

### **Purpose/Background**

In keeping with its long-standing traditions and policies, University of the Pacific considers students, employees, applicants for admission or employment, and those seeking access to university programs on the basis of individual merit. The university does not discriminate on the basis of race, sex/gender, sexual orientation, national origin, ancestry, color, language use, religion, religious creed, age, marital status, gender, gender identity, gender expression, cancer-related or genetic-related medical condition, disability, pregnancy, perceived pregnancy, citizenship status, military service status, or any other status protected by law (including Title IX of the Education Amendments of 1972).

### **Purpose**

The purpose of this Policy is to:

- Define Sexual Misconduct that includes Sexual Harassment, Sexual Assault, Stalking, Sexual exploitation, Dating Violence or Domestic Violence, Discrimination, and Retaliation
- Affirm the university's commitment to preventing Sexual Misconduct
- Affirm the university's commitment to provide educational and preventative training regarding Sexual Misconduct
- Identify resources and Supportive Measures for Parties involved in Complaints of Sexual Misconduct
- Establish prompt, fair and equitable procedures for filing and handling complaints of Sexual Misconduct
- Assure that all Staff and Faculty (except for Confidential Resources as listed in this Policy) are required to report all knowledge of Sexual Misconduct to the Title IX Coordinator

### **Applicability/Responsibility**

The core purpose of this Policy is the prohibition of all forms of sex and gender-based Discrimination, and Retaliation. Sometimes, Discrimination involves exclusion from or different 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, 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 university's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed within the associated procedures. In general, if some or all of the allegations in a Complaint relate to the protections of Title IX as described in the 2020 Federal Regulations (34 CFR §106) then all allegations in the complaint are resolved through Process A. All other complaints under this policy are resolved through Process B.

This Policy applies to all members of University of the Pacific Community, as defined below. When the Respondent or Complainant is not a Pacific Student or employee, a grievance process may still be available. The procedures outlined may also be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy.

### **Title IX Coordinator**

Elizabeth Trayner serves as University of the Pacific's Title IX Coordinator and oversees implementation of the Policy Prohibiting Sexual Misconduct, Discrimination, and Retaliation. The Title IX Coordinator has the primary responsibility for coordinating the university's efforts related to the intake, investigation, resolution, and implementation of Supportive Measures to stop, remediate, and prevent Discrimination, Harassment, and Retaliation prohibited under this Policy.

Dr. Elizabeth Trayner  
Title IX Coordinator  
3601 Pacific Avenue  
Hand Hall 112  
Stockton, California 95211  
[titleix@pacific.edu](mailto:titleix@pacific.edu)  
Direct: 209.946.7770  
Toll-Free: 888.383.2765  
[www.go.pacific.edu/TitleIX](http://www.go.pacific.edu/TitleIX)

### **Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice or complaints of sex or gender-based Discrimination, Harassment, and/or Retaliation may be communicated in any of the following ways:

- 1) File a Complaint with, or give verbal notice to, the Title IX Coordinator or deputy/deputies/Officials with Authority. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
- 2) Report online, using the reporting form posted at [www.go.pacific.edu/TitleIX](http://www.go.pacific.edu/TitleIX). Anonymous reports are accepted but can give rise to a need to investigate. The university 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 university respects the Complainant's 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 university to discuss and/or provide Supportive Measures.
- 3) Report using the Compliance Helpline: 800.854.8443.

In order to file a Formal Complaint, a document must be submitted by the Complainant or by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the university investigate the allegation(s). A Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in this Policy. As used in this paragraph, the phrase "document submitted by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the university) 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 university 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 ask that it be submitted correctly.

### **Education and Prevention**

University of the Pacific provides 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. Prevention programs are included as

part of incoming student orientation. Per California harassment laws AB1825 and SB 1343, all employees must complete ongoing prevention and intervention training and education.

### **What to do**

For information on what to do if you have experienced sex or gender-based discrimination or harassment go to: <https://www.pacific.edu/campus-life/safety-and-conduct/sexual-assault/-/title-ix-resources-and-support/get-help.html>

### **Supportive Measures**

University of the Pacific will offer and implement appropriate and reasonable supportive measures to the parties upon Notice of alleged Harassment, Discrimination, and/or Retaliation.

Supportive Measures are non-disciplinary, non-punitive, individualized services offered as appropriate and reasonably available, and without fee or charge to the parties to restore or preserve access to the university's education program or activity, including measures designed to protect the safety of all parties or the university's educational environment, and/or deter harassment, discrimination, and/or retaliation. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the Supportive Measures that are planned and implemented.

The university will maintain the Privacy of any individual receiving Supportive Measures, provided that this Privacy does not impair the university's ability to provide the Supportive Measures. The university will seek to implement Supportive Measures in a way that does not unreasonably burden the other party, and has as minimal an academic/occupational impact on the parties as is reasonably possible. Supportive measures 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 Pacific community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing Public Safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass or Persona Non Grata (PNG) instructions
- Timely Warnings
- 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

Violations of no contact orders, trespass or PNG instructions by students or employees will be referred to appropriate processes for enforcement.

## **Emergency Removal**

University of the Pacific can act to remove a Student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and 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 the Behavioral Intervention Team using its standard objective violence risk assessment procedures.

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 by a Student or employee will be grounds for discipline, up to and including Dismissal or Termination, respectively, through appropriate conduct policies.

The university will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, working in coordination with the appropriate entity (Student Conduct, Human Resources Department, or Provost), 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 as minimal an academic impact as possible on the Parties.

Where the Respondent is an employee, the university will follow the university policies for determining the need for taking interim action.

## **Promptness**

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

If the general timeframes for resolution outlined in university procedures will be delayed, the university 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.

## **Privacy**

When reports or complaints are made of sex- or gender-based Discrimination, Harassment or Retaliation, University of the Pacific will endeavor to preserve the confidentiality of the information contained in the reports or complaints, as well as the identities of (1) the person making the report or Complaint; (2) any Complainant; (3) any Respondent; and (4) any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; FERPA regulations, 34 CFR §99; or as required by law; or to carry out the purposes of this policy, including the conducting of any investigation, hearing, or grievance proceeding arising under these Policies and associated procedures.

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

Typically, only a small group of officials who need to know will be told about the complaint, including but not limited to: the Title IX Coordinator and appropriate members of the Title IX Team; Public Safety; and the university's Behavioral Intervention/Threat Assessment Team. Information will be shared as necessary with Investigators, Decision-Makers, witnesses, and the Parties. Additional units within the university such as Human Resources and the Faculty Grievance Committee will be informed, as appropriate. The circle of people with this knowledge will be limited to preserve the parties' rights and Privacy.

The university may contact parents/guardians to inform them of situations in which there is a significant risk to the safety or well-being of that student, other students, or other members of the school community, but will usually consult with the Student first before doing so.

Confidentiality and Mandated Reporting are addressed more specifically below.

### **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 associated procedures. The members of the Title IX Team are 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.

Persons who have a complaint involving bias or conflict of interest by the Title IX Coordinator, should contact the university President, Chris Callahan, at 209.946.222 or internal audit. 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 Sexual Misconduct or Discrimination committed by the Title IX Coordinator should be reported to the university President, Chris Callahan, at 209.946.222 or designee. Reports of Sexual Misconduct or Discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

### **Jurisdiction**

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 Sexual Misconduct includes conduct occurring on campus or off campus, including online and electronic communication or other conduct, when the university determines there is a nexus to the university and the university has a substantial interest. Regardless of where the conduct occurred, the university 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 or in an off-campus sponsored program or activity. 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 Pacific community. Pacific community members may be held accountable for the conduct of their guests.

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

Even when the Respondent is not a member of Pacific's community, Supportive Measures, Remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator or Pacific's Victim Advocate.

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

All vendors serving the university through Third-Party contracts are subject to the policies and procedures of their employers and may, through their contract, be bound by this policy.

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

The Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences Discrimination in an environment external to the university (such as an internship, externship, study abroad program, or other environment) where Sexual Harassment or Nondiscrimination policies and procedures of the facilitating or host organization provide Supportive Measures for the Complainant.

### **Time Limits on Reporting**

There is no time limitation on providing Notice/Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to University of the Pacific'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 university will typically apply the Policy in place at the time of the alleged Sexual Misconduct and the procedures in place at the time of Notice/Complaint.

**Points of Contact**

**STOCKTON:**

<b>Contact</b>	<b>Responsible Items</b>
<p>Dr. Elizabeth Trayner                      Title IX Coordinator                      Office of the President                      3601 Pacific Avenue                      Hand Hall 112                      Stockton, CA 95211                      209.946.7770  <a href="mailto:titleix@pacific.edu">titleix@pacific.edu</a>  <a href="http://www.go.pacific.edu/TitleIX">www.go.pacific.edu/TitleIX</a></p>	<p>Complaints or Notice of alleged policy violations, or inquiries about or concerns regarding this Policy and associated procedures, may be made internally to this individual.</p>
<ul style="list-style-type: none"> <li>• 911 Emergency</li> <li>• Stockton Police Department – 209.937.8377</li> <li>• Pacific’s Victim Advocate can assist with reporting to the police – 209.403.0250</li> <li>• Public Safety can assist with reporting to the police – 209.946.3911 or 3911 (24-hour access) or 209.946.2537 (Non-Emergency)</li> <li>• The Title IX Coordinator can assist with reporting to the police – 209.946.7770</li> </ul>	<p>Making a complaint off campus</p>
<ul style="list-style-type: none"> <li>• San Joaquin General Hospital                      500 West Hospital Road                      French Camp, CA 95231                      209.468.6000</li> </ul>	<p>This facility can be utilized for immediate medical treatment.                      This facility performs Sexual Assault examinations.                      This is a Confidential Resource.</p>
<ul style="list-style-type: none"> <li>• Dr. Elizabeth Trayner, Title IX Coordinator – 209.946.7770 or 1.888.383.2765 (toll-free)</li> <li>• Jared Stammer, Deputy Title IX Coordinator – 209.946.2177</li> <li>• Holly Trexler, Deputy Title IX Coordinator, Senior Associate Athletic Director – 209.946.2307</li> <li>• Linda Jeffers, Deputy Title IX Coordinator, Assistant Vice President for Human Resources – 209.932.3274</li> </ul>	<p>Title IX Team Members</p>
<ul style="list-style-type: none"> <li>• Dr. Elizabeth Trayner, Title IX Coordinator – 209.946.7770</li> <li>• Jared Stammer, Deputy Title IX Coordinator – 209.946.2177</li> <li>• Holly Trexler, Deputy Title IX Coordinator, Senior Associate Athletic Director – 209.946.2307</li> </ul>	<p>University of the Pacific has determined that these individuals are Officials with Authority to address and correct Harassment, Discrimination, and/or Retaliation. In addition to the Title IX Team members, listed above, these Officials with Authority listed may also accept Notice or Complaints on behalf of the university.</p>

<ul style="list-style-type: none"> <li>• Linda Jeffers, Deputy Title IX Coordinator, Assistant Vice President for Human Resources – 209.932.3274</li> <li>• <a href="#">Members of the President’s Cabinet</a></li> <li>• <a href="#">Chief Compliance Officer</a></li> <li>• Janet Lucas, Athletics Director – 209.946.3208</li> </ul>	
<ul style="list-style-type: none"> <li>• Pacific’s Victim Advocate – 209.403.0250</li> <li>• Pacific Counseling and Psychological Services – 209.946.2315 x2</li> <li>• Pacific Health Services – 209.946.2315 x1</li> <li>• Interfaith Chaplain – 209.946.2325</li> <li>• University Ombuds – 209.932.3017</li> <li>• <a href="#">Employee Assistance Program</a></li> <li>• Women’s Center Youth &amp; Family Services – 209.465.4997</li> </ul>	Confidential Resources (No Notice to the university)

**SACRAMENTO:**

<b>Contact</b>	<b>Responsible Items</b>
<p>Dr. Elizabeth Trayner  Title IX Coordinator  Office of the President  3601 Pacific Avenue  Hand Hall 112  Stockton, CA 95211  209.946.7770  <a href="mailto:titleix@pacific.edu">titleix@pacific.edu</a>  <a href="http://www.go.pacific.edu/TitleIX">www.go.pacific.edu/TitleIX</a></p>	<p>Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to this individual.</p>
<ul style="list-style-type: none"> <li>• 911 Emergency</li> <li>• Sacramento Police Department – Emergencies – 916.732.0100 Non-Emergency Dispatch – 916.264.5471</li> <li>• Pacific’s Victim Advocate can assist with reporting to the police – 209.403.0250</li> <li>• Public Safety can assist with reporting to the police – 916.739.7200 (24-hour access)</li> <li>• The Title IX Coordinator can assist with reporting to the police – 209.946.7770</li> </ul>	<p>Making a complaint off campus</p>
<ul style="list-style-type: none"> <li>• UC Davis Medical Center 2315 Stockton Blvd. Sacramento, CA 95817 916.734.2011</li> <li>• Sutter Memorial Hospital 5151 F St</li> </ul>	<p>This facility can be utilized for immediate medical treatment.  This facility performs Sexual Assault examinations.  This is a Confidential Resource.</p>



Sacramento, CA 95819 916.454.3333	
<ul style="list-style-type: none"> <li>• Dr. Elizabeth Trayner, Title IX Coordinator – 209.946.7770 or 1.888.383.2765 (toll-free)</li> <li>• Dr. Heather Dunn Carlton, Deputy Title IX Coordinator, Associate Dean of Students – 916.733.2809</li> </ul>	Title IX Team Members
<ul style="list-style-type: none"> <li>• Dr. Elizabeth Trayner, Title IX Coordinator – 209.946.7770</li> <li>• Dr. Heather Dunn Carlton, Deputy Title IX Coordinator, Associate Dean of Students – 916.733.2809</li> <li>• <a href="#">Members of the President’s Cabinet</a></li> <li>• <a href="#">Chief Compliance Officer</a></li> </ul>	University of the Pacific has determined that these individuals are Officials with Authority to address and correct Harassment, Discrimination, and/or Retaliation. In addition to the Title IX Team members, listed above, these Officials with Authority listed may also accept notice or complaints on behalf of the university.
<ul style="list-style-type: none"> <li>• Pacific’s Victim Advocate – 209.403.0250</li> <li>• Pacific Counseling and Psychological Services – 209.946.2315 x2</li> <li>• Pacific Health Services – 209.946.2315 x1</li> <li>• Interfaith Chaplain – 209.946.2325</li> <li>• University Ombuds – 209.932.3017</li> <li>• <a href="#">Employee Assistance Program</a></li> <li>• WEAVE 24 Hour Crisis Line – 916.920.2952</li> <li>• My Sister’s House 24 Hour Crisis Line – 916.428.3271</li> </ul>	Confidential Resources (No Notice to the university)

**SAN FRANCISCO:**

Contact	Responsible Items
Dr. Elizabeth Trayner Title IX Coordinator Office of the President 3601 Pacific Avenue Hand Hall 112 Stockton, CA 95211 209.946.7770 <a href="mailto:titleix@pacific.edu">titleix@pacific.edu</a> <a href="http://www.go.pacific.edu/TitleIX">www.go.pacific.edu/TitleIX</a>	Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to this individual.
<ul style="list-style-type: none"> <li>• 911 Emergency</li> <li>• San Francisco Police/Fire Department – Emergencies – 415.553.8090</li> <li>• San Francisco District Attorney’s Victim/Witness Resources 850 Bryant Street, Room 320 San Francisco, CA 94103</li> </ul>	Making a complaint off campus

<p>415.553.9044 (may assist with reporting to police)</p> <ul style="list-style-type: none"> <li>• Pacific’s Victim Advocate can assist with reporting to the police – 209.403.0250</li> <li>• Public Safety can assist with reporting to the police – 916.739.7200 (24-hour access)</li> <li>• The Title IX Coordinator can assist with reporting to the police – 209.946.7770</li> </ul>	
<ul style="list-style-type: none"> <li>• San Francisco General Hospital Emergency Room 1001 Potrero Avenue #107 San Francisco, CA 94110 415.206.8000</li> </ul>	<p>This facility can be utilized for immediate medical treatment.</p> <p>This facility performs Sexual Assault examinations.</p> <p>This is a Confidential Resource.</p>
<ul style="list-style-type: none"> <li>• Dr. Elizabeth Trayner, Title IX Coordinator – 209.946.7770 or 1.888.383.2765 (toll-free)</li> <li>• Kara Bell, Deputy Title IX Coordinator, Assistant Dean, Human Resources &amp; Support Operations &amp; Campus Director – 415.929.6454</li> </ul>	<p>Title IX Team Members</p>
<ul style="list-style-type: none"> <li>• Elizabeth Trayner, Title IX Coordinator – 209.946.7770</li> <li>• Kara Bell, Deputy Title IX Coordinator, Assistant Dean, Human Resources &amp; Support Operations &amp; Campus Director – 415.929.6454</li> <li>• <a href="#">Members of the President’s Cabinet</a></li> <li>• <a href="#">Chief Compliance Officer</a></li> </ul>	<p>University of the Pacific has determined that these individuals are Officials with Authority to address and correct Harassment, Discrimination, and/or Retaliation. In addition to the Title IX Team members, listed above, these Officials with Authority listed may also accept notice or complaints on behalf of the university.</p>
<ul style="list-style-type: none"> <li>• Pacific’s Victim Advocate – 209.403.0250</li> <li>• Pacific Counseling and Psychological Services – 209.946.2315 x2</li> <li>• Pacific Health Services – 209.946.2315 x1</li> <li>• Interfaith Chaplain – 209.946.2325</li> <li>• University Ombuds – 209.932.3017</li> <li>• <a href="#">Employee Assistance Program</a></li> <li>• San Francisco Women Against Rape (SFWAR) Crisis Hotline – 415.647.RAPE</li> </ul>	<p>Confidential Resources (No Notice to the university)</p>

**EXTERNAL INQUIRIES:**

<b>Contact</b>	<b>Responsible Items</b>
<p>Office for Civil Rights (OCR)</p> <p>U.S. Department of Education</p> <p>400 Maryland Avenue, SW</p>	<p>Inquiries may be made externally here</p>

<p>Washington, D.C. 20202-1100  Customer Service Hotline #: (800) 421-3481  Facsimile: 202.453.6012  TDD#: 877.521.2172  Email: <a href="mailto:OCR@ed.gov">OCR@ed.gov</a>  Web: <a href="http://www.ed.gov/ocr">http://www.ed.gov/ocr</a></p> <p>San Francisco Office  Office for Civil Rights  U.S. Department of Education  50 Nations Plaza  Mail Box 1200, Room 1545  San Francisco, CA 94102  Telephone: 415.486.5555  Fax: 415.486.5570  TDD: 800.877.8339  Email: <a href="mailto:ocr.sanfrancisco@ed.gov">ocr.sanfrancisco@ed.gov</a></p>	
<p>Office for Civil Rights (OCR)  U.S. Department of Health and Human Services  200 Independence Avenue, SW  Room 509F, HHH Building  Washington, D.C. 20201  Toll-Free: 800.368.1019</p> <p>Pacific Region  Michael Leoz, Regional Manager  Office for Civil Rights  U.S. Department of Health and Human Services  90 7<sup>th</sup> Street, Suite 4-100  San Francisco, CA 94103  Customer Response Center: 800.368.1019  Fax: 202.619.3818  TDD: 800.537.7697  Email: <a href="mailto:ocrmail@hhs.gov">ocrmail@hhs.gov</a></p>	<p>Inquiries related to medical school may be made externally here</p>
<p>Equal Employment Opportunity Commission (EEOC)  Contact: <a href="http://www.eeoc.gov/contact/">http://www.eeoc.gov/contact/</a></p>	<p>Complaints involving employees may made externally here</p>

**Definitions**

Terms in this Policy that are capitalized (e.g., “Sexual Misconduct”) are defined below.

Term	Definition
------	------------

Advisor	A person chosen by a party or appointed by the university to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
Appeal Decision-Makers	The three-person committee of trained individuals from the Pacific community who have the responsibility of considering an appeal of the Decision Maker's determination and sanctions.
Complainant	An individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
Complaint (formal)	A document submitted by a Complainant or by the Title IX Coordinator alleging Harassment or Discrimination based on a protected class or Retaliation for engaging in a protected activity against a Respondent and requesting that University of the Pacific 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).
Confidentiality	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. University of the Pacific has designated individuals who have the ability to have privileged communications as Confidential Resources. 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 Clery Act. Other information may be shared as required by law.
Consensual Relationships	Romantic relationships that may occur between various members of the Pacific community. Some consensual relationships have the potential to evolve into Sexual Misconduct. This is true of faculty-student, faculty-staff, staff-student, supervisor-subordinate, and coach-student athlete relationships. The university prohibits consensual relationships when one person provides teaching, mentoring, supervision or coaching to the other person in that relationship.  <a href="#">Athletics Staff/Student-Athlete Amorous Relationships Policy</a>  <a href="#">Intimate Relationships Affecting Supervisory Functions, Teaching, and Mentoring</a>

Consent	<p>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 they have 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 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. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.</p> <p>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, other birth control or protective/prophylactic device, without additional evidence of consent, is not sufficient to constitute Consent. Consent to one form of sexual activity cannot imply Consent to other forms of sexual activity. Consent cannot be obtained by the use of physical force, threats, intimidating behavior or coercion (e.g. unreasonable pressure for sexual activity). Consent cannot be given by a person known under the legal age of Consent or by someone, or who should have been known, to be mentally or physically incapable of providing consent (by alcohol or other drug use, unconsciousness, blackout, sleep, shock disability, age [i.e. under 18 years old] or for any other reason). The use of alcohol or drugs will not function as an excuse for behavior that violates this Policy.</p>
Day	Includes Monday through Friday, when the university is in normal operation.
Decision-Maker or Panel	Refers to those who have decision-making and sanctioning authority within University of the Pacific's Formal Grievance process.
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 is not relied upon in the investigation report.
Discrimination	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 status, veteran status, pregnancy, age, physical or mental disability, or any other status prohibited by law.
Discriminatory Harassment	Unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.
Education program or activity	Locations, events, or circumstances where University of the Pacific 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 university.

Faculty	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.
FERPA	Family Education Rights and Privacy Act which protects the Privacy of student education records.
Formal Grievance Process	"Process A," a method of formal resolution designated by University of the Pacific to address conduct that falls within the policies included below, and which complies with the requirements the Title IX regulations (34 CFR §106.45).
Gender Identity	Refers to each person's identification as internal understanding of their gender, or the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female, a gender different from the person's sex assigned at birth, or transgender.
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.
Investigator	The person or persons charged by University of the Pacific with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
Mandated Reporter	An employee of University of the Pacific who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator. Under this policy, these individuals are required to immediately report suspected or known child abuse of a minor. Examples of Mandated Reporters include but are not limited to Staff from the Division of Student Life, Faculty, and other academic staff who teach courses in which minors are enrolled, including summer programs, Athletics Department employees, and Resident Assistants.
Sexual Misconduct	Prohibited conduct including but not limited to Discriminatory Harassment, Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, Sexual Exploitation, Non-Consensual Sexual Intercourse, Non-Consensual Sexual Touching, Threatening or causing physical harm, Gender-Based Harassment, Gender-Based Discrimination, Intimidation, Sex or Gender-Based Hazing, Sex or Gender-Based Bullying, Violation of No Contact/Supportive or Protective Measures, Attempts, and Retaliation.

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 University of the Pacific explicitly vested with the responsibility to implement corrective measures for Harassment, Discrimination, and/or Retaliation on behalf of the university.
Pacific Community	Includes, but is not limited to Students, registered student organizations, Faculty, administrators, Staff, and Third Parties.
Parties	Include the Complainant(s) and Respondent(s), collectively.
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.
Privacy	Information related to a Complaint will be shared with a limited number of University of the Pacific 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 university’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 university FERPA policy. The privacy of employee records will be protected in accordance with Human Resources policies.
Process A	The Formal Grievance Process as detailed and defined within the procedures affiliated with this Policy.
Process B	Administrative resolution procedures detailed in the procedures affiliated with this Policy that only apply when Process A does not, as determined by the Title IX Coordinator.
Relevant Evidence	Evidence that tends to prove or disprove an issue in the Complaint.
Remedies	Post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the university’s educational program.
Respondent	An individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
Responsible Employee	An employee who knows, or in the exercise of reasonable care should have known, that Sexual Misconduct has occurred. Responsible Employees have the obligation to report incidents of Sexual Misconduct to the Title IX

	Coordinator or their designee. Except Confidential Resources, all employees at the university are Responsible Employees.
Resolution	The result of an informal or Formal Grievance Process.
Sanction	A consequence imposed by the University of the Pacific on a Respondent who is found to have violated this Policy.
Sexual Harassment	The umbrella category including the offenses of Sexual Harassment, Sexual Assault, Stalking, Dating Violence and Domestic Violence.
Staff Member or Staff	A salaried or hourly person employed by the university, including applicants.
Student	Includes all full and part-time undergraduate, professional, and graduate Students from the time of application for admission to the time of the conferral of a degree and includes periods prior to the start of classes, after classes have ended, between terms, and when a student is not officially enrolled but has an ongoing relationship with Pacific.
Third Party	Includes but not limited to guests, visitors, vendors, volunteers, invitees, and campers.
Title IX Coordinator	The official designated by University of the Pacific to ensure compliance with Title IX and the university's Title IX program.
Title IX Team	The Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.
University	Refers to University of the Pacific.

**Policy Statement**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of legally prohibited harassment. University of the Pacific's 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 university policy. Collectively, these are referred to as Sexual Misconduct.

When speech or conduct is protected by academic freedom and/or Leonard's Law, it will not be considered a violation of university policy, though supportive measures will be offered to those impacted. The university's policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below.

**1. Discriminatory Harassment**

Discriminatory Harassment constitutes a form of Discrimination that is prohibited by university policy. Discriminatory Harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.



The university does not tolerate discriminatory harassment of any employee, student, visitor, or guest. The university 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. 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 university may also impose sanctions on the Respondent through application of the appropriate grievance process below.

The university reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under University of the Pacific policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms.

For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Assistant Vice President of Human Resources, and students should contact the Assistant Dean of Student Conduct & Community Standards.

## 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.

University of the Pacific has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of Students as well.

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

Sexual Harassment, as an umbrella category, includes the offenses of Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

### a) Quid Pro Quo:

- i) an employee of the university,
- ii) conditions the provision of an aid, benefit, or service of the university,
- iii) on an individual’s participation in unwelcome sexual conduct; and/or

### b) Sexual Harassment:

- i) unwelcome conduct,
- ii) determined by a reasonable person,
- iii) to be so severe, and
- iv) pervasive, and,
- v) objectively offensive,
- vi) that it effectively denies a person equal access to the university’s education program or activity.

c) **Sexual assault**, defined as:

- i) Sex Offenses, Forcible:
  - 1) Any sexual act directed against another person,
  - 2) without the Consent of the Complainant,
  - 3) including instances in which the Complainant is incapable of giving Consent.
  
- ii) Forcible Rape:
  - 1) Penetration,
  - 2) no matter how slight,
  - 3) of the vagina or anus with any body part or object, or
  - 4) oral penetration by a sex organ of another person,
  - 5) without the Consent of the Complainant.
  
- iii) Forcible Sodomy:
  - 1) Oral or anal sexual intercourse with another person,
  - 2) forcibly,
  - 3) and/or against that person's will (non-consensually), or
  - 4) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age per California State Law or because of temporary or permanent mental or physical incapacity.
  
- iv) Sexual Assault with an Object:
  - 1) The use of an object or instrument to penetrate,
  - 2) however slightly,
  - 3) the genital or anal opening of the body of another person,
  - 4) forcibly,
  - 5) and/or against that person's will (non-consensually),
  - 6) or not forcibly or against the person's 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.
  
- v) Forcible Fondling:
  - 1) The touching of the private body parts of another person (buttocks, groin, breasts),
  - 2) for the purpose of sexual gratification,
  - 3) forcibly,
  - 4) and/or against that person's will (non-consensually),
  - 5) or not forcibly or against the person's 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.
  
- vi) Sex Offenses, Non-forcible:
  - 1) Incest:
    - (a) Non-forcible sexual intercourse,
    - (b) between persons who are related to each other,

(c) within the degrees wherein marriage is prohibited by California law.

2) **Statutory Rape:**

(a) Non-forcible sexual intercourse,

(b) with a person who is under the statutory age of consent of 18 years of age in California

d) **Dating Violence**, defined as:

- i) Violence,
- ii) on the basis of sex,
- iii) committed by a person,
- iv) who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - 1) 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—
  - 2) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - 3) Dating violence does not include acts covered under the definition of domestic violence.

e) **Domestic Violence**, defined as:

- i) violence,
- ii) on the basis of sex,
- iii) committed by a current or former spouse or intimate partner of the Complainant,
- iv) by a person with whom the Complainant shares a child in common, or
- v) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- vi) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of California, or
- vii) 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.

\*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.

f) **Stalking**, defined as:

- i) engaging in a course of conduct,
- ii) on the basis of sex,
- iii) directed at a specific person, that
  - 1) would cause a reasonable person to fear for the person's safety, or
  - 2) the safety of others; or
  - 3) Suffer substantial emotional distress.

For the purposes of this definition—

- (i) 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.

- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

The university reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or dismissal/termination, for any offense under this Policy.

### 3. Other Civil Rights Offenses

In addition to the forms of Sexual Harassment described above, which fall within the coverage of Title IX as defined in 34 CFR §106.30, University of the Pacific additionally prohibits the following offenses as forms of discrimination outside of Title IX as defined in 34 CFR §106.30 when the act is based upon the Complainant's actual or perceived Sex, Gender, Gender Identity, or Gender Expression.

- a) **Sexual Exploitation**, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - i) Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - ii) Invasion of sexual privacy
  - iii) Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
  - iv) Prostituting another person
  - v) 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 infection
  - vi) 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
  - vii) Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - viii) 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
  - ix) Knowingly soliciting a minor for sexual activity

- x) Engaging in sex trafficking
  - xi) Creation, possession, or dissemination of child pornography
- b) **Non-Consensual Sexual Intercourse**, defined as non-consensual sexual intercourse or any other sexual penetration (oral, anal, or vaginal) with a body part or other object (no matter how slight), rape, forced sodomy, forced oral copulation or the threat of any of these behaviors;
- c) **Non-Consensual Sexual Touching**, defined as intentional sexual touching, however slight, with any body part or object, by any individual upon another that is without consent and/or by force or coercion. Sexual contact includes: intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts or object, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.
- d) **Threatening or causing physical harm**, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- e) **Gender-Based Harassment**, defined acts of verbal, nonverbal, or physical aggression, based on gender, gender expression, sex or sexual-orientation; unwelcome sexual advances, requests for sexual favors; verbal, visual or physical conduct of a sexual nature;
- f) **Gender-Based Discrimination**, defined as giving preferential treatment to a gender to the disadvantage of another;
- g) **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- h) **Sex or Gender-Based Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Pacific community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
- i) **Sex or Gender-Based Bullying**, defined as:
- i) Repeated and/or severe
  - ii) Aggressive behavior
  - iii) Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
  - iv) That is not speech or conduct otherwise protected by Leonard’s Law.
- j) **Violation of No Contact/Supportive or Protective Measures:**
- i) Failure to abide by or follow the requirements of a no contact order or other Supportive or protective Measures.
- k) **Attempts**, defined as:
- i) Conduct that, if successful, would constitute or result in the prohibited conduct.

Violation of any other university policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a Discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through dismissal/termination.

### **Intimate Relationships Affecting Supervisory Functions, Teaching, and Mentoring**

<https://webshare.pacific.edu/sites/policies/Pages/Intimate%20Relationships%20Affecting%20Supervisory%20Functions,%20Teaching%20and%20Mentoring.aspx>

#### **4. Retaliation**

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. University of the Pacific is prepared to take appropriate steps to protect individuals who fear that they may be subjected to Retaliation.

It is prohibited for the university or any member of the Pacific community to take 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 associated 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, constitutes Retaliation.

The exercise of rights protected under the First Amendment/Leonard's Law does not constitute Retaliation.

Charging an individual with 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 a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

### **Force, Coercion, Consent, and Incapacitation**

As used in sections 1-4 of 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.

**Consent is:**

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 they have 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 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. 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, other birth control or protective/prophylactic device, without additional evidence of Consent, is not sufficient to constitute Consent. Consent to one form of sexual activity cannot imply Consent to other forms of sexual activity. Consent cannot be obtained by the use of physical force, threats, intimidating behavior or coercion (e.g. unreasonable pressure for sexual activity). Consent cannot be given by a person known under the legal age of consent or by someone, or who should have been known, to be mentally or physically incapable of providing consent (by alcohol or other drug use, unconsciousness, blackout, sleep, shock disability, age [i.e. under 18 years old] or for any other reason). The use of alcohol or drugs will not function as an excuse for behavior that violates this Policy.

**Incapacitation:** A person cannot Consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol 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.

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.

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).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

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.

### **Mandated Reporting and Responsible Employees**

University of the Pacific Staff (including student staff members) and Faculty are Responsible Employees who are required to immediately report information about any incident of Sexual Misconduct to the Title IX Coordinator or a Deputy Title IX Coordinator, unless the employee is required by law to keep information confidential (e.g. psychological counselor, Student Victim Advocate, Student Health Services, University Chaplain working within the scope of their licensure or ordination, University Ombuds as outlined in their charter, etc.). Mandated Reporters are required to report known or suspected instances of child abuse involving a minor.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Responsible Employee can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

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

### **Confidential Resources**

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

- University of the Pacific Counseling and Psychological Services (CAPS)
- University of the Pacific Student Health Services
- University of the Pacific Victim Advocate
- Director of Religious & Spiritual Life, Multifaith Chaplain working within the scope of their licensure or ordination
- University Ombuds
- Off-campus (non-employees):
  - [Employee Assistance Program \(EAP\)](#)
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors and domestic violence resources
    - Women's Center Youth & Family Services (Stockton)
    - WEAVE (Sacramento)
    - My Sister's House (Sacramento)
    - San Francisco Women Against Rape (SFWAR) (San Francisco)
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

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



CAPS and/or the Employee Assistance Program are available to help free of charge and may be consulted at any time.

University employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

### **Mandated Reporters, Responsible Employees and Formal Notice/Complaints**

All employees of the University of the Pacific (including Student employees), with the exception of those who are designated as Confidential Resources, are Responsible Employees 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 Responsible Employees, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from the university.

Supportive Measures may be offered as the result of such disclosures without a formal university investigation.

Failure of a Mandated Reporter or Responsible Employee, as described above, to report an incident of Harassment or Discrimination of which they become aware is a violation of university policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when a Mandated Reporter or Responsible Employee is engaged in Harassment or other violations of this Policy, they still have a duty to report their own misconduct, though the university is technically not on Notice when a harasser is also a Mandated Reporter or Responsible Employee unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandated Reporter or Responsible Employee 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.

### **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 University of the Pacific proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the university to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The university may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the university's ability to pursue a Formal Grievance Process fairly and effectively.

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 university 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.

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

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the university to honor that request, the university will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, 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 university, and to have the incidents investigated and properly resolved through the associated procedures.

### **Federal Timely Warning Obligations**

Parties reporting Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking should be aware that under the Clery Act, University of the Pacific must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The university 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.

### **False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University of the Pacific policy.

### **Amnesty for Complainants and Witnesses**

University of the Pacific encourages reporting of Sexual Misconduct. The university will ensure that an individual who participates as a Complainant or witness in an investigation of Sexual Misconduct will receive amnesty and will not be subject to disciplinary sanctions for a violation of the university's student conduct policies regarding 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. The university reserves the right to require individuals to participate in health and safety assessments or educational programs.

It is in the best interests of the university community that Complainants choose to report Sexual Misconduct to university 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 university 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. The decision not to offer amnesty to a Respondent is based on neither sex nor 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.

**Students:** 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 Misconduct to the Public Safety).

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

**Employees:** Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to university officials.

The university may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

### **Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) 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;
- c) VAWA-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to [campus law enforcement] regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student life including student conduct staff and public safety, local police, coaches, athletic directors, residence life and housing staff, student activities staff, human resources staff, advisors to registered student organizations, and any other official with significant responsibility for student and campus activities.

### **Contact Information**

<b>Subject</b>	<b>Phone</b>	<b>Email</b>	<b>Webpage</b>
Title IX Coordinator	209.946.7770	<a href="mailto:titleix@pacific.edu">titleix@pacific.edu</a>	<a href="http://www.go.pacific.edu/TitleIX">www.go.pacific.edu/TitleIX</a>

### **Individuals with Disabilities**

If you are a student with a disability who requires accommodations, please contact the Office of Services for Students with Disabilities located in the McCaffrey Center, Room 137. Phone: 209.946.3221. Email: [ssd@pacific.edu](mailto:ssd@pacific.edu). Online: [www.pacific.edu/disabilities](http://www.pacific.edu/disabilities).

If you are an employee or applicant on the Stockton Campus, please contact Cari Keller, Associate Director Human Resources at [ckeller@pacific.edu](mailto:ckeller@pacific.edu) or 209.946.2126.

If you are an employee or applicant on the Sacramento Campus, please contact Cari Keller, Associate Director Human Resources at [ckeller@pacific.edu](mailto:ckeller@pacific.edu) or 209.946.2126.

If you are an employee or applicant on the San Francisco Campus, please contact Kara Bell, Assistant Dean, Human Resources & Support Operations/Campus Director at [kbell@pacific.edu](mailto:kbell@pacific.edu) or 415.929.6454.

### Related Information

Item	Description
University Links	<a href="#">Sexual Misconduct and Title IX Resources</a>
Forms	<a href="#">Reporting Form</a>
Related Links	<a href="#">34 CFR §106</a>
Procedures	<a href="#">Procedures</a>

ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL. USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED THROUGH A LIMITED LICENSE TO UNIVERSITY OF THE PACIFIC. ALL OTHER RIGHTS RESERVED. ©2020. ATIXA