



## LOMA LINDA UNIVERSITY

### Form

CATEGORY: Human Resource Management

Effective: Not  
Approved  
Yet

SUBJECT: Prohibiting Sexual Misconduct and Discrimination on the  
Basis of Sex (Title IX)

Replace: 11-20-2019  
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COORDINATOR: Senior Vice President for Risk Management and Human  
Resource Management

GOVERNING POLICY:

RELATED ENTITY SPECIFIC POLICIES:

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Title IX of the Education Amendments of 1972 ("Title IX") prohibits discrimination on the basis of sex in educational programs and activities at institutions receiving federal financial assistance.

Loma Linda University and its affiliated educational sites (herein referred to as "LLU" or "University") is committed to providing a safe and supportive environment that is free from unlawful discrimination on the basis of sex in its admissions practices, in its employment practices, or in its educational programs or activities. Any form of sex discrimination and sexual misconduct, including harassment, coercion, intimidation, or sexual violence, is reprehensible; runs counter to LLU's teachings and guiding beliefs; and will not be tolerated. In keeping with this commitment, Loma Linda University maintains a strict policy prohibiting unlawful discrimination or harassment based on personal characteristics of gender, sexual orientation, gender identity, race, color, religion, national origin, disability, age, or veterans' status. Also prohibited is retaliation of any kind against individuals who report alleged incidents of discrimination or sexual misconduct, or who assist in a University investigation of such allegations.

#### 1. Glossary

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual misconduct or sexual harassment.
- *Formal Complaint* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation.
- *Confidential Advisor* means an employee who is not a Mandated Reporter of notice of harassment, misconduct and/or retaliation.

- *Education program or activity* means locations, events, or circumstances where LLU exercises substantial control over both the Respondent and the context in which the sexual misconduct or harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by LLU.
- *Final Determination* is the conclusion based on the preponderance of the evidence that the alleged conduct did or did not violate this policy.
- *Finding* is a conclusion based on the preponderance of the evidence that the conduct did or did not occur as alleged.
- *Hearing Decision-Maker(s)* refers to those who have decision-making and sanctioning authority within LLU's Title IX Grievance Process
- *Investigator* means the person or persons charged by LLU 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* means an employee of LLU who is obligated by policy to share knowledge, notice and/or reports of Sexual Misconduct, Sexual Harassment and/or retaliation with the Title IX Coordinator
- *Notice* means that 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.
- *Officials with Authority (OWA)* means an employee of LLU explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of LLU. OWAs are obligated by policy and Title IX to share knowledge, notice and/or reports of harassment and/or retaliation with the Title IX Coordinator and/or the Title IX Officer. All LLU Deans and Associate Deans fall under the definition of Officials with Authority.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to LLU's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, sexual misconduct or retaliation for engaging in a protected activity.
- *Sexual Misconduct Grievance Process* means the process designated by LLU to apply when the alleged conduct is deemed to be sexual misconduct but does not meet the definition of Sexual Harassment, as determined by the Title IX Coordinator.
- *Student* is any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing

relationship with LLU.

- *Title IX Coordinator* is the official designated by LLU to ensure compliance with Title IX and oversee LLU's Title IX program.
- *Sexual Harassment Grievance Process* is the method of formal resolution designated by LLU to address conduct that meets the definition of sexual harassment, and which complies with the requirements of the Title IX regulations.

## 2. Applicable Scope

The purpose of this policy is the prohibition of sexual harassment, sexual misconduct and retaliation. When an alleged violation of this policy is reported, the allegations are subject to resolution using LLU's Sexual Misconduct or Title IX grievance processes, as determined by the Title IX Coordinator, and as detailed below.

When the respondent is a member of the LLU community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the LLU community. This community includes, but is not limited to, students, residents, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, and invitees.

The procedures below may 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.

## 3. Title IX Coordinator and Title IX Officer

LLU's Title IX Officer provides oversight and leadership for activities involving Title IX compliance, coordination, and complaint resolution.

LLU's Title IX Coordinator oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating LLU's efforts related to the intake, investigation, resolution and implementation of supportive measures to stop, remediate, and prevent sexual harassment, sexual misconduct and retaliation prohibited under this policy.

The Title IX Officer and Coordinator act with independence and authority free from bias and conflicts of interest. All members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Title IX Officer. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

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

Mark Hubbard, Title IX Officer 101 East Redlands Blvd San Bernardino, CA 92408  
Phone: 909-651-4011 Email: Mhubbard@llu.edu

Sara Matus, Title IX Coordinator 101 East Redlands Blvd, Ste 1400-B San Bernardino,

CA 92408

Phone: 909-651-4638 Email: Smatus@llu.edu

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

External inquiries regarding training pertaining to the medical school or medical center can be made externally to:

Centralized Case Management Operations  
U.S. Department of Health and Human Services  
200 Independence Avenue, S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201  
Toll-Free: 1-800-368-1019  
TDD#: 1-800-537-7697  
Email: [OCRMail@hhs.gov](mailto:OCRMail@hhs.gov)  
Web: <https://ocrportal.hhs.gov/ocr>

#### 4. Notice/Complaints of Sexual Harassment, Sexual Misconduct and/or Retaliation

Notice or complaint of sexual harassment, sexual misconduct and/or retaliation may be made using any of the following options:

- a. File a complaint with, or give verbal notice to, the Title IX Coordinator or Title IX Officer. Such a report may be made at any time (including non-business hours) by using the telephone number, email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
- b. Report online, using the reporting form posted at <https://home.llu.edu/about-llu/policies/sex-discrimination-sexual-misconduct-title-ix/report-incident-online-form>.

A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that LLU investigate the allegation(s). "Document submitted by a Complainant" for this purpose means a document or electronic submission containing the Complainant's physical or digital signature, or otherwise

indicates that the Complainant is the person filing the complaint. If notice is submitted in a form that does meet the Formal Complaint standard, the Title IX Coordinator will contact the Complainant to confirm their intent as to filing a Formal Complaint.

#### 5. Alternatives to Reporting

LLU encourages victims of sexual violence to talk to somebody about what happened – so victims can get the support they need, and so the University can respond appropriately. Different employees on campus have different abilities to maintain a victim’s confidentiality. Some are required to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.” However, some employees are required to report all the details of an incident (including the identities of both the victim and alleged perpetrator) to the Title IX coordinator. A report to these employees, called “officials with authority,” constitutes a report to the University - and generally obligates the University to investigate the incident and take appropriate steps to address the situation.

All LLU Deans, Associate Deans, and any member of the Security department fall under the definition of Officials with Authority; Notice or a complaint to them, the Title IX Coordinator or the Title IX Officer, constitute notice on behalf of LLU. LLU has also classified all employees within the HR department as Mandated Reporters and any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation is required to be shared with the Title IX Coordinator.

Privileged communications refer to confidential discussions with designated confidential resources or professional, licensed counselors and pastoral counselors who provide mental-health counseling to members of the school community (and including those who act in that role under the supervision of a licensed counselor). Designated confidential advisors, Professional and Pastoral Counselors are not permitted to report any information about an incident to the Title IX coordinator without a victim’s permission.

All other employees of LLU are encouraged, but not required, to share any information regarding sexual misconduct, sexual harassment and/or retaliation occurring within the education program or activities of LLU with the Title IX Coordinator, Title IX Officer or any Official with Authority.

#### 6. Supportive Measures

LLU will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual misconduct, sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to LLU’s education program or activity, including measures designed to protect the safety of all parties or LLU’s educational environment and/or deter sexual harassment and retaliation.

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

LLU maintains the privacy of the supportive measures provided, so long as that privacy does not impair the University's ability to provide such supportive measures. LLU will act to minimize the academic/employment impact on the parties as much as possible. Supportive measures will be implemented in a way that does not unreasonably burden any other party.

Supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee or Student Assistance Program
- Referral to community based service providers
- Student financial aid counseling
- Education to the institutional community or community subgroup
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations while on campus
- Implementing contact limitations "no contact orders" between the parties
- Academic support
- 602 Advisals – restriction from campus property
- Class schedule or group modifications
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

## 7. Emergency Removal

LLU can act to remove a student or employee 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.

In all cases in which an emergency removal is imposed, the student or employee will be given notice of the action and the option to request to meet with the Title IX Coordinator and Dean of their school (or designee) prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. The meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice at the meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

LLU will implement the least restrictive emergency actions possibly in light of the circumstances and safety concerns. As determined by the Title IX Coordinator and presiding Dean, these actions could include, but are not limited to: removing a student from a residence all, 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, administrative leave, and suspending a student's participation in extracurricular activities and student employment.

#### 8. Promptness

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

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

#### 9. Privacy

Every effort is made by LLU to preserve the privacy of reports. LLU will not share the identity of any individual who has made a report or complaint of misconduct harassment, or retaliation, any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing or grievance proceeding arising under these policies and procedures.

Information will be shared as necessary with Investigators, Decision Makers, witnesses and the parties. LLU 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 FERPA. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

#### 10. Jurisdiction of Loma Linda University

This policy applies to the education program and activities of LLU, to conduct that takes place on campus or on property owned or controlled by the University or at LLU sponsored events. The Respondent must be a member of LLU's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to LLU's educational program. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX coordinator determines that the conduct affects a substantial LLU interest.

Regardless of where the conduct occurred, the University will address all notices/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. A substantial LLU interest includes, but is not limited to:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any student or other individual;
- Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- Any situation that is detrimental to the educational interest or mission of LLU.

If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. In addition, LLU may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events.

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to LLU'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.

#### 11. Online Sexual Misconduct, Sexual Harassment and/or Retaliation

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct. LLU's policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities or use University networks, technology or equipment.

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

#### 12. Policy on Disability Discrimination and Accommodation

LLU is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

For the student Disability Accommodation Policy please see the student handbook. For Employees of the University please refer to the "Accommodations for Person with Disabilities" policy.

#### 13. Definitions

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

Sexual Misconduct: Sexual misconduct is unwelcome, sexual, sex-based or gender-based verbal, written, online and/or physical conduct.

Sexual Harassment: Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- a. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- c. "Sexual assault", "dating violence", "domestic violence" or "stalking"

Sexual harassment may include incidents between any member of the University community, including faculty and other academic appointees, staff, deans, students, and nonstudents or nonemployee participants in University programs — such as vendors, contractors, visitors, and patients. Such conduct can occur by both in-person and electronic means; including via postal mail, hand delivered letter, use of e-mail, the internet, etc.

Sexual Assault: Any sexual act directed against another person, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.

Examples of Sexual Assault:

*Forcible Rape*: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without that person's consent.

*Forcible Sodomy*: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

*Sexual Assault with an Object*: — To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

*Forcible Fondling*: The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Dating Violence: The term “dating violence” means violence committed by a person – (A) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors (i) the length of the relationship, (ii) the type of relationship and (iii) the frequency of interaction between the persons involved in the relationship.

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

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

Stalking: Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress.

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

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.

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.

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: “Consent” is defined as agreement, approval, or permission as to some act or purpose that is given knowingly, willingly, and voluntarily by a competent person. Consent can be withdrawn at any time. There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress is used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent. Silence or absence of resistance

does not imply consent. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.

If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious. 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.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. Proof of consent or non-consent is not a burden placed on either party involved in an incident. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

#### 14. Retaliation

Retaliation occurs when intimidation, threats, coercion, or other discriminatory action is used against an individual for the purpose of interfering with any right or privilege secured by a federal civil right. 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. LLU will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

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

#### 15. Amnesty for Complainants and Witnesses

Loma Linda University offers immunity to students who may have violated University policies pertaining to sexual activity and/or consumption of alcohol or drugs at or near the time of the incident when such information is made available as a result their report of sexual misconduct. Individuals who initially report sexual misconduct or sexual harassment that was directed at them or another person, will not be subject to disciplinary action by the University for their own personal involvement in such activities at or near the time of the incident provided that any such violations did not and do not place the health or safety of any other person at risk.

The purpose of this clause is to encourage reporting. Victims or bystanders (witnesses) should not let his or her use of alcohol or drugs be a deterrent to reporting an incident. When conducting the

investigation, the University's primary focus will be on addressing the sexual misconduct or sexual harassment violation and not on alcohol/drug violations that may be discovered or disclosed.

However, the university may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.

#### 16. 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 LLU 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. The Title IX Coordinator's decision to proceed should be based on an assessment that show a compelling risk to health and/or safety that requires the University to pursue a formal action to protect the community.

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

When LLU proceeds, the Complainant 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. Note that LLU'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 LLU's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow LLU to honor that request, the University will offer informal resolution options, supportive measures and remedies to the Complainant 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 LLU, and to have the incidents investigated and properly resolved through these procedures.

#### 17. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, LLU must issue timely warning for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

LLU 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.

#### 18. Sexual Harassment Grievance Process

LLU will act on any formal or informal notice/complaint of sexual harassment that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures. The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

If a dismissal occurs under the Sexual Harassment Grievance Process, the grievance process may continue but will follow the Sexual Misconduct Grievance Process as outlined further below

a. A. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps LLU needs to take.

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

- Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- An informal resolution (if appropriate and the wishes of Complainant); and/or
- A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

LLU uses the Formal Grievance Process to determine whether or not this Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

b. Initial Assessment

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

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.

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<sup>1</sup> If circumstances require, the Title IX Officer or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address an incident, a pattern of alleged misconduct, and/or a culture/climate concern, based on the nature of the complaint.
    - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies and procedures (such as the Sexual Misconduct Grievance Process) may apply. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit LLU’s authority to address a complaint with an appropriate process and remedies.

c. Dismissal (Mandatory and Discretionary)

LLU must dismiss a formal complaint of Sexual Harassment or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- The conduct did not occur in an educational program or activity controlled by LLU, and/or LLU does not have control of the Respondent; and/or
- The conduct did not occur against a person in the United States; and/or
- At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the University.

LLU may dismiss a formal complaint of Sexual Harassment or any allegations therein if, at any time during the investigation or hearing:

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

Upon any dismissal, LLU will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Complainant and the Respondent, if notice of the allegations has previously been provided.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

d. Counterclaims

LLU is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, as described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

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

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

e. Right to an Advisor

The parties may each have an Advisor<sup>2</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>3</sup> Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

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

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool made available by LLU, the Advisor will be trained and be familiar with the LLU's resolution process. If the parties choose

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<sup>2</sup> This could include an attorney, advocate, or support person. One Advisor is permitted for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

<sup>3</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained and may not be familiar with the University's policies and procedures.

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

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

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired) or, if no advisor will attend the meetings, before the hearing.

(1) Advisors in Hearings/LLU-Appointed Advisor

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

If the party's Advisor will not conduct questioning, LLU will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

(2) Advisor Violations of LLU Policies and Procedures

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

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

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented.

Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

(3) Sharing Information with the Advisor

LLU expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

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

(4) Expectations of an Advisor

LLU generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

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

f. Confidentiality

Grievance proceedings are private. All persons participating in the grievance process are expected to maintain the privacy of the proceedings in accordance with LLU policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. LLU encourages parties to discuss any sharing of information with their Advisors before doing so.

g. Informal Resolution

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation;
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, usually before a formal investigation takes place; or
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation).

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

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

LLU will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution. Results of complaints resolved by Informal Resolution are not appealable.

#### (1) Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

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

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Alternate Resolution are not appealable.

#### (2) Respondent Accepts Responsibility for Alleged Violations

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

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

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

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

#### h. Grievance Process Pool

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees.

The list of Pool members and a description of the Pool can be found at <https://home.llu.edu/about-llu/policies/sex-discrimination-sexual-misconduct-title-ix>.

##### (1) Pool Member Roles

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

- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternate Resolution
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

##### (2) Pool Member Appointment

The Title IX Officer, in consultation with the Provost and/or the Vice President for Student Experience, appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can also

designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary.

### (3) Pool Member Training

The Pool members receive training every two years. This training includes, but is not limited to:

- The scope of LLU's Sexual Harassment Policy and Procedures
- How to conduct hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct the grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

Specific training is also provided to the investigators and Title IX Coordinator. The materials used to train all members of the Pool are publicly posted at <https://home.llu.edu/about-llu/policies/sex-discrimination-sexual-misconduct-title-ix>.

#### i. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them if they so wish. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that LLU presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement on LLU's policy on retaliation,
- Information about the privacy of the process,
- Notification that each party may select an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that LLU prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

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

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

j. Resolution Timeline

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

k. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process (including the Title IX Coordinator, Investigator(s), and Decision-maker(s)) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

Once the decision to commence a formal investigation is made, the Title IX Coordinator will appoint an investigator to conduct the investigation. The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised to the Title IX Officer.

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

#### l. Investigation Timeline

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

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

LLU may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

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

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

LLU operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

#### m. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

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

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in

reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.

- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

n. Interviews

Witnesses (as distinguished from the parties) who are employees of LLU are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances may require individuals to be interviewed remotely. Zoom or similar technology may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

No unauthorized audio or video recording of any kind is permitted during investigation meetings.

o. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

p. Referral for Hearing

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

The hearing cannot be less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker – unless all parties and the Decision-maker agree to an expedited timeline.

q. Hearing Decision-maker Composition

LLU will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Officer. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Officer.

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

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

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

r. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

During the ten (10) business day review and comment period the Chair will consider arguments from the parties and their Advisors that evidence identified in the investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

At a post-hearing deliberation, the Decision-maker(s) will render a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent

violated the Policy as alleged. This determination will be transcribed by the Title IX Coordinator and sent to the Decision-maker(s) for verification prior to its distribution to the parties.

s. Notice of Hearing

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

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and virtual location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- The technology that will be used to facilitate the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Decision Maker may determine to reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

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

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy may be deemed to not be in good standing to graduate.

t. Pre-Hearing Preparation

The hearing facilitator or Title IX Officer after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator or Title IX Officer as soon as possible.

The Title IX Coordinator may invite the parties and their Advisors to submit the questions or topics they wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator regarding such rulings.

u. Hearing Procedures

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator (if distinct from Chair) the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf. The Chair will allow witnesses who have relevant information to be admitted to the virtual meeting at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and will then be excused.

(1) Joint Hearings

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

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

v. The Order of the Hearing

The Chair will begin the hearing with an explanation of the procedures and introduction of the participants.

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

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

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

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

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

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

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

w. Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

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

x. Recording Hearings

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

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

y. Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

The Decision-maker(s) will review the statements and any pertinent conduct history and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Title IX Coordinator will then prepare a written deliberation statement based on the Decision-maker(s)' determination and present it to the Decision-maker for accuracy confirmation. The deliberation will detail the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

z. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome will then be reviewed by legal counsel. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any

applicable sanction(s) with the parties and their Advisors within seven (5) business days of receiving the Decision-maker(s)' deliberation statement.

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

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

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to LLU's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by LLU to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

#### 19. Sexual Misconduct Grievance Process

The Sexual Misconduct Grievance Process is applicable when the Title IX Coordinator determines the Sexual Harassment Grievance Process is inapplicable, or offenses subject to the Sexual Harassment Grievance Process have been dismissed. If the Sexual Harassment Grievance Process is applicable, it must be applied in lieu of the Sexual Misconduct Grievance Process.

LLU will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Non-discrimination that is received by the Title IX Coordinator or an Official With Authority. The procedures described below apply to all allegations of harassment or discrimination on the basis of sex involving students, staff, faculty members, or third parties.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct. All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the respective student and faculty handbooks.

##### a. Initial Assessment

Following intake, receipt of notice, or a complaint of an alleged violation of LLU's non-discrimination Policy, the Title IX Coordinator engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive response or an Administrative Resolution.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. The Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - If Administrative Resolution is preferred, the Title IX Coordinator initiates the investigation process.

Based on the initial assessment, the University will initiate one of two responses:

- Informal Resolution – typically used for less serious offenses and only when all parties agree to Alternate Resolution, or when the Respondent is willing to accept responsibility for violating policy.
- Administrative Resolution – investigation of policy violation(s) and recommended finding, subject to a finding by the Title IX Coordinator and sanctions by the Dean of the applicable school, with an opportunity to appeal.

The investigation and the subsequent Administrative Resolution determine whether the nondiscrimination policy has been violated. If so, LLU will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator. At any point during the initial assessment or formal investigation, if the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

The Complainant may request that the Title IX Coordinator review the reasonable cause determination and/or re-open the investigation but the decision lies in the sole discretion of the Title IX Coordinator.

#### b. Resolution Process Pool

The resolution processes rely on a pool of officials ("Pool") to carry out the process. The list of members and a description of the Pool can be found at <https://home.llu.edu/about-llu/policies/sex-discrimination-sexual-misconduct-title-ix>.

- To act as optional process Advisors to the parties

- To facilitate Informal Resolution
- To serve on an Appeal Panel

Pool members receive annual training organized by the Title IX Coordinator, including a review of LLU's policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.

The Pool members receive annual training. This training includes, but is not limited to:

- The scope of LLU's Sexual Harassment Policy and Procedures
- How to conduct hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct the grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

Specific training is also provided to the investigators and Title IX Coordinator. The materials used to train all members of the Pool are publicly posted at <https://home.llu.edu/about-llu/policies/sex-discrimination-sexual-misconduct-title-ix>.

#### c. Counterclaims

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. LLU is obligated to ensure that any process is not abused for retaliatory purposes.

LLU permits the filing of counterclaims, but uses the initial assessment, described above in the Policy section, to assess whether the allegations are made in good faith. If they are, the

allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

d. Advisors

Each party may choose an Advisor<sup>4</sup> who is eligible and available<sup>5</sup> to accompany them throughout the process. The Advisor should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

LLU generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. LLU may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

Parties whose Advisors are disruptive or who do not abide by LLU policies and procedures may face the loss of that Advisor and/or possible Policy violations. Advisors are expected to consult with their advisees without disrupting meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to the Investigator(s) and/or the Title IX Coordinator if they change Advisors at any time.

e. Confidentiality

Grievance proceedings are private. All persons participating in the grievance process are expected to maintain the privacy of the proceedings in accordance with LLU policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to

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<sup>4</sup> This could include an attorney, advocate, or support person. Witnesses are not entitled to Advisors within the process, though they can be advised externally.

<sup>5</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Informal Resolution, discussed below. LLU encourages parties to discuss any sharing of information with their Advisors before doing so.

f. Informal Resolution

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternate Resolution or when the Respondent accepts responsibility for violating Policy.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the fact, Administrative Resolution may be pursued.

(1) Alternate Resolution

Alternate Resolution is an informal process, such as mediation or restorative practices, by which a mutually agreed upon resolution of an allegation is reached. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts. The parties must consent to the use of Alternate Resolution.

The Title IX Coordinator determines if Alternate Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternate Resolution. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternate Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy. The results of Alternate Resolution are not appealable.

(2) Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of LLU Policy.

The Title IX Coordinator, with the applicable Dean, then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties are still able to seek Alternate Resolution on the remaining allegations, subject to the stipulations above.

g. Administrative Resolution

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by this Policy at any time during the process. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If Administrative Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, will be made in writing, and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official LLU records, or emailed to the parties' LLU-issued or designated email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

LLU aims to complete all investigations within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

Once the decision is made to commence an investigation, the Title IX Coordinator may appoint an investigator to conduct the investigation, usually within two (2) days of determining that an investigation should proceed. The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias. The Title IX Coordinator may also conduct the investigation

The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the Title IX Officer.

Investigations are completed expeditiously, normally within 20-25 business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

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

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

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

#### h. Investigation

The Investigators typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- Assist the Title IX Coordinator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
- If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties.
- Notice should inform the parties of their right to have the assistance of a Pool member as a member as a process Advisor appointed by the University or other Advisor of their choosing present for all meetings attended by the advisee
- When formal notice is being given, it should provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- Give an instruction to the parties to preserve any evidence that is directly related to the allegations
- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness

- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Write a comprehensive investigation report fully summarizing the investigation and all evidence
- Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within five (5) business days and incorporate that response into the report
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop
- Share the report with the Title IX Coordinator or legal counsel for review and feedback.
- Provide the final report to the Title IX Coordinator. The report will gather, assess, and synthesize evidence without making a finding, conclusion, determination or recommendation.

i. Additional Details of the Investigation Process

(1) Witness responsibilities

Witnesses (as distinguished from the parties) who are faculty or staff of LLU are expected to cooperate with and participate in the University's investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.

(2) Remote processes

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) or Decision-maker determine that timeliness or efficiency dictates a need for remote interviewing.. Where remote technologies are used, LLU makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

(3) Recording

No unauthorized audio or video recording of any kind is permitted during the resolution process. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

(4) Evidence

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

(5) Sexual history/patterns

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); or (3) the character of the parties.

(6) Previous allegations/violations

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

j. Determination

Within two to three days of receiving the Investigator's recommendation, the Title IX Coordinator or a trained, designated Decision-maker from the Pool<sup>6</sup> reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the Title IX Coordinator/Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The Title IX Coordinator then timely provides the parties with a written Notice of Outcome to include findings, any sanction(s), and a detailed rationale, delivered simultaneously (without undue delay) to the parties

k. Notification of outcome

If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator, along with the applicable Dean, determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or

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<sup>6</sup> When the Title IX Coordinator is the Investigator or has been heavily involved in the process prior to determination, a Decision-maker will be designated from the Pool to ensure there is no conflict of interest.

retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Title IX Coordinator informs the parties of the determination within two to three business days of the resolution, ideally simultaneously, but without significant time delay between notifications. Notifications are made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official LLU records; or emailed to the parties' LLU-issued or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which the University is permitted to share pursuant to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found below.

## 20. Sanctions

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

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

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

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

### a. Student Sanctions

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

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any LLU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either LLU-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at LLU.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend LLU-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma*: LLU may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Other Actions*: In addition to or in place of the above sanctions, LLU may assign any other sanctions as deemed appropriate.

b. Employee Sanctions/Responsive Actions

For responsive actions that may be taken against an employee who has engaged in harassment and/or retaliation refer to the Faculty Handbook for employees of Loma Linda University (Section 2.7) and to the Human Resource "Non-discrimination and Anti-Harassment" policy (I-39) for employees of Loma Linda University Medical Center or Loma Linda University Children's Hospital.

21. Withdrawal or Resignation While Charges Pending

a. Student Sanctions

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

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any LLU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either LLU-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of

the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at LLU.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend LLU-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma*: LLU may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Other Actions*: In addition to or in place of the above sanctions, LLU may assign any other sanctions as deemed appropriate.

b. Employee Sanctions/Responsive Actions

For responsive actions that may be taken against an employee who has engaged in harassment and/or retaliation refer to the Faculty Handbook for employees of Loma Linda University (Section 2.7) and to the Human Resource "Non-discrimination and Anti-Harassment" policy (I-39) for employees of Loma Linda University Medical Center or Loma Linda University Children's Hospital.

22. Appeals Process

Any party may file a request for appeal but it must be submitted in writing to the Title IX Appeals Committee via the Title IX Officer. No appeal panelists will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. The Appeals Committee shall normally be called by the Title IX Officer and consist of at least three members chosen from the Pool.

The written appeal must specifically address at least one of the following criteria to be considered for review:

- Insufficient information to support the decision.
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- Procedural irregularity that affected the outcome of the matter;
- The Title IX Coordinator, investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; and
- Inappropriateness of the sanction for the violation of the Sexual Misconduct Policy.

It is within the discretion of the Title IX Officer to determine if an appeal request appropriately falls within one of the above categories.

The appeal must be submitted within five (5) calendar days of the issuance date of the Notice of Outcome. The written appeal must specify grounds that would justify consideration. General dissatisfaction with the outcome of the decision or an appeal for mercy is not an appropriate basis for an appeal. The non-appealing party, their Advisor and the Title IX Coordinator will be notified of the request for appeal and may file a response with the Appeals Committee within five (5) calendar days from the date of notification. All responses will be forwarded by the Title IX Officer to all parties for review and comment.

The non-appealing party may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Title IX Officer and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator and/or original Decision-maker(s), as necessary, who will submit their responses in five (5) business days, which will be circulated for review and comment by all parties. Neither party may submit any new requests for appeal after this time period.

The Title IX Officer will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses will be shared with the Appeal Panel, and the Title IX Officer will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

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

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

a. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

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

LLU may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

b. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the

finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### 23. Recordkeeping

LLU will maintain for a period of at least seven years records of:

- a. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- b. Any disciplinary sanctions imposed on the Respondent;
- c. Any remedies provided to the Complainant designed to restore or preserve equal access to LLU's education program or activity;
- d. Any appeal and the result therefrom;
- e. Any Informal Resolution and the result therefrom;
- f. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. LLU will make these training materials publicly available on LLU's website; and
- g. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - (1) The basis for all conclusions that the response was not deliberately indifferent;

- (2) Any measures designed to restore or preserve equal access to the University's education program or activity; and
- (3) If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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

#### 24. Disabilities Accommodations in the Resolution Process

LLU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Anyone needing such accommodations or support should contact the dean's office of the school in which the student is enrolled or the Human Resource department (for employees of the University) who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### 25. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. LLU reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

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

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

**ATIXA 2020 INTERIM MODEL SEXUAL HARASSMENT POLICIES AND PROCEDURES  
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED  
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**APPROVERS:** LLU President's Committee