

UNIVERSITY OF THE PACIFIC
POLICY PROHIBITING SEXUAL MISCONDUCT,
DISCRIMINATION AND RETALIATION

This policy applies to all University of the Pacific community members, including Students, Faculty, Staff, administrators, consultants, vendors and others engaged in business with the University. The University's prohibition of Misconduct includes conduct occurring on any campus or off-campus, including online and electronic communication or other conduct.

Approved by:



Pamela A. Eibeck, PhD
President
February 16, 2016

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I. POLICY STATEMENT	3
II. PURPOSE	3
III. SCOPE.....	3
IV. EDUCATION AND PREVENTION	4
V. PROHIBITED MISCONDUCT – DEFINITIONS.....	4
VI. IMMEDIATE ASSISTANCE FOR VICTIMS AND HOW TO FILE A COMPLAINT	5
A. Contacts for Medical Treatment and Filing Complaints	6
VII. POLICY QUESTIONS	9
VIII. PROCEDURES FOR ALLEGED VIOLATIONS OF UNIVERSITY OF THE PACIFIC’S POLICY PROHIBITING MISCONDUCT	9
A. Effect of Criminal Charges/Investigation.....	10
B. Pre-Investigation Review	10
C. Rights of the Complainant and Respondent	10
D. Participation.....	11
E. Limits on Student Discipline	11
F. Privacy and Confidentiality	11
G. Notification.....	12
H. Advisor and Process Guide	12
I. Pre-Investigation Interim Measures	13
J. Investigation	13
K. Review Panel and Hearing	15
L. Appeals.....	18
M. Sanction Implementation.....	19
N. Timelines and Modification	20
ADDENDUM A – DEFINITIONS	21

I. POLICY STATEMENT

University of the Pacific seeks to promote an environment that is free of Sexual Misconduct, Discrimination and Retaliation. Sexual Misconduct includes Sexual Violence, Stalking, Dating Violence, Domestic Violence and Gender-Based Harassment, terms that are defined in Addendum A of this Policy. Throughout this Policy, this prohibited conduct will be referred to generally as “Misconduct.” The University seeks to educate students, faculty and staff about the issue of Misconduct and to provide a clear path to resolution and correction of prohibited Misconduct. The University reserves the right to respond with whatever measures it deems appropriate to prevent Misconduct and preserve the safety and wellbeing of the University community.

The University is committed to compliance with Title IX of the Education Amendments of 1972, the Campus SaVE Act, and state and federal sexual discrimination laws. Title IX states,

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance.”

University of the Pacific prohibits Misconduct in any form.

II. PURPOSE

The purpose of this Policy is to:

- Affirm the University’s commitment to preventing Misconduct
- Affirm the University’s commitment to provide educational and preventative training regarding Misconduct
- Identify resources and support for victims of Misconduct
- Establish procedures for filing and handling complaints of Misconduct
- Define Misconduct that includes Sexual Violence, Stalking, Dating Violence, Domestic Violence and Gender-Based Harassment, Discrimination and Retaliation.
- Assure that members of the University community respond appropriately when incidents occur

III. SCOPE

This Policy applies to all University of the Pacific community members, including Students, Faculty, Staff, administrators, consultants, vendors, and others engaged in business with the University. Every community member is responsible for complying with all University policies and procedures.

The University’s prohibition of Misconduct includes conduct occurring on campus or off-campus, including online and electronic communication or other conduct, when the University determines it has a substantial interest. The University has a substantial interest in conduct when it:

- Occurs at University-related events
- Occurs during study abroad, clinical, internship or other academic programs
- Constitutes a violation of local, state or federal law; including repeat violations of any local, state, or federal law committed in any county where the University is located
- Indicates that the individual may present a danger or threat to the health or safety of him/herself or others
- Significantly threatens the rights or property of those protected by this Policy, or significantly breaches the peace and/or causes social disorder
- Is harmful to the educational mission of the University
- Involves individuals covered by this Policy at a non-university event

University policies and procedures apply to conduct that takes place once a person becomes a Student or employee of the University, including periods during academic breaks and between semesters/academic terms. This Policy applies to and protects visitors to the University. Visitors may file a Complaint for alleged violation(s) of University policies and procedures committed by members of the University community. University community members may be held accountable for the conduct of their guests.

IV. EDUCATION AND PREVENTION

The University provides comprehensive education and prevention programs including prevention strategies, awareness campaigns, primary prevention, bystander intervention, and risk reduction. Outreach programs are also provided to make Students, Faculty and Staff aware of all aspects of this Policy including the practical implications of an affirmative consent standard, resources available for victims, and the rights and responsibilities of Students, Faculty and Staff.

V. PROHIBITED MISCONDUCT

The list of prohibited Misconduct under this policy includes, but is not limited to, the following:

- Unwelcome verbal or physical conduct of a sexual nature that is sufficiently severe or persistent or such that it unreasonably interferes with, limits or deprives someone of the ability to participate in or benefit from the University's educational programs or employment opportunities. The unwelcome behavior may be based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation. A single instance of Sexual Harassment may be sufficient to constitute a hostile environment.
- Using electronic devices or technology (e.g., cell phone, camera, email, Internet sites or social networks) to record or transmit nudity or sexual acts without a person's knowledge and/or permission
- Committing violence within a social or romantic relationship in order to gain sexual favors (Domestic Violence or Dating Violence)
- Excessive unwanted and persistent attention of a sexual nature on a regular basis either with electronic devices or in person or other means (Stalking)
- Intentionally observing nudity or sexual acts of another person without the person's knowledge or permission (voyeurism)
- Unwanted touching of the genitals, buttocks, or breasts that is intentional or other unwanted touching or groping

- Forcing/coercing someone to touch you or someone else in a sexual manner
- Threatening to sexually harm someone
- Initiating sexual activity with a person who is incapacitated and unable to provide affirmative consent due to alcohol and/or drug consumption or other condition
- Inducing incapacitation for the purpose of sexual exploitation
- Ignoring a sexual limit that has been communicated
- Coercing, intimidating, or defrauding someone into sexual behavior
- Sexual assault or the penetration of an orifice (anal, vaginal, oral) with the penis, finger or objects without affirmative consent
- Retaliation based on a person's complaint, or participation in an investigation or other behavior supporting this Policy.

“**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.¹ The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

A current or previous dating or marital relationship shall not be sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the Respondent that the Respondent use a condom or other birth control device, without additional evidence of consent, is not sufficient to constitute consent.² Consent to one form of sexual activity cannot imply Consent to other forms of sexual activity. Consent cannot be procured by the use of physical force, threats, intimidating behavior or coercion (unreasonable pressure for sexual activity). Consent cannot be given by a person known, or who should have been known, to be mentally or physically incapacitated (by alcohol or other drug use, unconsciousness, blackout, sleep, shock or for any other reason). The use of alcohol or drugs will not function as an excuse for behavior that violates this Policy.

Additional definitions may be found in Addendum A.

VI. IMMEDIATE ASSISTANCE FOR VICTIMS

A. Getting Immediate Help

If you or someone you know has experienced Misconduct, and are in immediate danger, or if you believe there could be an ongoing threat to the University community, please call 911, public safety or use an emergency blue phone and get to a safe place.

¹ CA Ed. Code, Section 67386.

² California Penal Code Section 261.6-7

B. Seeking Medical Care

A victim of Sexual Assault or Sexual Violence should seek immediate medical attention including a medical exam to check for injuries and gather evidence.

1. Immediate medical treatment:
 - a. Stockton: San Joaquin General Hospital, 500 West Hospital Road, French Camp, CA 95231 – 209-468-6000^{3**}
 - b. Sacramento: UC Davis Medical Center, 2315 Stockton Blvd., Sacramento, CA 95817 - 916.734.2011** OR Sutter Memorial Hospital, 5151 F St, Sacramento, CA 95819 - (916) 454-3333**
 - c. San Francisco: San Francisco General Hospital Emergency Room - 1001 Potrero Avenue #107, San Francisco, CA 94110 415-206-8000**

C. Preserving Evidence

In order to preserve evidence, victims should leave the scene undisturbed, collect bedding or clothing and store items in a paper bag (not plastic), and collect a prophylactic device of any type in a paper bag. All potential evidence should be placed in separate paper bags to prevent cross contamination of evidence. If possible, the victim should not bathe, urinate, douche, brush their teeth, drink liquids or change clothing before seeking medical attention.

VII. HOW TO FILE A COMPLAINT AND MANDATED REPORTERS

Persons (Students, Faculty or Staff) who believe they are victims of Misconduct may file a complaint or seek assistance with any of the following resources. If a Complainant or victim seeks a confidential resource, they should speak with one of the confidential resources listed below, including Pacific's Student Victim Advocate, Pacific's Counseling and Psychological Services, the Women's Center, Pacific Health Services, and other city specific resources.

University Students, Staff and Faculty are encouraged to promptly report information about any incident of Misconduct to the Title IX Coordinator or a Deputy, unless the employee is required by law to keep information confidential (e.g. psychological counselor, Student Victim Advocate, etc.). University Staff (including student staff members) and Faculty are Responsible Employees. Mandated Reporters, those with responsibility for student welfare, are required to immediately report information about any incident of Misconduct to the Title Coordinator or a Deputy, unless the employee is required by law to keep information confidential (e.g. psychological counselor, Student Victim Advocate, etc.).

STOCKTON:

*Denotes confidential resource

**Denotes medical facility that performs sexual assault examinations

Reporting to law enforcement:

- Department of Public Safety (University Police) – 209-946-3911 (24-hour access)
 - Non-Emergency 209-946-2537
- Stockton Police Department – 209-937-8377 or 911 emergency
- Student Victim Advocate can assist with reporting to the police – 209-403-0250

Immediate medical treatment:

- San Joaquin General Hospital, 500 West Hospital Road, French Camp, CA 95231 – 209-468-6000**

Making a complaint:

- Department of Public Safety (University Police) – 209-946-3911
- Office of Student Conduct and Community Standards – 209-946-2177
- Lynn King, Title IX Coordinator, Assistant Vice President Student Life – 209-946-2365
- Heather Dunn Carlton, Title IX Deputy, Associate Dean of Students – 209-946-2177
- Faculty Title IX Deputy – [Add Name/Phone]
- Holly Trexler, Title IX Deputy, Associate Athletic Director – 209-946-2307
- Jane Lewis, Title IX Deputy, Assistant Vice President of Human Resources – 209-946-2125
- Sally Coleman, Title IX Deputy, Human Resources Manager – 209-946-3907
- San Joaquin County District Attorney's Office, Victim-Witness Program – 209-468-2400

Confidential Resources (Anonymous Report):

- Pacific's Student Victim Advocate* – 209-403-0250⁴
- Pacific Counseling and Psychological Services* – 209-946-2315 x2
- Pacific Health Services – 209-946-2315 x1
- Women's Center -Youth and Family Services* – 209-465-4997

SACRAMENTO:

Reporting to law enforcement:

- Public Safety – 916-739-7200 (24-hour access)
- Sacramento Police Department
 - Emergencies- Crimes in Progress – 911 or 916-732-0100
 - Non-Emergency Dispatch – 916-264-5471

Immediate medical treatment:

- UC Davis Medical Center, 2315 Stockton Blvd., Sacramento, CA 95817 – 916.734.2011**

* Denotes confidential resource

**Denotes medical facility that performs sexual assault examinations

- Sutter Memorial Hospital, 5151 F St, Sacramento, CA 95819 – (916) 454-3333**

Making a complaint:

- Public Safety – 916-739-7200
- Lynn King, Title IX Coordinator, Assistant Vice President Student Life – 209-946-2365
- Faculty Title IX Deputy – [Add Name/Phone]
- Elisa Levy, Title IX Deputy, Assistant Dean Administration & Resource Management – 916-739-7343
- Laura Allen, Title IX Deputy, Director, Human Resources – 916-739-7028

Confidential resources (Anonymous Report):

- Pacific’s Student Victim Advocate* – 209-403-0250
- Pacific Health Services – 209-946-2315 x1
- Pacific Counseling and Psychological Services* – 209-946-2315 x2
- WEAVE 24 Hour Crisis Line* – 916-920-2952
- My Sister’s House 24 Hour Crisis Line* – 916-428-3271

SAN FRANCISCO:

Reporting to law enforcement:

- Campus Security Emergencies
 - Campus – x56411 or External Phones – 415-929-6411
- Campus Security Non-Urgent
 - Security dispatch – x56456 or External Phones – 415-929-6456
- San Francisco Police/Fire Department
 - Emergency number – 911 or Cell Phones – 415-553-8090

Immediate medical treatment:

- San Francisco General Hospital Emergency Room – 1001 Potrero Avenue #107, San Francisco, CA 94110 415-206-8000**

Making a complaint:

- Lynn King, Title IX Coordinator, Assistant Vice President Student Life – 209-946-2365
- Faculty Title IX Deputy – [Add Name/Phone]
- Kara Bell, Title IX Deputy, Director, Human Resources – 415-929-6454

Confidential Resources (Anonymous Report):

- Pacific’s Student Victim Advocate* – 209-403-0250

* Denotes confidential resource

** Denotes medical facility that performs sexual assault examinations

* Denotes confidential resource

- Pacific Counseling and Psychological Services* – 209-946-2315 x2
- Pacific Health Services – 209-946-2315 x1
- San Francisco Women Against Rape Crisis Hotline* – 415-647-RAPE
- San Francisco District Attorney’s Victim/Witness Resources – 850 Bryant Street, Room 320, San Francisco, CA 94103 – 415-553-9044

VIII. POLICY QUESTIONS

Inquiries concerning this Policy and Title IX compliance should be referred to University of the Pacific’s Title IX Coordinator or a Deputy Coordinator (Title IX Officers).

University Title IX Coordinator:

Lynn King, Assistant Vice President Student Life, Title IX Coordinator:
Stockton campus: lynnking@pacific.edu or 209-946-2889

Title IX Deputy Coordinators:

Jane Lewis, Assistant Vice President of Human Resources, Title IX Deputy:
jlewis@pacific.edu or 209-946-2125

Sally Coleman, Associate Director of Human Resources, Title IX Deputy, Stockton campus:
scoleman@pacific.edu or 209-946-3907

Heather Dunn Carlton, Director, Student Conduct and Community Standards, Title IX Deputy,
Stockton Campus: hdunn Carlton@pacific.edu or 209-946-2936

Holly Trexler, Associate Athletic Director, Title IX Deputy, Stockton campus:
htrexler@pacific.edu or 209-946-2307

Kara Bell, Director, Human Resources, Title IX Deputy, San Francisco campus:
kbell@pacific.edu or 415-929-6454

Elisa Levy, Assistant Dean, Administration and Resource Management, Title IX Deputy,
Sacramento campus: el Levy@pacific.edu or 916-739-7343

Laura Allen, Director, Human Resources, Title IX Deputy, Sacramento campus;
lallen9@pacific.edu or 916-739-7028

Faculty Deputy Title IX Coordinator (One from each campus)

IX. PROCEDURES FOR ALLEGED VIOLATIONS OF UNIVERSITY OF THE PACIFIC’S POLICY PROHIBITING MISCONDUCT

Any person participating in the educational activities or programs of the University wishing to file a Complaint of Misconduct must follow the procedures set forth in this policy.

**Denotes medical facility that performs sexual assault examinations

A. Effect of Criminal Charges/Investigation

The procedures outlined here for review of allegations of Misconduct are separate from any criminal process or investigation. Because the requirements and standards for finding a violation of criminal law are different from the standards for finding a violation of this Policy, criminal investigations, reports or verdicts may be different from outcomes under this Policy. The University may share information and coordinate investigation efforts with law enforcement when necessary or appropriate.

B. Pre-Investigation Review

All Complaints will be reviewed to determine whether the Complaint involves a Policy violation and whether an investigation is appropriate under the circumstances. This review will be performed by the Title IX Coordinator, in consultation with the Director of Student Conduct and Community Standards, Human Resources and/or the Provost's office as appropriate depending upon the persons implicated by the Complaint. Even if an investigation is not undertaken, the University may engage in protective measures or corrective action.

C. Rights of the Complainant and Respondent

The University will ensure that Complainants and Respondents receive the same information, support and protections throughout the Complaint Review Process. Both the Complainant and Respondent have the following rights:

- To be treated with sensitivity and respect during the entire Complaint Review Process
- To receive timely and detailed information on options for Complaint resolution
- To have an Advisor and a Process Guide throughout the Complaint Review Process and any appeal process
- To have a prompt and thorough investigation of any Complaint
- The right to decline to participate in the Complaint Review Process, with the understanding that, based upon the nature of the Complaint, the process may proceed without an individual's participation
- To a Complaint Review Process that provides reasonable time for all parties to prepare and respond to a Complaint
- To challenge panel member(s) who present a potential conflict of interest
- To receive prompt notification in writing of the Complaint Review Panel's finding, and appeal findings
- To an appeal, after an initial decision is made by a Review Panel
- To understand that all records associated with the Complaint Review Process may be obtained for use in civil and/or criminal proceedings by search warrant or subpoena

The Title IX Coordinator will work with the following to coordinate investigations:

Campus	Student	Staff	Faculty
Stockton	Office of Student Conduct	Human Resources	Provost and Faculty Grievance Committee Chair
Sacramento	Dean or Designee	Human Resources	Provost and Faculty Grievance Committee Chair
San Francisco	Dean or Designee	Human Resources	Provost and Faculty Grievance Committee Chair

D. Participation

The Complainant or Respondent may decline to participate in the Complaint Review Process. The University may proceed with the Complaint Review Process based upon the nature of the Complaint and available information. A Complainant or Respondent who does not participate in the investigation of a Complaint (without cause) may be precluded from participating in the review hearing or appeal process.

E. Limits on Student Discipline

University of the Pacific encourages reporting of Misconduct. The University will ensure that an individual who participates as a Complainant or witness in an investigation of Misconduct will not be subject to disciplinary sanctions for a violation of the University’s student conduct policies (including drug and/or alcohol use) at or near the time of the incident, unless the University determines that the violation was egregious. Egregious violations include acts that place the health or safety of any other person at risk or involve plagiarism, cheating, or academic dishonesty.

F. Privacy and Confidentiality

Information related to the Complaint Review Process will be shared only with those individuals with a demonstrated need to know. Confidential campus resources include the Student Victim Advocate, psychological therapists, and attorneys in a client relationship. All other University Faculty and Staff are Mandated Reporters, and therefore cannot serve as confidential resources.

An individual who asks the University to pursue an alleged violation of this Policy may request that the University not disclose certain information to the Respondent or other individuals who may be involved in the matter. While the University will take all reasonable steps to investigate and respond to the Complaint to the extent possible, while honoring the Complainant’s request, a formal review hearing will not be possible without the disclosure of the Complainant’s identity. During a formal review hearing, the Complainant’s name will be disclosed to the Respondent.

The names of the Complainant and Respondent will also be provided to the Review Panel, unless there is a compelling reason not to share this information. Individuals requesting that their name not be disclosed must submit a request in writing to the Title IX Coordinator within three (3) Business Days of receiving Notice that their case will be referred to a review hearing. The University may not be able to honor a Complainant's request for confidentiality, if doing so would potentially compromise the safety or wellbeing of the campus community.

G. Notification

Upon receipt of a Complaint, the Complainant and Respondent will be provided with written information regarding the Complaint Review Process. This will include a copy of the policies and procedures related to the Complaint Review Process, resources available both on and off campus, and information on interim protective measures that may be available. The primary method for Notice and communication under this Policy will be University email. All persons involved in the Complaint Review Process have an obligation to promptly read all University emails.

Complainants and Respondents will simultaneously receive Notice of:

- The Complaint, including alleged policy violations and the process for review and investigation of the Complaint
- The option for Informal Resolution and the decision by a Respondent to accept responsibility for any Policy violations
- The opportunity to review the investigation report and all documents/evidence gathered during the investigation (subject to FERPA limitations)
- The date, time, and location of the review hearing
- The Review Panel members, the process to challenge members, and any conflict of interest challenges
- The Review Panel finding and reason for each finding
- The sanctions recommended by the Review Panel
- The process for appealing either the finding or recommended sanction(s)
- The filing of any appeal
- The outcome of any appeal

The Complainant and Respondent will each receive the above information unless one or both request in writing not to receive further information.

If requested by law enforcement, the University may modify these notification standards to accommodate a criminal investigation

H. Advisor and Process Guide

The Complainant and Respondent may choose anyone (including legal counsel or a union representative) to voluntarily serve as an Advisor of their choice. The Complainant and Respondent may be accompanied to any meeting or hearing by their Advisor. The Advisor may support and advise the Complainant or Respondent; however, the Advisor may not speak on

behalf of the Complainant or Respondent or otherwise engage with the investigators, Review Panel members, witnesses, or other individuals associated with the Complaint Review Process.

The University will also assign a University-trained Process Guide to each Complainant and Respondent. The Process Guide will not be involved in the current investigation. The Process Guide will explain the steps involved in the Misconduct Complaint Review Process and be available to answer questions regarding the process. The Process Guide may support and advise the Complainant or Respondent; however, the Process Guide may not speak on behalf of the Complainant or Respondent or otherwise engage with the investigators, Review Panel members, or witnesses.

I. Interim Protective Measures

Before and during the Complaint and investigation process, the University may elect to impose interim protective measures to provide immediate support and added protection to a victim or Complainant. Interim measures may also afford protection to the University community as a whole or witnesses. Protective measures may be temporary or permanent and may include the following:

- Change in campus housing and/or dining locations
- Paid or unpaid leave of absence (Staff and Faculty)
- Academic or workplace accommodations
- No contact directive or campus ban
- Alternate work scheduling
- Escorts
- Removal from University housing
- Other accommodations as may be necessary given the circumstances

J. Investigation⁵

The investigation and review hearing will generally be completed within sixty (60) days following receipt of the Complaint. However, this time period may be extended by the Title IX Coordinator in consultation with University counsel for good cause given the circumstances of the Complaint, investigation and/or Review Panel hearing process.

The investigation will include some or all of the following steps:

- If the University decides not to investigate a Complaint, this decision will be communicated in writing, including the reasoning, and provided to the Complainant
- If the Complainant requests that the University not conduct an investigation, the University will evaluate this request in light of its obligations under applicable laws
- If the University decides to investigate following a request from the Complainant that the matter not be investigated, the Respondent will be informed in writing that the Complainant requested that the matter not be investigated
- The University will notify the Complainant before investigation interviews start

⁵ Complaints involving a Faculty Respondent will follow the hearing procedures described in Section 7.12.10-7.12.20 of the University's Faculty Handbook.

- The University will appoint a specialized investigation team to conduct interviews of the Complainant, Respondent, and witnesses and collect relevant evidence related to the Complaint. In some cases, the University may appoint outside investigators to review a Complaint
- Interviews may be recorded at the discretion of the investigator and will be maintained in the Office of the Title IX Coordinator
- Investigators will not consider information from character witnesses or other individuals who do not possess factual information specifically related to the Complaint
- The sexual history of the Complainant and Respondent will not be considered, except information regarding history between the Complainant and Respondent
- Prior violations of this or other University policies by the Complainant and/or Respondent will be evaluated by the investigators for relevance to the matter under investigation and possible inclusion in the investigation report
- Formal rules of evidence and discovery are not applicable. All relevant information will be considered, including medical and police reports, digital communications (e.g., text messages, emails, and other forms of social media) when/if available
- At the conclusion of the investigation, the investigators will present their findings to the Title IX coordinator or his/her designee
- The report will then be shared with the Complainant and Respondent for their review and response. Under the Family Educational Rights and Privacy Act (FERPA) regulations, any identifying personal information will be redacted from the report

1. Investigation Report

The investigation team will prepare a report summarizing the information gathered. The report may include a description of the alleged incident, factual agreements and disputes, and supporting information. The investigation team will review all of the facts and determine the relevance of information necessary and appropriate for determining if this Policy was violated. The investigation team will come to one of two conclusions, by applying the preponderance of the evidence standard: (a) a Policy violation has occurred; or (b) there is insufficient evidence to conclude that Policy violation has occurred.

2. Finding of No Policy Violation

If the investigation team determines there is insufficient evidence to find a violation of this Policy, the Complaint will be referred back to the Title IX Coordinator to determine future handling. This determination will be performed by the Title IX Coordinator, in consultation with the Director of Student Conduct and Community Standards, Human Resources and/or the Provost's office as appropriate depending upon the persons implicated by the Complaint.

3. Informal Resolution

In some situations, the University may seek to resolve Complaints through an informal resolution process. In compliance with Title IX, the University, the Complainant, or the Respondent may propose informal resolution of the Complaint at any time. When permissible, informal resolution may include an agreement to stay away from persons, alter behavior or change schedules.

If the University finds the informal resolution proposal acceptable under this policy, the faculty handbook, and Title IX, the University may propose an informal resolution to the other party. If both parties agree to the proposed informal resolution and the outcome satisfies the University's obligations under Title IX, the matter shall be considered closed. If either party disagrees with the proposed informal resolution, the Complaint Review Process will continue. In situations involving Faculty, the Chair of the Faculty Grievance Committee must be notified.

In some situations, mediation may be used to resolve a Complaint, but only with the consent of both the Complainant and Respondent. Mediation typically involves an attempt to resolve a dispute through the help of an objective party. Mediation is not available in cases of Sexual Assault, Battery, Exploitation or other Sexual Violence. Mediation participants may end their participation at any time and the Complaint Review Process will continue. If mediation successfully resolves the Complaint, the matter shall be considered closed.

K. Review Panel and Hearing

If the informal resolution or mediation process is inappropriate or unsuccessful, the University will convene a 3-person Review Panel to conduct a review hearing. The Review Panel will consider all information presented, including the investigation report, and determine responsibility for each alleged policy violation by applying the preponderance of the evidence standard. The Review Panel will also make sanction recommendations when appropriate.

The Review Panel, appointed by the Title IX Coordinator or his/her designee, will be composed of three persons. Panel members may be trained Faculty, Students, or Staff (director level or higher). The Title IX Coordinator in consultation with the Review Panel will designate one of the three members to serve as the review hearing chair. Panel members may be from any of the three Pacific campuses. In some cases, the University may include in the panel retired judges, attorneys, or other individuals from outside the University with relevant and/or specialized training or expertise. Pre-hearing training of Review Panel members will include the hearing process as well as specialized training for the unique issues related to cases of Misconduct.

The Complainant and Respondent will be provided with the names of the panel members in advance of the hearing process. The Complainant and Respondent may each request that one panel member be excused without stating a reason. A replacement will be selected. Additional challenges to the panel's membership require the challenger to explain the reason for a request to disqualify. The reason provided will be evaluated by the Title IX Coordinator in consultation with the Dean of Student Life, and/or the Assistant Vice President of Human Resources, and/or the Provost as appropriate. Following consultation, the Title IX Coordinator will make a decision regarding any challenges and provide Notice of the decision to both the Complainant and Respondent.

1. Written Statements

The Complainant and Respondent may provide a written response to the investigation report, as well as any additional information relevant to the case, to the Review Panel. Both the Complainant and Respondent will have the opportunity to review all materials submitted to the Review Panel (subject to FERPA limitations).

2. Hearing Procedures

Generally, the Complainant and Respondent will have at least ten (10) Business Days' advance Notice of the scheduled hearing.

Hearings are closed proceeding. Participants who may be present during the hearing include:

- Review Panel Members
- Complainant (with Advisor and/or Process Guide only when Respondent not present)
- Respondent (with Advisor and/or Process Guide only when Complainant not present)
- Witnesses (only when called by Review Panel)
- Members of Investigation Team (only when called by Review Panel)

The review hearing will generally proceed in the following order (note that the Complainant and Respondent will not be in the same room at the same time):

- Complainant Statement
- Questions to the Complainant by the Review Panel
- Questions to the Complainant from the Respondent
- Respondent Statement
- Questions to the Respondent by the Review Panel
- Questions to the Respondent from the Complainant
- Witness statements and questioning by the Review Panel
- Questions to the Investigation Team by the Review Panel
- Closing statement by the Complainant
- Closing statement by the Respondent

Only the Review Panel may ask questions of the Complainant, Respondent, and witnesses. The Complainant and Respondent may submit questions to the Review Panel in writing. The Review Panel has the discretion to revise or decline to ask any or all questions submitted. If questions are revised or declined, the Review Panel will document the reasoning in writing at the time of the hearing.

The Review Panel may, at its discretion, alter the order of proceedings and establish reasonable limits on time allotted for any portion of the hearing process. The Review Panel may determine the relevance of, restrict or exclude any witnesses or information presented.

In the event that the Complainant or Respondent is unable to attend the review hearing, alternative means for participation will be identified.

The Complainant and Respondent, along with their Advisors, when not before the Review Panel, will be able to listen to the proceedings via speaker-phone or other appropriate means (e.g., closed circuit TV, live streaming).

3. Hearing Recording

An audio recording will be made of the hearing and transcribed for use by the Review Panel, appeal panel, and University administrators. The Complainant and Respondent may request to

review the hearing transcript; however, no duplication or copy of the recording or transcript will be provided. No recording devices, including cell phones, will be permitted in the hearing rooms.

4. Standard of Proof

The standard of proof used by the Review Panel is “preponderance of the evidence.” The Review Panel will use this standard to determine whether the Respondent(s) violated this Policy. A preponderance of the evidence requires that the Review Panel members believe, based upon the evidence available to them at the time of the hearing, that the Respondent is more likely than not to have violated this Policy.

5. Majority Vote

A Policy violation finding will be based upon a majority vote of the Review Panel.

6. Sanctions

If the Review Panel finds the Respondent responsible for a policy violation, the Review Panel will recommend a sanction by a majority vote. In considering an appropriate sanction, the Review Panel shall consider all the evidence presented during the hearing and the following:

- Impact statements provided by the Complainant and Respondent to the Review Panel. Impact statements should not be part of the process of determining a Policy violation.
- What is reasonable, appropriate, and fair given the facts of the case and the determination of responsibility, including but not limited to:
 - What were the specific acts involved? (e.g., touching over the clothes, penetration, etc.)
 - What factors contributed to the absence of affirmative Consent? (coercion, force, incapacitation)
 - What motivated the Respondent’s behavior? (negligence, intentional, reckless, biased)
 - What is the impact on the Complainant?
 - What is the Respondent’s disciplinary history with regard to Misconduct?
 - Is the proposed sanction consistent with sanctions imposed for similar offenses at the University?

Sanctions the Review Panel may recommend include but are not limited to the following:

- Disciplinary Warning
- Disciplinary Probation
- Restricted Access to University facilities, organizations or events
- Imposition or continuation of a “no contact” order
- Loss of student housing privileges
- Employment Discipline
- Suspension, reduction, or loss of compensation
- Demotion (employment)

- Termination of employment, contract, appointment and/or tenure.
- Suspension from educational program or campus access
- Delayed awarding of a degree if enrolled in Pacific degree program
- Dismissal (expulsion)
- Revocation of a degree

The Review Panel will submit its decision to the Title IX Coordinator. The decision will generally be issued within ten (10) Business Days of the conclusion of the review hearing. The Review Panel decision will include an explanation of the reasoning for the decision and the basis for its recommended sanction(s).

Where a sanction is recommended against a union employee, the employee will have all rights provided by the applicable collective bargaining agreement to appeal discipline under the union procedures prior to imposition of a sanction.

L. Appeals

Both the Respondent and Complainant may request an appeal of the decision of the Review Panel and/or the sanctions imposed. An appeal must be based on one or more of the following four reasons:

- Material deviation from the hearing procedures, resulting in significant prejudice
- New relevant evidence is available that could not have been produced at the time of the hearing, despite the exercise of reasonable diligence, that could affect the outcome
- The decision is not supported by a preponderance of the evidence
- The sanction is disproportionate to the offense

Disagreement with the findings or recommended sanction, in and of itself, is insufficient grounds for appeal.

The Complainant or Respondent must submit a written appeal request within ten (10) Business Days of receipt of the Review Panel decision and/or sanction(s). The appeal shall be submitted to the Title IX Coordinator. If either the Complainant or Respondent submits an appeal request, the University will notify the other party of the appeal and the reason(s) cited. The non-appealing party may submit a written response within ten (10) business days of receiving Notice of the appeal.

1. Initial Review

The Title IX Coordinator will perform an initial review of the request for appeal. This review will be performed by the Title IX Coordinator, in consultation with the Director of Student Conduct and Community Standards, Human Resources and/or the Provost's office, as appropriate depending upon the persons implicated by the Complaint.

2. Appeal Committee

An appeal committee will be constituted in the same manner as the Review Panel, but will not include any person serving on the original panel. The Complainant and Respondent will be

provided with the names of the panel members in advance of the hearing process. The Complainant and Respondent may each request that one panel member be excused without stating a reason. A replacement will be selected. Additional challenges to the panel’s membership require the challenger to explain the reason for a request to disqualify. The reason provided will be evaluated by the Title IX Coordinator in consultation with the Dean of Student Life, and/or the Assistant Vice President of Human Resources, and/or the Provost as appropriate. Following consultation, the Title IX Coordinator will make a decision regarding any challenges and provide Notice of the decision to both the Complainant and Respondent.

The appeal committee should re-evaluate the underlying proceedings and evidence to determine whether the Respondent violated this Policy. As with the first hearing, formal rules of evidence will not apply. The Review Panel’s alleged deviation from procedures will not necessarily warrant reversing the decision of the Review Panel, unless there is significant prejudice to the Respondent, Complainant, or to the University (if the Complainant did not participate), and a different outcome would have been likely. The appeal committee will use the preponderance of the evidence standard and a majority vote in reaching a decision. The appeal committee will generally issue its written decision within five (5) Business Days of the conclusion of the appeal hearing. The appeal decision will include an explanation of the reasoning for the decision, including review of any sanction(s) recommended by the Review Panel. The appeal committee will submit its written decision to the Title IX Coordinator for evaluation and implementation.

3. Final Appeal

Following Notice of the appeal committee’s decision, either the Complainant or Respondent may engage in one final request for appeal of the process. A written Notice of final appeal must be submitted within five (5) Business Days to the Title IX Coordinator for review. The Title IX Coordinator will review the appeal request for the limited purpose of correcting serious procedural defects. This review will be conducted in conjunction with, as appropriate, the Director of Student Conduct and Community Standards, Human Resources and/or the Provost’s office.

M. Sanction Implementation

Sanction consideration and/or implementation will be conducted by the following:

Campus	Student	Staff	Faculty
Stockton	Office of Student Conduct	Human Resources	Dean and Provost
Sacramento	Dean or Designee	Human Resources	Dean and Provost
San Francisco	Dean or Designee	Human Resources	Dean and Provost

The recommended sanction shall be imposed unless a compelling reason exists for adopting an alternate sanction.

N. Timelines and Modification

The University may modify the deadlines and procedures associated with the Complaint Review Process and/or appeal process as necessary for good cause and will communicate this information in a timely manner to both the Complainant and Respondent.

ADDENDUM A – DEFINITIONS

As used in this Policy, the following terms have the meaning indicated:

1. “Advisor” is any person chosen by either the Complainant or Respondent to provide support or assistance during the Complaint Review Process including legal counsel or a union representative. The Complainant or Respondent may not compel a person to serve as their Advisor.
2. “Appropriate University Officer” means the officer at University of the Pacific responsible for the office, school, college, or other administrative unit with direct supervisory authority over the Faculty or Staff employee and his or her designee and any successors.
3. “Business Day” includes Monday through Friday for purposes of calculating the deadlines under this Policy.
4. “Consensual Relationships” are romantic relationships that may occur between various members of the University’s community. Some consensual relationships have the potential to evolve into Misconduct. This is particularly true of faculty–student, faculty–staff and staff–student relationships, as well as supervisor–subordinate relationships. The University urges all members of the University community to consult the [Policy on Intimate Relationships Affecting Supervisory Functions, Teaching and Mentoring](#), before engaging in a close personal relationship with another member of the University community.
5. “Complaining Party or Complainant” means the person (including, in certain circumstances, the University) filing a report or Complaint of Misconduct.
6. “Complaint” means filing a charge of Misconduct with an appropriate person.
7. “Complaint Review Process” means the University’s process for investigating alleged Complaints and determining whether this Policy has been violated. The Complaint Review Process may include some or all of the following: investigation, witness interviews, gathering evidence, making a preliminary decision, a Review Panel hearing and the issuance of a finding and recommended sanctions.
8. “Conduct Officer” means the University Staff member trained in the Misconduct Complaint Review Process.
9. “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.⁶ The person must act freely and voluntarily and have knowledge of the nature of the act or

⁶ CA Ed. Code, Section 67386.

transaction involved. A current or previous dating or marital relationship shall not be sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the Respondent that the Respondent use a condom or other birth control device, without additional evidence of consent, is not sufficient to constitute consent.⁷ Consent to one form of sexual activity cannot imply Consent to other forms of sexual activity. Consent cannot be procured by the use of physical force, threats, intimidating behavior or coercion (unreasonable pressure for sexual activity). Consent cannot be given by a person known, or who should have been known, to be mentally or physically incapacitated (by alcohol or other drug use, unconsciousness, blackout, sleep, shock or for any other reason). The use of alcohol or drugs will not function as an excuse for behavior that violates this Policy.

10. “Dating Violence” refers to controlling, abusive and aggressive behavior in a social or romantic relationship. Examples can include but are not limited to verbal, emotional, physical and/or sexual abuse.
11. “Discrimination” refers to less favorable treatment because of a person’s membership in a class or status protected by law. Protected classes include but are not limited to race, gender, gender identity or expression, sexual orientation, national origin, ancestry, color, religion, religious creed, age, marital status, medical condition, genetic information, disability, citizenship status, military service status, veteran status, pregnancy, age, physical or mental disability, or any other status prohibited by law.
12. “Domestic Violence” refers to behaviors used by one person in a social or romantic relationship to control the other. Examples can include but are not limited to name calling, verbal, emotional, physical and/or sexual abuse, withholding money, actual or threatened physical harm, sexual assault, Stalking, and Intimidation.
13. “Faculty” or “Faculty Member” means the president, provost, associate provosts, deans of the schools and colleges; professors, associate professors, assistant professors, instructors, lecturers, adjunct professors, volunteer professors, clinical professors, and part-time professors, visiting professors, and scholars (writers, composers, artists, executives, and the like)-in-residence, teaching assistants in their teaching capacity, and others who are recognized under the University’s bylaws or policies or both as members of the University Faculty.
14. “FERPA” is the Family Educational Rights and Privacy Act which protects the privacy of student education records. The University will comply with FERPA throughout the processes outlined in this Policy.
15. “Gender Identity” refers to a person’s innate, deeply felt psychological identification as male or female, which may or may not correspond to the person’s body or designated sex at birth.
16. “Gender Expression” refers to all of the external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns and social interactions. Social or cultural norms can vary widely.

⁷ California Penal Code Section 261.6-7.

17. “Gender-Based Harassment” means acts of verbal, nonverbal, or physical aggression, Intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.
18. “Harassment” includes Sexual Harassment, Gender-Based Harassment, and Sexual Violence.
19. “Intimidation” means to make fearful, to compel or deter by threats, to force into or coerce.
20. “Mandated Reporters” under this Policy are individuals required to immediately report information regarding Misconduct and potential violations of this Policy. Examples of Mandated Reporters include but are not limited to Staff from the Division of Student Life, all Faculty, Athletics Department employees, all Staff providing direct services to Students.
21. “Notice” refers to information given directly to a person. An individual is deemed to have been given Notice when one actually hears it or reads it. For purposes of this Policy, the primary method for Notice and communication will be University email. All persons involved in the Complaint Review Process have an obligation to promptly read all University emails.
22. “Penetration” involves any penetration of the mouth, sex organs or anus, however slight, with an object or any part of the body. This includes contact between the penis and the vulva; contact between the mouth/tongue and the penis, vulva, or anus; or physical insertion of a hand, finger, or other object into the mouth, anal or genital opening of another person; and specifically includes cunnilingus, fellatio, vaginal intercourse and anal intercourse.
23. “Process Guide” means a volunteer University Faculty or Staff member trained in the Complaint Review Process who may be assigned to the Complainant, Respondent, Review Panel or appeal panel to assist as a neutral source to answer questions about the process.
24. “Reasonable Person” is a standard that represents how a person with an ordinary degree of reason, prudence, care, foresight or intelligence would behave in a given situation.
25. “Report” means giving written or verbal Notice of alleged Misconduct to an appropriate person. (see VIII c. 1&2)
26. “Responding Party or Respondent” means the person who is alleged to have engaged in Misconduct as set forth in the report or Complaint filed with a Title IX Officer.
27. “Responsible Employee” is an employee who knows, or in the exercise of reasonable care should have known that Misconduct has occurred. Responsible employees have the obligation to report incidents of Misconduct to the Title IX Coordinator or her/his designee. All employees at the University are Responsible Employees.
28. “Retaliation” means an act of revenge or punishment. Performing a negative act against someone you know or assume has acted against you or someone you support. This includes any employment, educational or personal action taken against a person because of the person’s participation in a Complaint or investigation of Misconduct.

29. "Review Panel" is the three person panel of trained individuals from the University community who have the responsibility of determining whether the Respondent violated this Policy and, if so, recommending a sanction(s).
30. "Sex" refers to the biological and physiological characteristics that define men and women.
31. "Sex Discrimination" means giving preferential treatment to one Gender to the disadvantage of another. It may occur also when policies or practices are facially neutral, but have a disproportionately adverse impact on a particular Gender when applied.
32. "Sexual Assault" includes, but is not limited to, sexual intercourse or any other sexual penetration (oral, anal, or vaginal), rape, forced sodomy, forced oral copulation, rape by a foreign object, sexual battery, or the threat of any of these. (Ed. Code, § 67380, subd. (c)(3).)
33. "Sexual Battery" means touching an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse. (CA Penal Code, 243.4.e)
34. "Sexual Exploitation" means taking sexual advantage of another person without his or her Consent. Sexual advantage includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain a sexual advantage of that person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate body parts of another person; allowing third parties to observe private sexual acts; and engaging in voyeurism.
35. "Sexual Harassment" is a form of Discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature including Sexual Violence. Hostile environment Sexual Harassment consists of verbal, physical or visual conduct based on sex, Gender or is sexual in nature, which is sufficiently severe, persistent, or pervasive and which occurs without Consent. A single, severe incident, such as a sexual assault, Stalking and relationship (dating or domestic) violence could create a hostile environment. However, a hostile environment is often created by a series of incidents. Quid pro quo Sexual Harassment means "this for that." An example of this form of Sexual Harassment occurs if a member of the Faculty (or Staff member) stipulates that one's grade or performance rating (or participation on a team, in a play, etc.) will be based on whether one submits to sexual conduct. Whether one refuses a sexual demand or submits to it is not relevant; the conduct violates this Policy. Sexual Harassment creates an intimidating hostile or offensive working or academic environment or unduly interferes with an individual's work or academic performance. For purposes of this Policy, undue interference is defined as improper, unreasonable or unjustifiable behavior going beyond what is appropriate, warranted or natural.
36. "Sexual Violence" means a physical sexual act perpetrated against a person's will or where a person is incapable of giving Consent for any reason including but not limited to sleep, unconsciousness, use of drugs or alcohol, intellectual or other disability or emotional instability/capacity. A number of different acts fall into the category of sexual violence, including but not limited to rape, sexual assault, sexual battery, and sexual coercion.

37. “Staff Member” or “Staff” means a salaried or hourly person employed by the University, including applicants.
38. “Stalking” refers to unwanted or obsessive attention by an individual or group toward another person. Behaviors are related to harassment and Intimidation, communicating a threat or placing a person in fear. Examples can include but are not limited to showing up at one’s home or place of work uninvited, sending unwanted text messages, letters, emails or voicemails, leaving unwanted items or gifts, making unwanted phone calls.
39. “Student” refers to any accepted, matriculated, currently or continuously enrolled, or returning student. A returning student is one who previously attended the University and is returning or has expressed an intent to return after being absent one or more semesters.
40. “University” refers to University of the Pacific.