.1(d) – Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine

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<sup>47</sup> Per CA Educ. Code, Section 66281.8, an institution may not mandate mediation to resolve allegations of sexual harassment, and will not allow mediation, even on a voluntary basis, to resolve allegations of sexual violence. Other forms of informal resolution that are not mediation are permitted.

whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of the Policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction(s) or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## **II.H.2 – Formal Grievance Process**

The College will make a good faith effort to complete the grievance process within a sixty to ninety (60-90) business-day time period, including appeal if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

The College will not unreasonably deny a student party's request for an extension of a deadline related to a complaint during periods of examinations or school closures.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the preponderance of the evidence.

A Formal Grievance Process includes an investigation and hearing and provides a determination as to whether or not the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

### **II.H.2(a) – Party Opportunities to Review and Respond to Evidence and Question Relevant Participants**

Throughout the process, both parties to have a full and fair opportunity, through the investigation and hearing process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

Such opportunities include:

1. Submission to the investigator(s) of relevant questions to witnesses or the other party during the investigation;
2. Preliminary investigative report response;
3. Final investigative report response;
4. Participation during the Formal Resolution Panel Hearing proceedings.

The parties will be notified of their right to participate in these opportunities to respond to evidence and submit questions, but they are not mandatory. If questions are submitted, they must be:

1. In writing;
2. Actual questions to be posed and not comments;
3. Pertinent to the investigation; and
4. Of a reasonable amount.

The Investigator(s) or Decision-maker(s) (depending on the opportunity) will determine which questions, if any, are relevant to the case. Rationale for excluding questions in an investigation will be provided in the investigative report. Rationale for excluding questions by the hearing panel will be provided on the record at the hearing, or may be provided in writing if the questions are submitted to the Panel before the hearing.

Questions may be excluded if found to be:

- Incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or
- Questions and evidence about the Complainant's sexual predisposition; or
- Questions and evidence about the Complainant's prior or subsequent sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior or subsequent sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Questions submitted and answered during the investigation and responses to the preliminary investigative report will become part of the file and the investigator(s) will include that information in the final investigative report.

A party is not obligated to answer all or any of the other party's questions. A party also has the right to not participate in the opportunities provided to respond to evidence and submit questions; however, they will still be provided with the preliminary investigative report and final investigative report.

#### II.H.2(b) – False Statements

All students, employees, and third-party visitors are expected to fully cooperate and participate in the grievance process and provide only truthful information.<sup>48</sup>

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<sup>48</sup> Further information about witnesses and witness participation may be found in [§II.H.2\(e\)](#).



Making false or misleading statements or submitting false or misleading information during the investigation knowingly, with constructive knowledge, or with reckless disregard for the truth throughout the grievance process is a serious offense and will be subject to appropriate disciplinary action. Students and employees may be subject to discipline from Student Conduct or Human Resources. Third-party visitors may be subject to limited or denied access to campus grounds, facilities, and/or programs.

### **II.H.2(c) – Formal Grievance Process Participants**

To promote and maintain fairness, equitable dignity, and privacy, the resolution process limits participation to the following categories: Complainant, Respondent, party advisors, witnesses (if any), investigator(s), hearing and appeal decision-makers, the Title IX Coordinator, and a hearing facilitator (if needed).

Other campus members may be included in the process as determined by the Title IX Coordinator and will be determined on a need to know basis. The Title IX Coordinator will take great care to maintain the privacy of the participants involved.

### **II.H.2(d) – Formal Grievance Process Pool**

The Formal Grievance Process relies on a pool of administrators<sup>49</sup> (“the Pool”) to carry out the process. The list of Pool members can be found at [www.puc.edu/titleix](http://www.puc.edu/titleix).

#### **II.H.2(d)(i) – Pool Member Roles**

Members of the Pool are trained annually, and can serve in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternate Resolution if appropriately trained in appropriate resolution approaches
- To assist with initial assessment.
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-maker role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

#### **II.H.2(d)(ii) – Pool Member Appointments**

The Title IX Coordinator appoints the Pool, which acts with independence and impartiality. While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the College can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

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<sup>49</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles.

### II.H.2(d)(iii) – Pool Member Training

The Pool members receive comprehensive, trauma-informed<sup>50</sup> annual training in joint sessions as well as task-specific training in regard to their specific roles. This training includes, but is not limited to:

- The scope of PUC's Sex Nondiscrimination and Sexual Harassment Policy and Procedures.
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias and racial inequities, both broadly and in school disciplinary processes
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to conduct a sexual harassment investigation in a thorough, reliable, timely, and impartial manner
- Trauma-informed investigatory and hearing practices that help ensure an impartial and equitable process
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the College with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct a grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants.
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping
- Statistics on the prevalence of sexual harassment and sexual violence in the educational setting, and the differing rates at which students experience sexual harassment and sexual assault in the educational setting based on their race, sexual orientation, disability, gender, and gender identity (See [Appendix C](#)).

The materials used to train all members of the Pool are publicly posted on the Title IX webpage.

### II.H.2(d)(iv) – Pool Member Recusal or Removal

To promote fair and just proceedings, resolution pool members asked to participate in a case must recuse themselves in cases where they possess a conflict of interest. Any individual materially involved

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<sup>50</sup> CA SB 967 requires Recipients to provide a comprehensive trauma-informed training program for campus officials involved in deciding sexual assault, domestic violence, dating violence, and stalking cases.

in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. While the Title IX Coordinator will vet the Pool participants to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the process, raise a concern regarding the bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member, or outside consultant (if needed) will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the President.

A resolution pool member may be removed from the case or from the pool entirely by the Title IX Coordinator or by a majority vote of the disinterested Pool members. The majority vote, stating cause, must be submitted in writing to the Title IX Coordinator. The Title IX Coordinator will be bound by a majority vote. In cases where the Title IX Coordinator may have a conflict of interest and has not already self-recused, a majority vote of the disinterested members, stating cause for administrative removal from said cases, must be submitted in writing to the president. The president will be bound by a majority vote, and appointment a replacement for the Title IX Coordinator for said cases.

### **II.H.2(e) – Witness Role and Participation in the Investigation**

Witnesses (as distinguished from the parties) who are employees of the College are strongly encouraged to cooperate with and participate in the College’s investigation and resolution process. Student witnesses and witnesses from outside the College community are encouraged to cooperate with College investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require witnesses to be interviewed remotely. Zoom, Microsoft Teams, Skype or similar videoconference technologies may be used for interviews if the investigator(s) determine that timeliness efficiency, or other reasons dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

Witnesses are not permitted to record (audio or video) investigation meetings or other resolution process proceedings.

### **II.H.2(f) – Investigation Timeline**

Investigations are completed expeditiously, normally the preliminary investigative report will be completed within thirty (30) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, College breaks and vacation, etc.

The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **II.H.2(g) – Delays in the Investigation Process and Interactions with Law Enforcement**

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to:

- a request from law enforcement to temporarily delay the investigation,
- the need for language assistance,
- the absence of parties and/or witnesses, and/or
- accommodations for disabilities or health conditions.

The College will communicate the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, PUC will implement supportive measures as deemed appropriate.

College action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **II.H.2(h) – Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints trained investigator(s) to conduct the investigation (typically a team of two investigators), usually within two (2) business days of determining that an investigation should proceed.

The College may rely on appropriately trained investigators outside of the PUC campus community if necessary. The Title IX Coordinator will remove and replace any investigator whom the Title IX Coordinator determines is biased or has a conflict of interest against either party or is not performing duties in a timely or professional manner.

Upon appointment, the investigator(s) may be asked to assist the Title IX Coordinator in identifying all the policies impacted by the alleged misconduct.

### **II.H.2(i) – Notice of the Investigation and Allegations**

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, *who is to be given **advance notice** of when the NOIA will be delivered to the Respondent.*

The **NOIA** will include:

- Notice that a formal investigation process has been initiated;
- A meaningful summary of all of allegations (alleged conduct);
  - The identity of the involved parties (if known);
  - The precise misconduct being alleged;
  - The date and location of the alleged incident(s) (if known);
  - The specific policies implicated;
- A description of the applicable procedures;
  - A statement of the potential sanctions/responsive actions that could result;
  - The right of both parties to submit a list of potential witnesses on their behalf;

- The right of both parties to be allowed to submit questions to the other party;
- The right of both parties to be allowed to review evidence obtained by the investigators;
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination;
- A statement that the investigation and hearing are not adversarial processes between Complainant(s), Respondent(s), and witnesses but rather a process the College uses to comply with its obligations under existing law;
- A statement that the Complainant does not have the burden to prove, nor does the Respondent have a burden to disprove, the underlying allegation(s) of misconduct.
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained;
- A statement about the College's policy on retaliation;
- Information about the confidentiality and privacy of the process;
- Information on the need for each party to have an Advisor of their choosing who may, but is not required to be, an attorney, and suggestions for ways to identify an Advisor;
- A statement informing the parties that the College's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process;
- Detail on how the party may request disability accommodations during the resolution process;
- Notice to the student parties regarding appropriate counseling resources developed and maintained by the institution;
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have; and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official College records, or emailed to the parties' PUC-issued email (preferred method) or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### **II.H.2(j) – Scope of Investigation**

Investigations are thorough, reliable, impartial, prompt, fair, and focused on fact-finding. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.

As described in [§II.H.2\(a\)](#), all parties have a full and fair opportunity, throughout the investigation and hearing processes, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The investigator(s) are granted the authority to address all collateral misconduct, meaning that they investigate allegations of sex discrimination and sexual harassment but also may investigate any additional alleged policy violations that have occurred in concert with the sex discrimination and sexual harassment, even though those collateral allegations may not specifically fall within the Sex Nondiscrimination and Sexual Harassment policy. The Title IX Coordinator will determine if the collateral allegations investigated will be granted amnesty or referred to Student Conduct or Human Resources.

Any evidence that the investigator(s) believes is relevant and credible may be considered. The investigator(s) may ignore irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial. All evidence gathered during the investigation related to the allegations, including evidence the investigator(s) did not include in the investigative report will be available for review by the parties and Decision-maker(s).

The Title IX Coordinator has the authority to terminate an investigation and end resolution proceedings. An investigation may be terminated due to circumstances described in [§II.D.2](#), or an alternate resolution process has been requested by the parties and granted by the Title IX Coordinator.

### **II.H.2(k) – Evidentiary Considerations in the Investigation and Hearing<sup>51, 52</sup>**

Neither the investigation nor the hearing will consider:

1. Incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or
2. Questions and evidence about the Complainant’s sexual predisposition; or
3. Questions and evidence about the Complainant’s prior or subsequent sexual behavior, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior or subsequent sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

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<sup>51</sup> CA Educ. Code, Section 66281.8 provides that parties may not introduce evidence, including witness testimony, at the hearing that the party did not identify during the investigation and that was available at the time of the investigation. However, the hearing officer has discretion to accept for good cause, or exclude, such new evidence offered at the hearing.

<sup>52</sup> In the event of a dismissal under Title IX, but where the process still proceeds, the following is applicable: CA Educ. Code, Sec. 662821.8 provides that the investigator(s) or hearing officer(s) prohibit the following evidentiary considerations: (1) the past sexual history of a Complainant or Respondent except when the conditions in (3a and 3b) are present; (2) prior or subsequent sexual history between the Complainant and anyone other than the Respondent for any reason unless directly relevant to prove that the physical injuries alleged to have been inflicted by the Respondent were inflicted by another individual; or (3a) the existence of a dating relationship or prior or subsequent consensual sexual relations between the Complainant and Respondent unless the evidence is relevant to how the parties communicated consent in prior or subsequent consensual sexual relations; (3b) when evidence in (3a) is permitted, investigators and hearing officers who allow consideration of evidence about a dating relationship or prior or subsequent consensual sexual relations between the Complainant and the Respondent are required to consider that the fact the Complainant and Respondent engaged in other consensual sexual relations with one another is never sufficient by itself to establish the conduct at issue was consensual. Prior to allowing the consideration of any evidence provided under this section, the investigator(s) or hearing officer(s) will provide a written explanation to the parties as to why the evidence is consistent with this clause.

## II.H.2(I) – Investigation Process

The investigator(s) will commence a thorough, reliable and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses. The Investigator(s) will complete the investigation promptly and without unreasonable deviation from the intended timeline.

The investigator(s) will make arrangements to meet with both the Complainant and the Respondent to document their statement, preferably in person.

- The parties will be provided with written notice of the date, time, location, the purpose of the meeting, and a reminder that they have the right to be accompanied by an advisor of their choice to the interview and all subsequent meetings but are not required to be accompanied by an advisor until the hearing.
- The Respondent will be given at least two (2) business days between NOIA and the first investigation interview to allow time for the Respondent to prepare for the interview and to choose an Advisor to accompany them. The Respondent may make a request in writing to the Investigator(s) that the interview be rescheduled earlier than the conclusion of two (2) business days. It is at the discretion of the Investigator(s) to grant the request.
- The Investigator(s) will make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.

If the parties cannot be interviewed in person or if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing, they may be interviewed via Microsoft Teams, Zoom, or similar videoconference technology as the Investigator(s) must be able to observe nonverbal communication of parties during interviews.

Once the Investigator(s) have documented the interview(s), an additional meeting will be arranged so the interviewees can review and sign the Investigator(s) summary notes of the relevant evidence/testimony. If a party is unable to attend the review interview in person, the Investigator(s) will send the documentation to the party via PUC email (email addresses not provided by PUC will only be used if the party is not a member of the institution and does not have a PUC email address) in order to give the party the opportunity to review the summary notes and indicate that it is both accurate and reflects what was discussed with the Investigator(s). If the initial interview is recorded, the parties will also be provided with copies of the transcripts.

The parties may submit relevant questions in writing to the Investigator(s) that they wish to be asked of the other party and witnesses. The submitted questions will be included in the investigative report. The investigators may decline to pose a question but must provide a rationale in the investigative report as to why the question is not relevant or appropriate to the investigation.

Questions may be deemed irrelevant if:

- They are not directly related to the possible violation(s), unless they evidence a pattern; or
- Questions and evidence about the Complainant's sexual predisposition; or
- Questions and evidence about the Complainant's prior or subsequent sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant,

or if the questions and evidence concern specific incidents of the Complainant's prior or subsequent sexual behavior with respect to the Respondent and are offered to prove consent.

- They are duplicative, they repeat, in sum or substance, questions already asked.

Both parties have the right to provide the Investigator(s) with witnesses and submit inculpatory and exculpatory evidence for review. The Investigator(s) will seek to collect evidence directly related to the allegations that is reasonably available. The Investigator(s) will make the determination about what evidence to collect and which witnesses should be interviewed.

The investigator(s) have broad discretion in determining whether an offered witness or item of evidence would be relevant or helpful to a determination. For example, the investigator(s) may decline to speak to an offered witness if:

- There is insufficient evidence to conclude the person would have relevant information to the factual determination of the matter;
- The information to be solicited would be repetitive; and/or,
- The need for confidentiality outweighs the importance of the information.

The Investigator(s) will document rationales for the irrelevancy determination proffered witnesses.

Similarly, the investigator(s) may decline to seek or review documentary evidence if:

- The College does not have the expertise to consider certain scientific evidence;
- The information is repetitive;
- Cost considerations outweigh the importance of the information; and/or
- Confidentiality concerns outweigh the importance of the information.

The Investigator(s) will document rationales for the irrelevancy determination of evidence.

In addition to the already mentioned duties, the investigator(s) will:

Interview available and relevant witnesses and document the relevant evidence/testimony;  
Provide the witness(es) with the opportunity to review and approve their statements in the same manner that is granted to the parties;  
Collect, analyze, and document all pertinent evidence relevant to the investigation and provide a supplemental document with evidence gathered that was related but deemed irrelevant;  
Provide regular status updates to the parties and Title IX Coordinator throughout the investigation.

Follow-up interviews with the parties and witnesses may be warranted so they may respond to new information, questions posed by the parties, or to allow the Investigator(s) to attempt to resolve inconsistencies or questions. Follow-up interviews also will be arranged via written notice that includes the date, time, and location of the meetings, and the purpose of the meeting.

#### II.H.2(I)(i) – Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved must be made aware of and consent to audio and/or video recording in accordance with California law, a “dual-party recording” state.



#### II.H.2.(I)(i) – Preliminary Investigative Report

Typically, within thirty (30) business days of the NOIA, the Investigator(s) will provide a written preliminary investigative report to the Title IX Coordinator. The presentation of the preliminary investigative report represents the belief of the investigator(s) that the fact gathering process is complete.

The preliminary investigative report will include:

- A summary of the relevant facts gathered; and
- All evidence obtained as part of the investigation that is directly related to the reported misconduct, evidence will be separated into two categories:
  - All evidence related to the reported misconduct which appears to prove or disprove an issue in the complaint; and
  - Evidence directly related when it is connected to the reported misconduct, but is not relevant, in that it is neither inculpatory nor exculpatory and will not be relied upon by the investigation report (to be supplied in a supplementary document).

The investigator(s) may make a request to the Title IX Coordinator for an extension of the thirty (30) business day period for reasonable circumstances. In such a case, the Title IX Coordinator will make a determination if the thirty (30) business day period may be extended and for how long. The Title IX Coordinator will then inform the parties of the extension to the investigation in writing.

Upon submission by the investigator(s), Title IX Coordinator will review the preliminary investigative report to confirm that it is complete. The Title IX Coordinator may request further fact gathering from the investigator(s) if deemed necessary.

Once the Title IX Coordinator has reviewed and confirmed the completeness of the preliminary investigative report, the Title IX Coordinator will:

- Watermark each page of the preliminary investigative report and evidentiary materials with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor) and, if sent via secure technology, protect the document to prevent tampering;
- Provide a Notice of Preliminary Report (NPR) to the parties (and their respective Advisors if so desired by the parties), informing them that the preliminary investigative report is completed;
  - Inform the parties of a ten (10) business day response period in which they may provide written feedback of the preliminary investigative report to the Title IX Coordinator, submit questions to be posed to witnesses or the other party, make a case as to why evidence deemed irrelevant should be considered relevant, submit additional evidence not previously available, and/or request additional fact gathering;
  - Inform the parties of their right to waive the ten (10) days and turn in the materials ahead of time;
  - Provide the preliminary investigative report and evidence to the parties for their review via a secure document exchange service.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Investigator(s) will review the parties' responses and incorporate relevant feedback from the parties as appropriate, include any additional relevant evidence, make any necessary revisions, and finalize the

report. The Investigator(s) should document all rationales for any changes made after the review and comment period.

In the event a party requests additional fact gathering, the Investigator(s), in consultation with the Title IX Coordinator, will evaluate the request and determine whether additional fact gathering should be undertaken. If it is determined that the request will be granted, a revised preliminary investigative report will be made available to the parties for their review within ten (10) business days. This term may be extended by the Title IX Coordinator for reasonable cause. The parties will have two (2) business days to review the revised preliminary investigative report and submit their feedback in writing to the Title IX Coordinator.

#### **II.H.2(l)(iii) – Final Investigative Report**

The final investigative report is submitted to the Title IX Coordinator to be shared with the parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not used by the Investigator(s) report.

Upon receipt of the final investigative report, the Title IX Coordinator will:

- Watermark each page of the final investigative report and evidentiary materials with the role of the person receiving it (e.g., Complainant, Respondent, Complainant’s Advisor, Respondent’s Advisor) and, if sent via secure technology, protect the document to prevent tampering;
- Provide a Notice of Final Report (NFR) to the parties (and their respective Advisors if so desired by the parties), informing them that the final investigative report is completed;
- Provide the final investigative report and evidence to the parties for their review via a secure document exchange service at least ten (10) business days before the hearing so they may adequately prepare for the hearing.

Once the NFR is mailed, emailed, and/or received in-person, notice will be presumptively delivered. By sending the NFR to the parties, the investigation is considered closed.

#### **II.H.2(m) – Right to Request Informal Resolution**

At any time during the Formal Grievance process, either party may request the complaint be referred to Informal Resolution. To explore informal resolution processes, see [§II.H.1](#). If a referred Informal Resolution process is unsuccessful, the Formal Grievance process will be reinstated.

#### **II.H.2(n) – Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation and the NFR—when the final investigation report is transmitted to the parties as this time allows parties to prepare to participate in the hearing—unless all parties, The Title IX Coordinator, and the Chair agree to an expedited timeline.

The Title IX Coordinator will select appropriate Decision-maker(s) from the Pool (or hire outside professionals as deemed necessary by the Title IX Coordinator) and provide a copy of the final investigative report and the supplemental file of directly related evidence that was deemed irrelevant

by the Investigator(s).

### **II.H.2(o) – Hearing**

Participants will include the Title IX Coordinator, the Decision-maker(s), the Investigator(s) who conducted the investigation, the Complainant, the Complainant’s advisor, the Respondent, the Respondent’s advisor, and any called witnesses.

The Title IX Coordinator a single Decision-maker or a three (3)-member panel<sup>53</sup> from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three (3) members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the complaint. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

The Title IX Coordinator acts as an administrative facilitator of the hearing and holds the responsibility of ensuring the procedures are followed, provided that their previous role(s) in the matter do not create a conflict of interest, otherwise, a designee may fulfill this role. The Title IX Coordinator may not serve as a Decision-maker; all substantial decisions are made by the Hearing Decision-makers.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

In consultation with the Chair, the Title IX Coordinator will schedule the time and venue for the hearing at least ten (10) business days after the close of the investigation and the NFR.

Hearings for possible violations that occur near or after the end of an academic quarter (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of quarter will typically be held immediately after the end of the quarter or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-90 business-day goal for Resolution Proceedings that occur during months between contracts.

In these cases, if the Respondent is a graduating student, a hold may be placed on the diploma and/or official transcripts until the matter is fully resolved (including any appeal).

### **II.H.2(o)(i) – Additional Evidentiary Considerations in the Hearing**

In addition to the evidentiary considerations provided in [§II.H.2\(k\)](#), the Decision-makers will not consider previous disciplinary action of any kind involving the Respondent unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

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<sup>53</sup> A three-member panel of Decision-makers is the preferred panel construction. A single Decision-maker will only be used as determined by the Title IX Coordinator as necessary.

The parties may each submit a written impact/mitigation statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process if a determination of responsibility is reached.

After post-hearing deliberation, the Decision-makers render a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

#### II.H.2(o)(ii) – Notice of Hearing

No less than ten (10) business days prior to the hearing,<sup>54</sup> the Title IX Coordinator will send a Notice of Hearing (NOH) to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the conduct alleged to violate policy, a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator as soon as possible, preferably at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and how the parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the College will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.
- A statement that questions that are repetitive, irrelevant, or harassing are prohibited.
- A statement that parties may note an objection to questions posed.<sup>55</sup>
- A copy of all the materials provided to the Decision-maker(s) about the complaint unless they have already been provided.<sup>56</sup>

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<sup>54</sup> Unless an expedited hearing is agreed to by all parties.

<sup>55</sup> CA Educ. Code, Sec. 66281.8 provides that institutions may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record. The hearing officer has the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.

<sup>56</sup> CA Educ. Code, Sec. 66281.8 provides that institutions may limit such objections to written form, and neither the hearing officer nor the institution are obligated to respond, other than to include any objection in the record. The hearing officer has

- Notification for the parties regarding pre-hearing submissions of questions or topics they, or their advisors, wish to ask or discuss at the hearing. Pre-hearing submissions do not preclude the parties' Advisors from asking additional questions at the hearing.
- An invitation to each party to submit to the Title IX Coordinator and/or Chair an impact and/or mitigation statement pre-hearing that the Decision-maker(s) will review during any sanction determination.
- A notification that impact statements will be provided to the other party for review.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

#### II.H.2(o)(iii) – Alternative Hearing Setup

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know as soon as possible, preferably at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

#### II.H.2(o)(iv) – Pre-Hearing Preparation

The Chair, after any necessary consultation with the other Decision-makers and/or parties, will provide the names of persons who will be participating in the hearing, to the Title IX Coordinator, who will provide the names to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by Investigator(s), or have proffered a written statement, or answered written questions, unless all parties consent to the participation of that witness in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.<sup>57</sup>

The parties will be given a list of the names of the Decision-maker(s) in the NOH. All objections to any Decision-maker(s) must be raised in writing to the Title IX Coordinator detailing the rationale for the objection and must be submitted to the Title IX Coordinator as soon as possible and no later than two business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the complaint.

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the authority and obligation to discard or rephrase any question that the hearing officer deems to be repetitive, irrelevant, or harassing. In making these determinations, the hearing officer is not bound by, but may take guidance from, the formal rules of evidence.

<sup>57</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires “timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings.”

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties when approached to serve as a Decision-maker, and a list of the witnesses and Advisors during pre-hearing preparations. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible. (See [§II.G.2\(d\)\(iv\)](#) for more information regarding participant recusal based on bias or conflicts of interest).

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair or the Title IX Coordinator.

#### II.H.2(o)(v) – Pre-Hearing Meetings and Submissions

The Chair, along with the Title IX Coordinator, may convene a pre-hearing meeting(s) with the parties and/or their Advisors and invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, only with the full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing. Upon receiving the list of called witnesses, the parties may submit a request in writing to include any witnesses interviewed in the investigative report but not called to the hearing. The Chair will consider the request and determine if the requested witnesses will be called.

At each pre-hearing meeting with a party and/or their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator.

The pre-hearing meeting(s) will not be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the same time, remotely, or as a written-only exchange. The Chair, in consultation with the Title IX Coordinator, will work with the parties to establish the format.

#### II.H.2(o)(vi) – Hearing Setup

Participants at the hearing will include the Chair, any additional Decision-maker(s), the Title IX Coordinator (or designee) as the hearing facilitator, the Investigator(s) who conducted the investigation,

the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf. All participants are expected to adhere to the relevant Rules of Decorum as outlined in [Appendix B](#). There will be no observers in the hearing. Witnesses who have relevant information will appear at portions of the hearing to respond to specific questions from the Decision-maker(s) and the parties involved, and then be excused. The Investigator(s) will remain present for the duration of the hearing, unless the parties and Chair agree to allow the Investigator(s) to be dismissed early.

Proceedings are private. All persons present at any time during the hearing are expected to maintain the privacy of the proceedings in accordance with College policy. While the contents of the hearing are private, the Complainant and Respondent have discretion to share their own experiences if they so choose and should discuss doing so with their advisors.

#### II.H.2(o)(vii) – Hearing Recordings

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties (with or without their Advisors), and appropriate administrative officers of the College will be permitted to listen to the recording in a controlled environment by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

#### II.H.2(o)(viii) – Joint hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation.

#### II.H.2(o)(ix) – Hearing Procedures

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) based on bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Hearing Facilitator then conducts the hearing. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by the non-voting hearing facilitator, which is typically Title IX Coordinator, although the Title IX Coordinator may designate an alternative Hearing Facilitator.

The Hearing Facilitator may also attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

**Investigator(s) Report:** The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from discussion of or questions for the Investigators about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

**Testimony and Questioning:** Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.<sup>58</sup>

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

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<sup>58</sup> If a dismissal occurs under Title IX, and the hearing process continues, CA law does not permit questioning by Advisors. All questions must be submitted by the parties/Advisors to the Decision-maker or Chair, who will pose them if the questions are relevant.



At the conclusion of the testimony and questioning, each party will be given the opportunity, but are not required, to give a final, concluding statement if they so wish. If a party chooses to take the opportunity to give a concluding statement, they will be provided up to 10 minutes for their statement.

**Participation in Cross-Examination and Inferences:** Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

If a party's Advisor of choice refuses to comply with the College's established rules of decorum for the hearing, the College may require the party to use a different Advisor. If a College-provided Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **II.H.2(p)– Deliberation and Decisions**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the policy violation(s) in question. When a panel is used, a simple majority vote is required to determine the finding. The Decision-maker(s) will base their findings on a preponderance of the evidence (i.e., whether it is more probable than not that the Respondent committed each alleged violation).<sup>59</sup> The hearing facilitator will attend the deliberations to facilitate procedurally but will not address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact and/or mitigation statements (if any) in determining appropriate sanction(s). The Title IX Coordinator or the Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will also review any pertinent conduct history provided by the Title IX Coordinator and will determine the appropriate sanction(s) in consultation with other appropriate administrations, as needed or required. Consultation outcomes are considered advisory and not binding on the Decision-maker(s).

The Chair will then prepare a written deliberation statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and/or remedies and rationales explaining the sanction(s), and will deliver the statement to the Title IX Coordinator.

This report must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

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<sup>59</sup> Under CA SB 967, the standard used in determining whether the elements of the complaint against the Respondent have been demonstrated is the preponderance of the evidence.

### **II.H.2(q) – Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome (NOO) report, which may be reviewed by legal counsel. The Title IX Coordinator will then share the report, which includes the final determination, rationale, and any applicable sanction(s) with the parties, and when the determination will be considered final, and their Advisors within five (5) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official College records, or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged policy violating conduct, including the relevant policy section(s), and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding for each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanction(s) issued which the College is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to the College's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered final by the College, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

### **II.H.2(r) – Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation;
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation;
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community;
- The impact on the parties;
- Any other information deemed relevant by the Decision-maker(s).

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

#### II.H.2(r)(i) – Student Sanctions

The following are common sanctions that may be imposed upon students singly or in combination:

- **Warning:** A formal statement that the behavior was unacceptable and a warning that further infractions of any College policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Required Counseling:** A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the misconduct and its effects.
- **Probation:** A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any College policy, procedure, or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact directives, and/or other measures deemed appropriate—*see restrictive probation in definitions*.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at Pacific Union College.
- **Expulsion:** Permanent termination of student status, revocation of rights to be on campus for any reason or attend PUC-sponsored events.
- **Withholding Diploma:** PUC may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** The College reserves the right to revoke a degree awarded from Pacific Union College for fraud, misrepresentation, or other violation of PUC policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Organizational Sanctions:** Deactivation, loss of recognition, loss of some or all privileges (including College registration) for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

#### II.H.2(r)(ii) – Employee Sanctions, Responsive/Corrective Actions

The following are examples of sanctions, responsive/corrective actions that may be imposed upon an **employee** who has engaged in sex discrimination, sexual harassment, and/or retaliation:

- Warning – verbal or written;
- Performance improvement plan/management process;
- Enhanced supervision, observation, or review
- Required counseling;
- Required training or education;
- Probation;

- Denial of pay increase/pay grade;
- Loss of oversight or supervisory responsibility;
- Demotion;
- Transfer;
- Reassignment;
- Delay of tenure track progress;
- Assignment to new supervisor;
- Restriction of stipends, research, and/or professional development resources;
- Suspension/administrative leave with pay;
- Suspension/administrative leave without pay;
- Termination;
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the College may assign any other responsive actions as deemed appropriate.

### **II.H.2(s) – Withdrawal or Resignation Before Complaint Resolution**

**Students:** Should a Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the College, the Resolution Process typically ends with a dismissal, as the College has lost primary disciplinary jurisdiction over the withdrawn student. However, the College may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged sexual harassment, discrimination, and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the College. Such exclusion applies to all campuses of Pacific Union College. Admissions and Human Resources will be notified.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and, if found in violation, that student is not permitted to return to College unless and until all sanctions, if any, have been satisfied.

**Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process typically ends with dismissal, as the College has lost primary disciplinary jurisdiction over the resigned employee. However, the College may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged sexual harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, the College will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment, discrimination, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for academic admission or rehire with the College and the records retained by the Title IX Coordinator, Admissions Office, and Human Resources will reflect that status.

All College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **II.H.2(t) – Appeals**

Any party may submit a written request for appeal (“Request for Appeal”) to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome. The Title IX Coordinator will designate an Appeals Decision-maker from the Pool to review the “Request for Appeal” and act as the Decision-maker. No appeal decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. If there is an inadequate supply of Pool members, the Title IX Coordinator may designate a trained consultant to act as the Appeals Officer.

The Request for Appeal will be forwarded to the Appeals Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **II.H.2(t)(i) – Grounds for Appeal**

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeals Decision-maker, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeals Officer will notify all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hardcopy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeals Decision-maker to all parties for review and comment.

The non-appealing party (if any) may choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeals Decision-maker and either denied or

approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, the Investigator(s), and/or original Decision-maker(s), as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeals Decision-maker will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses, and render a decision in no more than seven (7) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which the College is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the College is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' College-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

#### II.H.2(t)(ii) – Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed (i.e.: not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures discussed in the Policy.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, the College may place a hold on official transcripts, diplomas, graduations, course registration, etc. pending the outcome of an appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator or designee, whose determination is final.

#### II.H.2(t)(iii) – Appeal Considerations

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for Appeals Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).

- The Appeals Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing)
- In rare cases where an error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new investigation and/or a new hearing with new Pool members serving in the Investigator and Decision-maker roles.
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **II.H.2(u) – Long-Term Remedies/Actions**

Following the conclusion of the Resolution Process and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy its effects, and prevent their reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services;
- Referral to the Employee Assistance Program;
- Education to the individual and/or community;
- Permanent alteration of housing assignments;
- Permanent alteration of work arrangements for employees;
- Provision of campus safety escorts;
- Climate surveys;
- Policy modification and/or training;
- Provision of transportation accommodations;
- Implementing long-term contact limitations between the parties;
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access.

The College will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the College's ability to provide these services.

### **II.H.2(v) – Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All Respondents are expected to comply with assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeals Decision-maker).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College and may be noted on a student's records or in the employee's permanent file in Human Resources. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **II.H.2(w) – Recordkeeping**

The College will maintain for a period of at least seven years following the conclusion of the Resolution Process, records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. The College will make these training materials publicly available on PUC website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to the College's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The College will also maintain any and all records in accordance with state and federal laws.



### III – Revisions

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This Policy and procedures supersede any previous policies addressing sex discrimination, sexual harassment, sexual misconduct, and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules, etc. The Title IX Coordinator may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this policy and procedure.

If government laws or regulations change—or court decisions alter—the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws or regulations or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws which frame such policies and codes generally.

This policy and procedure will be effective upon posting to PUC website.

**Valid as of January 1, 2022.**

## IV – Definitions

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**Advisor:** A person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and in the case of a Process A hearing (if any), to conduct questioning for the party. An Advisor may, but is not required to be, an attorney.

**Appeal Decision-maker:** The person who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.

**Coercion:** Unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type of and/or extent of the pressure someone uses to obtain consent. When someone makes clear that they do not want to engage in certain 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.

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute harassment or discrimination; or retaliation for engaging in a complaint or grievance process.

**Complaint (formal):** Complaint (formal) means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination or retaliation for engaging in a protected activity against a Respondent and requesting that the College investigate the allegation.

**Confidential Resource:** An employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status). These employees include the campus chaplain, the staff, therapists, and health providers at the Wellness Center.

**Consent:**<sup>60</sup> An active giving of permission to engage in activity. Consent is affirmative, knowing, conscious, and voluntary, and provides clear permission by word or action to engage in sexual activity.

**Dating Violence:** Violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic and/or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

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<sup>60</sup> According to California law: "An affirmative consent standard in the determination of whether consent was given by both parties to sexual activity. "Affirmative consent" means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent." For additional information: [https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB967](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB967)

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

**Day:** A business day when Pacific Union College is in normal operation.

**Decision-maker(s):** The person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.

**Directly Related Evidence:** Evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.

**Discrimination:** Actions that deprive, limit, or deny other members of the community of educational or employment and/or social access, benefits, and/or opportunities, including disparate treatment on the basis of actual or perceived sex or gender.

**Discriminatory Harassment:** Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived sex or gender.

**Domestic Violence:** Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, or by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of California

**Education program or activity:** Locations, events, or circumstances where Pacific Union College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.

**Employee:** Any person employed by the College at any of its facilities or campus.

**Final Determination:** A conclusion by the standard of proof (preponderance of the evidence) that the alleged conduct did or did not violate policy.

**Finding:** A conclusion by a preponderance of the evidence that the conduct did or did not occur as alleged (as in a "finding of fact").

**Force:** The use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent ("Have sex with me or I'll hit you." "Okay, don't hit me, I'll do what you want.").

**Formal Grievance Process:** A method of formal resolution designated by the College to address conduct that falls within the Sex Nondiscrimination and Sexual Harassment policy, and which complies with the requirements of the Title IX regulations (34 CFR 106.45) and the Violence Against Women Act § 304.

**Grievance Process Pool:** Includes any investigators, hearing decision-makers, appeal decision-makers, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same complaint).

**Hearing Panel:** Those who have decision-making and sanctioning authority within the Pacific Union College's formal grievance processes as outlined in the Sex Nondiscrimination and Sexual Harassment policy.

**Hostile Environment:** A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive *and* objectively offensive.

**Incapacitation:** A state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). A person cannot consent if s/he is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. Incapacitation may also result from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

**Intimidation:** Implied threats or acts that cause an unreasonable fear of harm in another.

**Investigation:** An investigation is a formal review of all pertinent evidence related to an allegation of a violation of the College's Sex Nondiscrimination and Sexual Harassment Policy. In an investigation process, the Title IX Coordinator will appoint one or more investigators to gather facts about an alleged violation of the Policy, providing an initial assessment of relevance, synthesizing the evidence, and compiling this information into an investigation report of directly related evidence.

**Investigator(s):** The person or persons charged by Pacific Union College to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of Relevant Evidence and a file of Directly Related Evidence.

**Mandated Reporter:** An employee of Pacific Union College who is obligated by policy to share knowledge, notice, and/or reports of sex discrimination, sexual harassment, and/or retaliation with the Title IX Coordinator.<sup>61</sup>

**Notice:** An employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

**Official with Authority (OWA):** An employee of the College explicitly vested with the responsibility to implement corrective measures for sex discrimination, sexual harassment, and/or retaliation on behalf of the College.

**Parties:** The Complainant(s) and Respondent(s), collectively.

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<sup>61</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

**Preponderance of Evidence:** The greater weight of the evidence; a standard of proof by which the evidence provides credible truth that a policy violation is more probable to have been committed than not.

**Quid Pro Quo:** An employee of the College, conditions the provision of an aid, benefit, or service of the College, on an individual's participation in unwelcome sexual conduct.

**Recipient:** A postsecondary education program that is a recipient of federal funding. For the purposes of this policy, Pacific Union College.

**Relevant Evidence:** Evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.

**Remedies:** Post-Final Determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College's education program.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination; or retaliation for engaging in a complaint or grievance process.

**Responsible Employee:**<sup>62</sup> An employee who has the authority to take action to redress sexual harassment or provide supportive measures to students, or who has the duty to report sexual harassment to an appropriate school official who has that authority.

**Resolution:** The result of an informal or Formal Grievance Process.

**Restrictive Probation:** A major disciplinary offense or series of violations may result in a loss of good standing and a matter of official record denoted by this sanction. Restrictive probation limits the student's activity on the campus and within the college community. The student cannot be initiated into any local or national organization, receive any college award or recognitions, occupy a position of leadership or travel with any college student organization. Further, the College may restrict any student's access to campus or use of campus services and facilities. Restrictive probation is for a period of not less than 2 academic terms. Any violation of Restrictive Probation orders may result in immediate suspension.

**Restorative Justice:**<sup>63</sup> A cooperative resolution process which emphasizes repairing harm caused by a policy violation by requiring the Respondent to take accountability for their actions and responsibility for harm caused by their actions and rebuilding trust.

**Retaliation:** Adverse action taken against a person participating in a protected activity because of their participation in that protected activity. A materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified,

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<sup>62</sup> Responsible employee is defined in CA Educ. Code Sect. 66281.8.

<sup>63</sup> *The Little Book of Restorative Justice for Colleges and Universities*, by David R. Karp; <http://restorativejustice.org/restorative-justice/#sthash.kwqrKjtg.dpbs>.

assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

**Sanction:** A consequence imposed by the College on a Respondent who is found to have violated this policy.

**Sexual Assault:** An umbrella category under Title IX Sexual Harassment which includes two categories: (1) Sex Offenses, Forcible and (2) Sex Offenses, Non-forcible.

1. **Sex Offenses, Forcible:** Any sexual act<sup>64</sup> directed against another person<sup>65</sup> without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
2. **Sex Offenses, Non-forcible:**
  - **Incest:** Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by California<sup>66</sup> law.
  - **Statutory Rape:** Non-forcible sexual intercourse, with a person who is under the statutory age of consent (18 years of age in California).

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<sup>64</sup> A “sexual act” is specifically defined by federal regulations to include one or more of the following:

**Rape:**

- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,
- without their consent,
- including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.”

**Sodomy:**

- Oral or anal sexual intercourse with a Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Sexual Assault with an Object:**

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of the Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Fondling:**

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>65</sup>Including, but not limited to, having another person touch sexually, forcibly, or without their consent, or other non-consensual sexual activities such as non-consensual condom removal or tampering, commonly known as “stealthing.”

<sup>66</sup> For more information regarding the California state definition for incest.

[http://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=285.&lawCode=PEN](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=285.&lawCode=PEN)

**Sexual Battery:** The intentional touching of another person’s intimate parts without consent, or intentionally causing a person to touch the intimate parts of another without consent, or using a person’s own intimate part to intentionally touch another person’s body part without consent.

**Sexual Exploitation:** A person taking sexual advantage of another person, for the benefit of anyone other than that person, without that person’s consent, including, but not limited to, any of the following acts:

- the prostituting of another person,
- the trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion,
- the recording of images, including video or photograph, or audio of another person’s sexual activity or intimate parts, without that person’s consent,
- the distribution of images, including video or photograph, or audio of another person’s sexual activity or intimate parts, 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 the disclosure, or
- The viewing of another person’s sexual activity or intimate parts, in a place where the other person would have a reasonable expectation of privacy, without that person’s consent, for the purpose of arousing or gratifying sexual desire.
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Knowingly creating, possessing, or disseminating child pornography

**Sexual Harassment:** The umbrella category including the offenses of:

- California: sexual harassment, sexual battery, sexual violence, and sexual exploitation.
- Title IX: sexual harassment, sexual assault, stalking, and dating violence and domestic violence.

**Sexual Harassment – California:** unwelcome sexual advances, or requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature, made by someone from in the work or educational setting,<sup>67</sup> under any of the following conditions:

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<sup>67</sup> The Department of Housing and Urban Development (HUD) Fair Housing Act requires — when an institution provides student and/or faculty/staff housing and sexual harassment occurs in an institution-owned residence — that the FHA/Title VII definition of sexual harassment will also apply in addition to the Title IX definition (use the definition of discriminatory harassment above, or the CA definition, to comply).

- submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or
- submission to, or rejection of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or
- the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, or
- submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

**Sexual Harassment – Title IX:** unwelcome<sup>68</sup> conduct, determined by a reasonable person, to be so severe, and pervasive, and, objectively offensive, that it effectively denies a person equal access to the College's education program or activity.

**Sexual Intercourse:** Vaginal or anal penetration by a penis, tongue, finger, or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

**Sexual Violence:** Physical sexual acts, perpetrated against a person without the person's affirmative consent. Physical act includes:

Rape: Penetration, no matter how slight, of the vagina or anus, with any part or object, or oral copulation of a sex organ by another person without the consent of the victim.

Sexual Battery: The intentional touching of another person's intimate parts without consent, or intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body part without consent.

**Stalking:** Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffers substantial emotional distress.

For the purposes of this definition—

Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

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<sup>68</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent, which is 18 in California). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.



**Student:** An individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with the College.

**Title IX Coordinator:** The official designated by the Pacific Union College to ensure compliance with Title IX and the College's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

**Title IX Team:** The Title IX Coordinator, the Deputy Coordinator, and any member of the Grievance Process Pool.

**Witness:** An individual who may provide relevant evidence, other than the parties in an investigation.

## Appendix A – Rights of the Parties

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- The right to an equitable investigation and resolution of all credible allegations of prohibited sexual harassment, discrimination, and/or retaliation made in good faith to College officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information by the College regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released by the College to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by College officials.
- The right to have College policy and these procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by College officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
- The right to be informed by College officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by the College in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by College Public Safety and/or other College officials.
- The right to be informed of available supportive measures, such as counseling; advocacy; health care; student financial aid, visa, and immigration assistance; and/or other services, both on campus and in the community.
- The right to a College-implemented no-contact order (or a no-trespass order against a non-affiliated third party) when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.

- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location
  - Assistance from College staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation assistance
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and provide a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options
  
- The right to have the College maintain such actions for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair the College's ability to provide the supportive measures.
  
- The right to receive sufficiently advanced, written notice of any College meeting or interview involving another party, when possible.
  
- The right to identify and have the Investigator(s), Advisors, and/or Decision-maker(s) question relevant available witnesses, including expert witnesses.
  
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker(s), may be asked of any party or witness.
  
- The right to have inadmissible sexual predisposition/prior sexual history or irrelevant character evidence excluded by the Decision-maker(s).
  
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
  
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
  
- The right to receive a copy of all relevant and directly related evidence obtained during the investigation, subject to privacy limitations imposed by state and federal law, and a ten (10)-business-day period to review and comment on the evidence.
  
- The right to receive a copy of the final investigation report, including all factual, policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to the hearing.

- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to a Hearing Panel that is not single sex in its composition, if a panel is used.
- The right to preservation of confidentiality/privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any College representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- The right to the use of a preponderance of the evidence to make a Finding and Final Determination after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.
- The right to have an impact and/or mitigation statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed of the finding(s) and sanction(s) (if any) of the Resolution Process and a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written Notice of Outcome letter delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the College is considered final and any changes to the Final Determination or sanction(s) that occur post Notification of Outcome.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the Resolution Process, and the procedures for doing so in accordance with the standards for appeal established by the College.
- The right to a fundamentally fair resolution as defined in these procedures.

# Appendix B – Rules of Decorum in Grievance Process Hearings

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Grievance process hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. They are primarily educational and administrative in nature.<sup>69</sup> The following rules of decorum require that all participants engaged in the process treat each other with respect.

The rules and standards apply equally to all parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

## Rules of Decorum

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the Complainant and Respondent) and advisors:

1. Participants are to remain seated while the hearing is in session, including when asking questions.
2. No participant may act abusively, unduly harassing or hostile, or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers, or any other participants.
3. An advisor, whether an attorney or not, does not speak for or represent parties in the hearing except when questioning the other party or witnesses. At all other times, advisors serve as an advisor rather than an advocate for a party. When an advisor is questioning parties and witnesses on a party's behalf, advisors are expected to remain mindful of and adhere to these rules of decorum at all times.
4. No action may be taken at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.
5. Questions may be proposed orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair). Questions submitted orally must be conveyed in a neutral tone. The advisor or questioning party may not yell, scream, or badger.
6. The advisor or questioning party may not use profanity or make irrelevant *ad hominem* attacks upon a party or witness. Questions are meant to be interrogative, used to test knowledge, or understand a fact and should not include accusations within the text of the question.
7. After a question is posed, the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased. The

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<sup>69</sup> The U.S. Department of Education, writing about Title IX in the Final Rule “purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner.” 85 Fed. Reg. 30026, 30319 (May 19, 2020).

Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

**Questions may be deemed irrelevant if:**

They are not directly related to the allegations, unless they evidence a pattern;

- They constitute, or seek the disclosure of, information protected under a legally-recognized privilege (such as protected information between a therapist/client or medical provider/patient) without voluntary, written consent of the party being questioned;
- They reference the Complainant’s sexual predisposition;
- They reference the Complainant’s prior or subsequent sexual behavior, unless such questions about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
- They reference disciplinary action of any kind involving the Respondent unless there is an allegation of a pattern of misconduct;
- They are duplicative, they repeat, in sum or substance, questions already asked in the hearing. This includes questions that have already been asked by the decision-maker(s), an advisor or questioning party, or already answered by a party or witness in direct testimony. When the Chair determines a question has been “asked and answered” or is otherwise not relevant, the determination is final.

### Relevant Questions Asked in Violation of the Rules of Decorum

Where a relevant question is asked in a manner that violates the Rules, such as yelling, screaming, badgering, abusively, or in an unduly harassing, hostile, or disrespectfully manner, the question may not be deemed irrelevant by the Chair simply because of the manner it was delivered. Under that circumstance, the Chair will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).<sup>70</sup>

### Warning and Removal Process

The Chair shall have sole discretion to determine if the Rules have been violated. The Chair will warn the offending person of any violation of the Rules. Upon a second violation of the Rules, the Chair will determine how to address the person’s non-compliance and future role. The Chair shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Chair removes a party’s advisor, the party may select a different advisor of their choice, or accept an advisor provided by the institution for the limited purpose of cross-examination. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed—a party cannot serve as their own advisor in this circumstance.

The Chair shall document any decision to remove an Advisor in the written determination regarding responsibility.

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<sup>70</sup> 85 Fed. Reg. 303319-30331.

## Appendix C – Statistics on the Prevalence of Sexual Harassment and Sexual Assault in the Education Setting

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The College provides training to the Grievance Process Pool on the following statistics:<sup>71</sup>

1. Sex discrimination, including sexual harassment and violence, harms all students, undermines students' physical safety, impedes students' ability to learn, and can reinforce social inequality throughout a student's lifetime.
2. Sexual harassment and violence in higher education is pervasive. According to research published by the American Association of University Women, during college, 62 percent of women and 61 percent of men experience sexual harassment. The Association of American Universities (AAU) survey of students shows that more than 1 in 5 women and nearly 1 in 18 men are sexually assaulted in college.
3. Historically marginalized and underrepresented groups are more likely to experience sexual harassment than their peers. Research from GLSEN and the Centers for Disease Control and Prevention show that more than one-half of LGBTQ students 13 to 21 years of age, inclusive, are sexually harassed at school. An AAU survey indicates that nearly one in four transgender and gender-nonconforming students are sexually assaulted during college. According to a National Women's Law Center (NWLC) report, students with disabilities are 2.9 times more likely than their peers to be sexually assaulted.
4. Sexual harassment occurs both on campus and in off-campus spaces associated with school. Nationwide, nearly 9 in 10 college students live off campus and 41 percent of college sexual assaults involve off-campus parties. Research by the Rape, Abuse & Incest National Network indicates that only 8 percent of all sexual assaults occur on school property.
5. Survivors generally underreport instances of sexual harassment and assault. The NWLC reports that only 12 percent of college survivors report sexual assault to their schools or the police.
6. Research published in the Journal of College Student Retention: Research, Theory & Practice demonstrates that 34 percent of sexual harassment and violence survivors drop out of college.

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<sup>71</sup> These statistics are included in CA Educ. Code, Section 66281.8.

## Appendix D – Athletics Department Protocol for Suspensions and Remedies

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In accordance with Title IX of the Education Amendments of 1972 and its implementing regulations, the Pacific Union College Athletics Department has implemented the following protocol, effective immediately, which addresses how the Athletics Department will respond to allegations of sex or gender-based discrimination, sexual harassment (sexual assault, dating and domestic violence, and stalking), and/or retaliatory conduct involving all members of the campus community in education programs and activities.

If a student-athlete is involved or believed to be involved **in any way** in an incident that involves any of the above offenses, neither the Athletic Department, nor any staff, trainers, or coaches, may alter or restrict a student-athlete's involvement in competition, training, or practice or access to athletic facilities, associated programs or services without conferring first with the Title IX Office or Coordinator.

Any such restriction or alteration may require some type of due process that will be afforded through the Title IX Office, not through the Athletics Department. This process is afforded under the Sex Nondiscrimination and Sexual Harassment Policy and associated procedures. Any restrictions or alterations requested by the student-athlete (including self-restrictions) should be immediately communicated to the Title IX Coordinator.

Athletic staff may make modifications to practice or weightlifting schedules, transportation, travel accommodations, etc. pending the outcome of the investigation and formal grievance process, but only after conferring with the Pacific Union College Title IX Coordinator, and on when the student-athlete is not unduly burdened by such modification. The Athletics Department will continue to work with the Pacific Union College Title IX Coordinator to help to facilitate any No Contact or No Communication Directives or other Interim Measures issued by the Title IX Office.

Any decisions regarding student-athlete involvement in athletics following any determination of any violations of Title IX related policies should be made after conferring with the Title IX Coordinator. For more information, please contact the Title IX Coordinator at (707) 965-6226 or [titleix@puc.edu](mailto:titleix@puc.edu).