



California University  
of Pennsylvania

**GENDER-BASED / SEXUAL MISCONDUCT (TITLE IX) POLICY**



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# California University of Pennsylvania

## I. Introduction

Gender-Based/Sexual Misconduct, as defined by this policy, comprises a broad range of behavior that will not be tolerated in the University community of trust. For the purposes of this policy, Gender-Based/Sexual Misconduct includes sexual harassment, non-consensual sexual contact, non-consensual sexual intercourse (or attempts to commit the same) and/or sexual exploitation, as more fully defined below. The University is committed to fostering a community that promotes prompt reporting of all types of sexual misconduct and timely and fair resolution of sexual misconduct complaints. Creating a safe environment is the responsibility of all members of the University community, guests and visitors. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. The intention of this policy is to define community expectations and to establish a mechanism for responding to violations.

Violations of this policy can impair or limit the educational and occupational opportunities of any person at California University of Pennsylvania and have no place in this community. This policy applies to all California University of Pennsylvania students, both undergraduate and graduate. The California University of Pennsylvania Policy Statements and Compliance Procedures on Equal Education and Employment Opportunity and Social Equity (EEEE) for employees (faculty, staff, and student employees) can be found at [www.calu.edu/SEpolicies](http://www.calu.edu/SEpolicies).

This policy defines unacceptable behavior and identifies resources for persons who have experienced a sexual offense. Sexual offenses are prohibited under Commonwealth of Pennsylvania statutes and federal laws and may be prosecuted in the criminal justice system. Legal definitions may vary from definitions used by the California University of Pennsylvania community as outlined in this policy. Pursuing a campus resolution does not preclude one from pursuing legal action now or in the future, and vice versa.

Anyone can experience or be a perpetrator of sexual misconduct regardless of gender or sexual orientation. Perpetrators can be anyone: a stranger, current or former intimate partner, a long-time acquaintance or new acquaintance. When the victim or perpetrator is a student, the violation falls under the rules and regulations of Title IX. Title IX [20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)] mandates that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any educational program or activity receiving federal financial assistance."







## II. Information and Assistance

The Title IX Coordinator's role is to oversee University compliance with Title IX regulations.

The Title IX Coordinator will:

1. Serve as a resource for students wishing to report any acts of sexual misconduct or gender-based discrimination, i.e. violations of Title IX.
2. Provide oversight for all Title IX complaints and identify patterns, issues or problems regarding those same complaints.
3. Review and support the informational initiatives enabling students, staff and faculty to fully understand sexual violence and sexual harassment as forms of sexual discrimination and further educate the community about University policy and procedures.

Contact the Title IX Coordinator:

**Special Assistant to the President for EEO**

South Hall 112

(724) 938-4014

If you believe you have experienced sexual harassment and/or sexual misconduct, you are strongly encouraged to file a complaint with the University, with the police or with both. To file a complaint, contact any of the University's Assistant Title IX Coordinators.

**Associate Provost**

Dixon Hall 301

(724) 938-4302

**Director of Human Resources**

Dixon Hall 408

(724) 938-4427

**Associate Dean for Student Conduct**

Natali Student Center 230

(724) 938-4439

**Cal U Police Detective**

Pollock Maintenance Building

(724) 938-4842

**Residence Director**

Carter Hall 131A

(724) 938-4204

**Associate Dean for Residence Life**

Building B 119

(724) 938-4025

**Executive Associate to the President**

Old Main 110

724-938-4400

Reporting sexual harassment or a sexual misconduct incident to any University employee other than Health Services or Counseling Center staff will initiate a campus investigation. All University employees (including faculty and staff — with the exception of Health Services/Counseling Center staff) who become aware of an incident of sexual harassment or sexual misconduct are encouraged to notify either the Special Assistant to the President for EEO/Title IX Coordinator or any of the Assistant Title IX Coordinators, who will initiate a campus investigation into the matter. The University is required to report incidents of sexual misconduct or sexual assault that constitute a violent felony under Commonwealth of Pennsylvania Sexual Assault (18 Pa. C.S. § 3124.1), to the California University Police Department.

**All members of the California University of Pennsylvania community are encouraged to promptly report any information they have pertaining to gender-based discrimination, sexual harassment or sexual misconduct offenses against any member of the University community, guests and visitors so that the matter may be addressed in a timely manner.**

### **III. Policy**

It is the policy of California University of Pennsylvania to comply with Title IX of the Education Amendments of 1972, which prohibits discrimination (including sexual harassment and sexual violence) based on sex in the University's educational programs and activities. Title IX also prohibits retaliation for asserting claims of sex discrimination. Sexual misconduct as defined in this policy is a form of sex discrimination prohibited by Title IX.

#### **1. Consent**

Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other form of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts. Consent can also be withdrawn at any point in sexual activity.

#### **2. Sexual Misconduct Offenses**

##### **A. Sexual Harassment**

Unwelcome, gender-based verbal or physical conduct that is sufficiently severe, persistent or pervasive that it has the effect of unreasonably interfering with, limiting or denying someone the ability to participate in or benefit from the University's educational program. The unwelcome behavior may be based on power differentials (*quid pro quo*), the creation of a hostile environment or retaliation. Examples include: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious or unwanted sexual attention; to punish a refusal to comply; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence or stalking; gender-based bullying.

##### **B. Non-Consensual Sexual Contact (or attempts to commit same)**

Any intentional sexual touching, however slight, with any object, by a man or a woman upon a man or a woman that is without consent and/or by force. Sexual contact includes intentional contact with the breasts, buttocks, groin or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

### **C. Non-Consensual Sexual Intercourse (or attempts to commit same)**

Any sexual intercourse, however slight, with any object, by a man or woman upon a man or woman that is without consent and/or by force. Intercourse includes vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue or finger and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

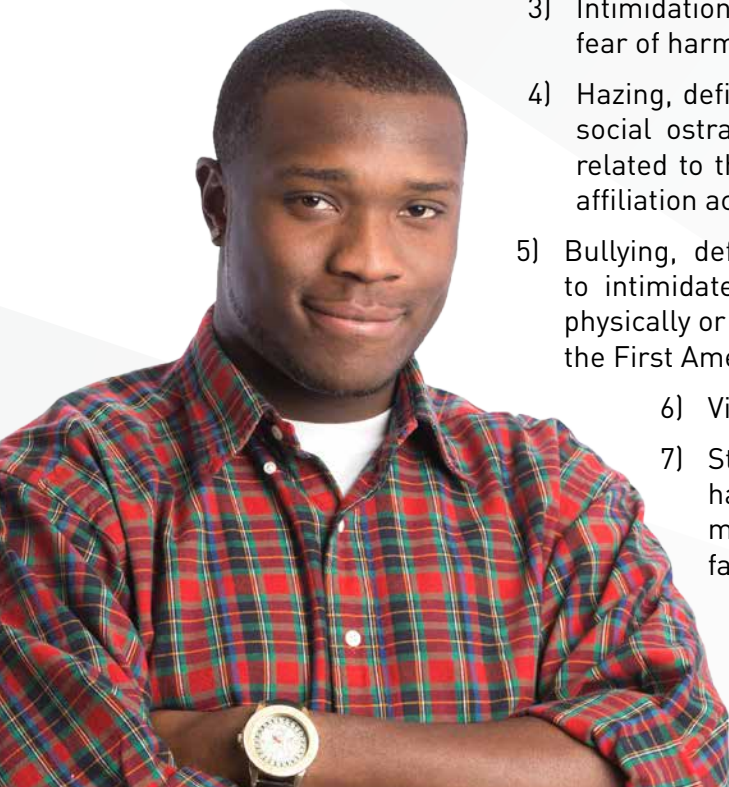
### **D. Sexual Exploitation**

Occurs when a person takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy.
- Prostituting another person.
- Non-consensual video, photography or audio-taping of sexual activity.
- Going beyond the boundaries of consent (such as letting someone hide in a closet to watch you having consensual sex).
- Engaging in voyeurism.
- Knowingly transmitting an STD or HIV to another person.
- Exposing one's genitals in non-consensual circumstances; or inducing another to expose their genitals.
- Sexually-based stalking and/or bullying.

### **3. Other Misconduct Offenses that will fall under Title IX when Gender-Based:**

- 1) Threatening or causing physical harm, extreme verbal abuse or other conduct which threatens or endangers the health or safety of any person.
- 2) Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender.
  - 3) Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another.
  - 4) Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the University community, when related to the admission, initiation, pledging, joining or any other group-affiliation activity.
  - 5) Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the First Amendment).
    - 6) Violence between those in an intimate relationship to each other.
    - 7) Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community.





#### **4. Overview of Policy Expectations With Respect To Consent and Physical Sexual Misconduct**

In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing and voluntary consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as discussing what is or isn't sexually permissible. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence—without actions demonstrating permission—cannot be assumed to show consent. Consent can also be withdrawn at any point during sexual activity.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid consent if he/she cannot fully understand the details of a sexual interaction (who, what, when, where, why or how) because he/she lacks the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "No."

#### **5. Overview of Policy Expectations With Respect to Consensual Relationships**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions of power (such as teacher and student or supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks or campus EEO Policy (specifically, *Section IV of the Sexual Harassment Policy-Related Unprofessional Conduct*). The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, CA-student or administrator-student) are generally discouraged. Consensual romantic or sexual relationships in which one party maintains a director supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes CAs and students over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

## 6. Sexual Violence – Risk Reduction Tips

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

1. If you have limits, make them known as early as possible.
2. Tell a sexual aggressor “NO” clearly and firmly.
3. Try to remove yourself from the physical presence of a physical aggressor.
4. Find someone nearby and ask for help.
5. Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
6. Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

1. Clearly communicate your intentions to your sexual partner and give him/her a chance to clearly relate his/her intentions to you.
2. Understand and respect personal boundaries.
3. DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go; or about whether he/she is physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
4. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading him/her. He/she may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which others are comfortable.
5. Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
6. Realize that your potential partner could be intimidated by you or fearful of you. You may have a power advantage simply because of your gender or size. Don't abuse that power.
7. Understand that consent to some form of sexual behavior does not automatically imply consent to any other form of sexual behavior.
8. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

In campus proceedings such as a hearing conducted by the conduct board, legal terms like “guilt,” “innocence” and “burdens of proof” are not applicable, but the University never assumes a student is in violation of University policy. Campus proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

The University reserves the right to take measures in response to an allegation of sexual misconduct to protect students' rights and personal safety. Such measures include, but are not limited to, academic changes; no-contact directives; police escorts; modification of living arrangements; accommodations for working and transportation; interim suspension from campus pending a hearing; and reporting the matter to California University Police Department. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the University reserves the right to impose different sanctions, ranging from a verbal warning to expulsion, depending on the severity of the offense. The University will consider the concerns and rights of both the Complainant and the Respondent (person accused of sexual misconduct).



#### IV. Definition(s)

**Gender Discrimination:** Unequal or disadvantageous treatment of an individual or group of individuals based on gender. Sexual harassment is a form of illegal gender discrimination.

**Retaliatory Harassment:** Intentional action taken by an accused individual or allied third party, absent legitimate non-discriminatory purposes, that harms an individual as reprisal for filing or participating in a civil rights grievance proceeding.

**Consent:** Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent to any one form of sexual activity cannot automatically imply consent to any other form of sexual activity. Previous relationships or prior consent cannot imply consent to future sexual acts. Consent can also be withdrawn at any point in sexual activity.

**Intimate Partner Violence (IPV)/Domestic Violence:** Occurs between two people in a close relationship. The term "intimate partner" includes current and former spouses and dating partners. IPV exists along a continuum from a single episode of violence to ongoing battering.

IPV/Domestic Violence includes four types of behavior:

1. **Physical violence**-when a person hurts or tries to hurt a partner by hitting, kicking or other types of physical force.
2. **Sexual violence**-forcing a partner to take part in a sex act when the partner does not consent.
3. **Threats**-physical or sexual violence that includes the use of words, gestures, weapons or other means to communicate the intent to cause harm.
4. **Emotional abuse**-threatening a partner or his or her possessions or loved ones, or harming a partner's sense of self-worth. Examples are stalking, name-calling, intimidation or not letting a partner see friends and family.

**Reproductive Coercion:** Explicit male behaviors to promote pregnancy (unwanted by the woman). Reproductive coercion can include “birth control sabotage” (interference with contraception) and/or “pregnancy coercion,” such as telling a woman not to use contraception and threatening to leave her if she doesn’t get pregnant.

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

- Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes it clear to you that he/she does not want sex, 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.
- NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual.
- In order to give effective consent, one must be at least 16 years old.
- Sexual activity with someone whom one should know to be –or based on the circumstances should reasonably have known to be—mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.
- Incapacitation is a state where someone cannot make rational, reasonable decisions because he/she lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction).
- This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint or from the ingestion of rape drugs. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy. More information on these drugs can be found at [www.911rape.org](http://www.911rape.org).
- Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy. For reference to the pertinent state statutes on sex offenses, please see [www.attorneygeneral.gov](http://www.attorneygeneral.gov).

**Bullying & Cyber-Bullying:** Bullying is typically portrayed as aggressive behavior or intentional harm that is carried out repeatedly and over time and occurs within an interpersonal relationship characterized by an imbalance of power. It often includes comments about race, color, national origin, sex, sexual orientation or disability. It often involves an imbalance of power, aggression, and a negative repeated behavior. Cyber-bullying is when an individual is tormented, threatened, harassed, humiliated, embarrassed or otherwise targeted by another person using the Internet, interactive and digital technologies, or mobile phones. Those who are electronically engaged can be cyber-bullied at any time or location, making the effect of cyber-bullying ubiquitous and acute. Harassment, hazing and stalking often are used to encompass cyber-stalking or cyber-bullying policy. The severity and state law dictate what is criminal. Examples include flaming, harassment, hazing or stalking. Understand the difference through 1) kind of threat [name calling, threat of harm, bomb]; 2) frequency of threat (how often it occurs); 3) source and nature of threats. Generally speaking, bullying is an on-going behavior. Hazing is often done once or twice during orientations or initiations, but may be more acute.



It has been suggested that cyber-bullying occurs only to individuals under the age of 18, and this behavior is better defined as cyber-stalking after age 18. The Department of Justice's definition of cyber-stalking: *"The use of Internet, e-mail or other electronic communications devices to stalk another person."*

**Complainant:** The person who is alleging a violation of the Gender-Based or Sexual Misconduct Policy.

**Respondent:** The person whose actions are alleged to have violated the Gender Based or Sexual Misconduct Policy.

**Investigator:** The faculty member or administrator designated to investigate an allegation of a violation of the Gender-Based or Sexual Misconduct Policy.

**Assistant Title IX Coordinator(s):** The Assistant Title IX Coordinators are responsible for implementing and monitoring Title IX compliance efforts at the University and for notifying the Title IX Coordinator of any alleged or suspected violations of this policy and the resolution of such alleged or suspected violations, regardless of whether a complaint is filed.

**Title IX Coordinator:** The Title IX Coordinator is responsible for implementing and monitoring Title IX compliance efforts on behalf of the University. The Title IX Coordinator will:

1. Serve as a resource for students wishing to report any acts of sexual violence or sexual harassment, i.e. violations of Title IX.
2. Provide oversight for all Title IX complaints and identify patterns, issues or problems regarding those same complaints.
3. Review and support the informational initiatives enabling students, staff and faculty to fully understand sexual violence and sexual harassment as forms of sexual discrimination and further educate the community about University policy and procedures.

## **V. Confidentiality and Reporting**

When consulting campus resources all parties should be aware of confidentiality and mandatory reporting in order to make informed choices. On campus, some resources can offer confidentiality, sharing options and advice without any obligation to tell anyone unless the Complainant wants them to. This is limited to the counselors in the Counseling Center who have client/counselor privilege and doctors at the Health Services (Wellness Center). Confidentiality may be limited to other health center staff. Other resources are expressly there for Complainants to report crimes and policy violations and they will take action when a violation of this policy is reported to them.

### **1. To Report Confidentially**

If one desires that details of the incident be kept confidential, he or she should speak with on-campus mental health counselors, campus health service providers or off-campus rape crisis resources who can maintain confidentiality. Campus counselors are available to help free of charge and can be seen on an emergency basis. In addition, Complainants may speak on- and off-campus with members of the clergy and chaplains who will also keep reports made to them confidential.

## 2. **Non-Confidential Reporting Options**

Complainants are encouraged to speak to officials of the University to make formal reports of incidents (Assistant Title IX Coordinators, deans, vice presidents or other administrators with supervisory responsibilities, campus police, human resources, etc.). The University considers these people to be “responsible employees.” Formal reporting means that only people who need to know will be told and information will be shared only as necessary with investigators, witnesses and the accused individual. **It is considered to be an “official notice” to the University, when any complaint informs a “responsible employee” of an incident/complaint.** Complainants have the right and can expect to have incidents of sexual misconduct taken seriously by the University when formally reported, and to have those incidents investigated and properly resolved through administrative procedures.

## 3. **Third- Party Reports**

In cases where the gender-based/sexual misconduct is reported to the Title IX Coordinator or Assistant Title IX Coordinator(s) by a third party (e.g., faculty member, Residence Life staff member, adviser, dean, student, etc.) a Good Faith Investigation will be conducted concerning the allegations. All efforts will be made to meet with the alleged victim to discuss options and resources available through the University and community.

## 4. **Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on- or off-campus, in the surrounding area but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include: student conduct, student affairs, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisers to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously.

## 5. **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that University administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The University will ensure that a victim’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 danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the paragraph above. Campus security information is provided to members of the California University of Pennsylvania community through the webpage at [www.calu.edu/current-students/student-services/safety/](http://www.calu.edu/current-students/student-services/safety/). When it has been determined that a crime creates a threat of continuing danger to the campus community, a crime alert will be posted throughout the campus, and an e-mail will be sent to the campus community. The Office of Public Safety/University Police Department will be responsible for issuing the timely warnings.

## VI. Retaliation Prohibited

Retaliation against any person who alleges a violation of the Gender-Based/Sexual Misconduct Policy or who reports or assists California University of Pennsylvania in the investigation of a complaint under this policy may result in disciplinary action up to and including termination or expulsion by California University of Pennsylvania. Retaliation against any person who is the alleged victim of sexual misconduct is prohibited as well. There will be no retaliation against those who report or assist California University of Pennsylvania in the investigation of a complaint.

## VII. Procedure(s)

### 1. Complaints

#### A) Alternative Dispute Resolution Options (Informal Complaints)

Alternative resolution options - such as mediation, restorative justice conferencing and other processes - may be available in certain situations. These options can be requested by any directly-involved party or suggested by a hearing officer. These options may be used to avoid escalation of minor conflicts or in place of the conduct process in certain situations with the agreement of all involved parties and the Title IX Coordinator's or the Assistant Title IX Coordinator(s)' approval. If an agreement is not reached when used in lieu of the conduct process, the case will be referred back for adjudication. ***Be advised that non-consensual sexual intercourse situations cannot be mediated.***

#### B) Formal Complaints

Any member of the University community, guest, visitor or other interested party may make a report of an alleged violation of the University's Gender-Based/Sexual Misconduct Policy. Complaints must be documented and submitted to the Title IX Coordinator or Assistant Title IX Coordinator(s) within 120 calendar days following the date of the alleged incident of sexual misconduct. The University has a right to investigate all complaints regardless of when they are filed, even if they exceed the 120 day limit.

While the University is firmly committed to protecting all students from harassment or discrimination in educational programs or activities, failure to file a timely complaint with the Title IX Coordinator or with the appropriate Assistant Title IX Coordinator(s) may adversely affect the ability of the University to take any remedial measures under this policy.

The Complaint process is outlined below:

- 1) The individual accused of conduct violating the Gender-Based/Sexual Misconduct Policy (Title IX) is provided written notification of the request for a formal investigation or otherwise given a full and complete written statement of the allegations and a copy of the Gender-Based/Sexual Misconduct Policy (Title IX).



- 2) The investigation generally includes interviews with the parties if available, interviews with other witnesses as needed, and a review of relevant documents as appropriate. Disclosure of facts to parties and witnesses is limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation are advised that maintaining confidentiality is essential to protect the integrity of the investigation.
- 3) Upon request, the Complainant and Respondent(s) may each have a representative present.
- 4) At any time during the investigation, the Investigator(s) may recommend interim protections or remedies for the Complainant or witnesses be provided by California University of Pennsylvania administrators. Violations of these protections may be considered a separate violation of the Gender-Based/Sexual Misconduct Policy (Title IX).
- 5) The investigation shall be completed as promptly as possible, in most cases within sixty (60) working days from the date that the request for a formal investigation was filed.
- 6) Generally, an investigation results in a written report that includes a statement of the allegations and issues, the positions of the parties, a summary of the evidence and a recommendation for corrective action. This report will be submitted to a designated administrative hearing officer or a conduct board hearing panel to determine whether a violation of University policy occurred and implementation of actions necessary to resolve the complaint. This report may also be used as evidence in other related procedures, such as subsequent complaints, grievances and/or disciplinary actions.
- 7) The Complainant and Respondent will be informed simultaneously and in writing if there were findings made that the policy was or was not violated and of actions taken to resolve the complaint, if any, that are directly related to the Complainant, such as an order that the Respondent not contact the Complainant.
- 8) Within fifteen (15) working days of taking corrective action and/or disciplinary action against the Respondent, or a decision not to take any action, the appropriate California University of Pennsylvania administrator shall provide written notification to the Title IX Coordinator of what action, if any, has been taken, including the results of any appeals.

## 2. **Formal Resolution Procedures for Complaints Against Faculty and Non-Faculty Employees**

Title IX complaints filed by students against employees of California University of Pennsylvania will follow the procedures outlined in the **California University of Pennsylvania's Policy Statements and Compliance Procedures on Equal Education and Employment Opportunity and Social Equity**. A copy of this policy can be found online at [www.calu.edu/SEpolicies](http://www.calu.edu/SEpolicies).

## 3. **Formal Resolution Procedures for Complaints Against Students**

### A) **Complaints Against Students**

- 1) Complaints will be assigned to a designated Assistant Title IX Coordinator who will investigate the allegation(s). Following an investigation, a preliminary meeting will be held with the Respondent to review the complaint and other information gathered. During the preliminary meeting, the Respondent normally may be allowed to request an administrative or conduct board hearing.



- 2) If a Respondent fails to attend a preliminary meeting after reasonable attempts by the University to provide notification, the University reserves the right to adjudicate the complaint based on the information available through an administrative hearing.
- 3) If a Respondent fails to appear for a scheduled hearing without providing notice, the hearing officer or conduct board may proceed in his/her absence. Only the information available then will be considered in determining responsibility and sanctions. Failure to participate will not be used to determine responsibility for a violation by itself and will not be grounds for an appeal.
- 4) Complainants and Respondents shall be provided written notification of the time, place and date of a board hearing at least three (3) working days in advance, following a preliminary meeting. The notice shall include the charges to be adjudicated and other pertinent information about the hearing. The Respondent can request a postponement of the hearing, which will be reviewed and decided on by the Associate Dean for Student Conduct.
- 5) Complainants and Respondents have the right to have an adviser of his/her choice present at all stages of the process and at an administrative or board hearing. An adviser may provide support and advice but not actively participate in a hearing. Attorneys may act as advisers, but may not argue a case or attempt to introduce legal procedures.
- 6) Hearings, both administrative and board will be closed to the public. The University reserves the right to review individuals attending hearings based on their involvement with the incident. All information presented during conduct proceedings is confidential and will only be released if subpoenaed or with the Complainant's/Respondent's permission except for final results of non-consensual sexual intercourse or other violent acts, which will be released to the survivor or victim of the act.
- 7) Prospective witnesses, other than the Complainant and Respondent, may at the discretion of the chair be excluded from a board hearing during statements by other participants.
- 8) Oral and/or written statements may be considered at the discretion of the chair or hearing officer and will be weighed as deemed appropriate by the hearing authority.
- 9) Complainants and Respondents will be afforded an opportunity to hear and respond to all information presented against them.
- 10) Complainants and Respondents may request the removal of any board member they feel may be biased against them. Removal for bias will be at the chair's discretion. Board members with a conflict of interest or bias may excuse themselves from a hearing. A hearing officer may request a case be assigned to another hearing officer due to a conflict of interest.
- 11) All participants are expected to act with integrity by providing honest answers, following established procedures and maintaining confidentiality.
- 12) Hearings will be conducted in a civil manner with any participant disrupting the conduct process being excluded from the remainder of the meeting. The chair is responsible for ensuring civility during a hearing.
- 13) Pending resolution of a complaint, student status may only be altered to protect University interests and/or the safety and security of individual members of the University community. Such actions may include interim suspensions, restriction of privileges including access to certain areas of campus, and no-contact directives. The Associate Dean for Student Conduct is responsible for determining if such actions are necessary, seeking approval if necessary and implementation.

- 14) Determination of responsibility for violating this policy will be based on the standard of preponderance of the evidence in both administrative and board hearings.
- 15) Written notification of the outcome of a hearing, including the reasons for the decision, findings of fact and an explanation of the sanctions, will be sent within five (5) business days from the conclusion of the conduct proceedings by either the hearing officer or the chair of a conduct board. Notifications will be sent to the Complainant and Respondent. Other notifications may be sent in order for the University to comply with applicable victim notification laws for reporting the results of disciplinary proceedings.

## **B) Student Appeal Process**

- 1) The outcome of any conduct board proceeding may be appealed by either the Complainant or Respondent. Appeals are to be in writing and submitted to the Associate Dean for Student Conduct within five (5) working days of receipt of the written notice of the board decision. Appeals from the University Conduct Board will be heard by the Vice President for Student Affairs or designee. The original determinations of the board will be considered final and conclusive if an appeal is not received within the five (5) day time limit. Appeals must be based on at least one of the following reasons to be considered:
  - i. Procedural errors in the operation of the conduct process substantial enough to have effectively denied the student a fair hearing.
  - ii. Availability of new and significant evidence that was not available at the original hearing in spite of diligent efforts by the student to collect information.
  - iii. Lack of substantial information presented at the hearing to support the decision on responsibility for a violation.
  - iv. Severity of the sanctions does not match the severity of the violation.
- 2) An appeal will limit inquiry to records and documents on file when the request was received. The appeal officer will determine a response which could be denial of the appeal, granting an administrative hearing with the appeal officer or conducting a review of the proceedings and information without meeting with the student. The appeal officer will notify the student of the response to the appeal within ten (10) working days from the date of the receipt of the appeal. If an administrative hearing is granted, the student will receive at least a two (2) day notice of the time, place and date of the hearing to prepare. No recording of an appeal hearing will be made. The appeal officer will send written notification of the outcome of an appeal hearing within five (5) working days of the hearing.
- 3) The appeal officer may modify the decisions of responsibility and sanctions as s/he deems appropriate if the appeal is upheld. Sanctions may be increased only in case of an appeal by a survivor of Gender-Based/Sexual Misconduct.
- 4) The University will provide notice if there are any changes in the results and/or when the results become final.

#### 4. Student Sanctions

##### Student Sanction Statement:

- 1) Any student found responsible for violating the policy on Non-Consensual Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident and taking into account any previous campus conduct code violations.
- 2) Any student found responsible for violating the policy on Non-Consensual Sexual Intercourse will likely face a recommended sanction of suspension or expulsion.
- 3) Any student found responsible for violating the policy on Sexual Exploitation or Sexual Harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.

The following sanctions comprise a range of official action that may be imposed for violation of this policy by individuals or groups. One or more sanctions may be imposed at the discretion of the hearing officer or conduct board in an effort to promote behavioral change. Sanctions attempt to teach alternative behaviors; increase personal and social skills; increase a student's awareness of obligations to others; demonstrate implications of actions; and explain rationale behind regulations. This list does not limit the actions available to a hearing officer or conduct board and is not inclusive of all possible actions that could be taken as a result of a violation of University policy. Students found responsible for violations will receive a minimum of disciplinary warning with expulsion being the maximum sanction.

**Disciplinary Warning:** This action is taken when the individual's conduct or involvement merits an official admonition that can be either verbal or written. The student is warned that further misconduct may result in more severe disciplinary action. A disciplinary warning is intended to promote reflection on the decisions and behavior leading up to a violation and promotes an increased awareness of the University's behavioral expectations.

**Disciplinary Probation:** This action is designed to assist students in developing behavior appropriate to the University community through placing them on a warning status. There are three types of probation which may be imposed, depending on the type and severity of the violation.

1. **Residence Hall Probation:** A change in student status for violating Residence Life Rules and Regulations involving written notice of the probation, its terms and time limit as established by the hearing officer or Residence Life Conduct Board. Privileges of residents, including visitation, may be revoked for all or part of the time the resident is on probation. The resident is also informed that further violations may result in greater levels of sanctions. This level of probation is intended to provide the student an opportunity to reflect on, and learn from, his/her behavior while increasing awareness of the impact of his/her behavior on themselves and others and of the University's behavioral expectations. The importance of making mature decisions is stressed while a student is on probation.
2. **University Probation Level I:** A change in student status involving written notice of the probation, its terms and time limit as established by the hearing officer or University Conduct Board. The student is notified that further infractions of any University regulation may result in more stringent restrictions being placed on his/her actions. This level of probation is intended to provide the student an opportunity to reflect on and learn from his/her behavior while increasing his/her awareness of the impact of his/her behavior on themselves and others and of the University's behavioral expectations. The importance of making mature decisions is stressed while a student is on probation.

- 3. University Probation Level II:** This is the most serious level of conduct sanction, short of suspension from the University, during which the student is considered not in good standing. The student remains enrolled at the University under circumstances defined by the hearing Officer or University Conduct Board, and may not represent the University in any official capacity or hold office in any student organizations including, but not limited to, varsity or non-varsity intercollegiate athletic events or teams, recognized student organizations, theater groups or productions, musical organizations or SAI Senator or Officer positions. This probation level indicates to the student that further violation(s) of University regulations will result in more stringent conduct action, including but not limited to suspension or expulsion from the University. This level of probation is intended to promote reflection on the student's behavior and decisions while stressing making mature decisions, engaging in critical thinking and developing more appropriate behaviors as a member of the University community.

**Behavior Contract:** A student and hearing officer may reach a written agreement concerning expectations for future behavior and decisions to assist in preventing inappropriate behaviors from recurring.

**Residence Hall Reassignment or Removal:** This action is an involuntary reassignment to another residence hall or removal from on-campus housing altogether for a designated period of time and may include restricted visitation privileges. Usually, a student is given forty-eight (48) hours to remove all belongings from an assigned space and reimbursement of room charges will be based on the official University refund schedule for removals. This sanction is imposed to protect the welfare of a residence hall or floor community, and students having this sanction imposed should reflect on the behaviors necessary for an individual to be part of a residential community by respecting others, and developing critical thinking skills and mature decision-making skills.

**Restriction of Privileges:** This action consists of an effort to assist students in developing an awareness of the responsibilities that go along with privileges and increase an awareness of appropriate behavior and how decisions impact themselves and others. Under this sanction, students may be restricted from entering certain buildings, attending certain events or using specific programs due to their behavior. Residence hall students may have their visitation privileges restricted or revoked for a certain time period, or specific guests may not be allowed into a residence hall. Participation in University organizations or holding office in organizations or other privileges can also be included under this sanction as deemed appropriate by the hearing officer or board based on the incident.

**No-Contact Directive:** This action is implemented at the discretion of a hearing officer directing a student to avoid initiating contact with another member of the University community, it may include limiting access to areas to avoid incidental contact. A No-Contact Directive may be imposed at a student's request without conduct proceedings if it does not involve any accommodation changes. Contact includes direct interactions in person or through technology, as well as the use of third parties to interact. The No-Contact Directive is not limited by location. They are issued open-ended; it would only be considered over if the person who originally requested it asked to have it canceled.

**Suspension of Group Recognition:** This action consists of the withdrawal of all or part of the official recognition of a group for a stated period of time and will include conditions for reinstatement of recognition. This sanction is intended to assist groups in developing a stronger sense of the responsibilities that go along with the privileges of University recognition and a commitment to be a positive part of the University community.

**Revocation of Group Recognition:** This action is permanent cancellation of the official University recognition and privileges of a group found in violation of University regulations.



**Restitution Fines:** A student or organization may be required to make payment to the University or to another specified person(s) or group(s) for damages incurred as a result of a violation of behavioral expectations. Restitution fines may be imposed by the University in addition to any other sanction to promote responsibility for actions and an awareness of the consequences of behavior.

**Restitution Service:** As part of the sanctioning process, students can be required to perform service to assist in developing increased awareness of the impact of their decisions and strengthen critical thinking abilities to identify appropriate behavior. These services can include performing assigned duties, sponsoring programs, etc.

**Educational Activity:** A student or organization may be required to complete an educational activity or project relating to the violation to assist in their developing increased awareness of the impact of their decisions, strengthen critical thinking abilities to identify appropriate behavior, and develop an increased sense of responsibility, integrity and civility.

**Conduct Referrals:** Hearing officers may refer students found responsible for violations to campus resources to assist, educate or monitor them in the development of appropriate behavior, critical thinking skills, mature decision-making skills, etc. These referrals are mandatory, and failure to complete a referral could result in additional conduct action. Referrals may include University-sponsored alcohol and drug education programs, the Counseling Center, etc., and could include drug testing for violations related to drug use.

**Registration Hold:** A hold may be placed on a student's registration if the student has failed to complete a sanction or withdraws prior to official conduct on an allegation. Holds are intended to be temporary until either the sanction or conduct process is complete. Registration holds may also be used during periods of interim suspension, suspension or expulsion.

**Interim Suspension:** The President or his/her designee may suspend a student for an interim period pending full conduct proceedings whenever there is evidence that the continued presence of the student at the University poses a substantial threat to the safety and/or well-being of any member of the University community or University or private property. An interim suspension may be effective immediately without prior notice; however the decision may be appealed to either the Associate Dean for Student Conduct, Associate Vice President or Vice President for Student Affairs and will be handled as outlined in the Appeal Procedures except that the timelines will not apply. The student shall be given an opportunity to appear personally before a hearing officer or board within ten (10) working days from the effective date of the interim suspension unless extenuating circumstances warrant an extension, in which case a hearing will be provided at the earliest possible date. Both the student(s) and the University must agree to an extension that may be left open-ended. By agreeing to an extension, the student accepts the decision of interim suspension and any conditions imposed as part of it.

During an interim suspension, the student will be barred from all or part of the University's premises, as designated by the hearing officer. A student under interim suspension who returns to the portion of campus from which he/she was barred without permission from the Vice President for Student Affairs will be subject to dismissal and/or arrest for trespassing.

**Suspension:** This action is an involuntary separation of a student from the University for a designated period of time after which he/she is eligible to return. The Associate Dean for Student Conduct or Associate Vice President for Student Affairs may establish requirements for reinstatement, which must be fulfilled to his/her satisfaction. The student may not participate in any University sponsored activity and may be barred from University premises during suspension. Reimbursement of University charges or fees for students removed from the University due to conduct action will follow the official refund schedule for withdrawals. This action is designed to protect members of the University community and their property, promote critical thinking and mature decision-making skills, and promote self-reflection on behavior and the impact it had on the student and others.

**Expulsion:** This action is one of involuntary and permanent separation from the University. The student will be barred from all University activities and property following expulsion. Reimbursement of University charges or fees for students removed from the University due to conduct action will follow the official refund schedule for withdrawals.

### **VIII. Retention of Records Regarding the Gender-Based/Sexual Misconduct Policy**

The Title IX Coordinator is responsible for maintaining records relating to sexual misconduct reports, investigations and resolutions. All written records associated with the resolution of a complaint pertaining to the formal investigation will be maintained in accordance with the California University of Pennsylvania's Record Retention Policy.



## IX. Special Complaint Process Provisions

1. **Attempted violations:** In most circumstances, the University will treat attempts to commit any of the violations listed in this policy as if those attempts had been completed.
2. **University as a Complainant:** As necessary, the University reserves the right to initiate a complaint, to serve as a Complainant and to initiate complaint proceedings without a formal complaint by the victim of sexual misconduct.
3. **False Reports:** The University will not tolerate intentional false reporting of incidents. It is a violation of the *Student Code of Conduct* to make an intentionally false report of any policy violation and it may also violate Pennsylvania criminal statutes and civil defamation laws.
4. **Immunity for Victims and Witnesses:** The University community encourages the reporting of sexual misconduct violations and crimes by victims and witnesses. Sometimes, victims or witnesses are hesitant to report to University officials or participate in complaint processes because they fear that they themselves may be accused of policy violations, such as underage drinking at the time of the incident. It is in the best interests of this community that as many victims as possible choose to report to University officials, and that witnesses come forward to share what they know. To encourage reporting, the University pursues a policy of offering victims of crimes and witnesses Limited Immunity (see the *Student Code of Conduct*) from specific policy violations related to the incident. While violations cannot be completely overlooked, the University will provide education, rather than responses, in such cases.
5. **Bystander Engagement:** The welfare of students in our community is of paramount importance. At times, students on and off campus may need assistance. The University encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, as a student who is underage and has been drinking might hesitate to help take a sexual misconduct victim to the University Police). The University pursues a policy of Limited Immunity (see the *Student Code of Conduct* for more information) for students who offer help to others in need.
6. **Parental Notification:** The University's primary relationship is with the student and not the parent. The University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, and alcohol and other drug violations. Additionally, University officials will directly inform parents when requested to do so by a student, in a life-threatening situation or if a student has signed a permission form that allows such communication. The University also reserves the right to designate which University officials have a need to know about individual conduct complaints pursuant to the Family Educational Rights and Privacy Act.
7. **Notification of Outcomes:** The outcome of a campus hearing is part of the educational record of the accused student, and is protected from release under a federal law, FERPA, and the University's Confidentiality of Records Policy. However, the University observes the legal exceptions as follows:
  - Complainants in non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking and relationship violence incidents have an absolute right to be informed of the outcome, essential findings and sanctions of the hearing, in writing, without condition or limitations.
  - The University may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a University policy that is a "crime of violence," including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property and kidnapping/abduction. The University will release this information to the Complainant in any of these offenses regardless of the outcome.



8. **Alternative Testimony Options:** For sexual misconduct complaints, and other complaints of a sensitive nature, whether the alleged victim is serving as the Complainant or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room or allowing the alleged victim to testify outside the physical presence of the accused individual, such as in another room or by electronic means such as videoconferencing. The victim will not be subjected to direct questioning by the Respondent. While these options are intended to help make the alleged victim more comfortable, they are not intended to work to the disadvantage of the accused student.
9. **Past Sexual History/Character:** The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the Conduct Board. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be included in the complaint/response or a subsequent written request, and must be reviewed in advance of the hearing by the Associate Dean for Student Conduct. While previous conduct violations by the accused student are not generally admissible as information in determining responsibility for the present alleged violation, the Associate Dean for Student Conduct may supply previous complaint information to be considered in sanctioning to the investigators, the conduct board, or may consider it him/herself if he/she is hearing the complaint, only if:
  - a) The accused was previously found to be responsible.
  - b) The previous incident was substantially similar to the present allegation.
  - c) Information indicates a pattern of behavior and substantial conformity with that pattern by the accused student.





## **STATEMENT OF THE COMPLAINANT'S (ALLEGED VICTIM'S) RIGHTS**

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to University Administrators;
- The right to be treated with respect by University Officials;
- The right of both Complainant and Respondent to have the same opportunity to have others present (in support or advisory roles) during a campus disciplinary hearing;
- The right not to be discouraged by University officials from reporting sexual misconduct offenses to both on-campus and off-campus authorities;
- The right to be informed of the outcome and sanction of any disciplinary hearing involving a sexual misconduct offense, usually within 48 hours of the end of the conduct hearing;
- The right to be informed by University Officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire;
- The right to be notified of available counseling, mental health or student services for victims of sexual misconduct offenses, both on campus and in the community;
- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual assault incident, if so requested by the victim and if such changes are reasonably available, (No formal complaint, or investigation, campus or criminal, need occur before this option is available.)
- Accommodations may include:
  - Change of an on-campus student's housing to a different on-campus location if space is available
  - Assistance from University support staff in completing the relocation
  - Arranging to dissolve a housing contract and pro-rating a refund
  - Exam (paper, assignment) rescheduling
  - Transferring class sections
  - Alternative course completion options
  - Temporary withdrawal
  - Taking an incomplete in a class
  - Transportation accommodations
  - Work accommodations
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right **not** to have any complaint of non-consensual sexual intercourse mediated (as opposed to adjudicated);
- The right to make a victim-impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;
- The right to a campus no-contact order against another student who has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the complaining student or others;
- The right to have complaints of sexual misconduct responded to quickly and with sensitivity by campus law enforcement;

- The right to appeal the (finding and) sanction of the conduct body, in accordance with the standards for appeal established by the institution;
- The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, usually within 48 hours of the hearing, except in cases where a witness's identity will not be revealed to the Respondent for compelling safety reasons (this does not include the name of the alleged victim/Complainant, which will always be revealed);
- The right to preservation of privacy, to the extent possible and allowed by law;
- The right to a hearing closed to the public;
- The right to petition that any member of the conduct body be removed on the basis of demonstrated bias;
- The right to bring a victim advocate or adviser to all phases of the investigation and campus conduct proceeding;
- The right to give testimony in a campus hearing by means other than being in the same room with the Respondent;
- The right to ask the investigator(s) to identify and question relevant witnesses, including expert witnesses;
- The right to be fully informed of campus conduct rules and procedures, as well as the nature and extent of all alleged violations contained within the complaint;
- The right to have the University request the presence of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, directly or indirectly, of witnesses (including the respondent) and the right to challenge documentary evidence;
- The right to be present for all testimony given and evidence presented before the conduct body;
- The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct training;
- The right to a conduct panel comprised of representatives of both genders;
- The right to have University policies and procedures followed without material deviation;
- The right to be informed in advance of any public release of information regarding the complaint if possible; and
- The right not to have released to the public any personally identifiable information, without his or her consent.



## **STATEMENT OF THE RESPONDENT'S RIGHTS**

- The right to investigation and appropriate resolution of all credible complaints of sexual misconduct made in good faith to University administrators against the Respondent;
- The right to be treated with respect by University officials;
- The right to be informed of, and have access to, campus resources for medical, counseling and advisory services;
- The right to be fully informed of the nature, rules and procedures of the campus complaint process and to timely written notice of all alleged violations within the complaint, including the nature of the violation and possible sanctions;
- The right to a hearing on the complaint, including timely notice of the hearing date, and adequate time for preparation;
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right to make an impact statement at the campus conduct proceeding and to have that statement considered by the board in determining its sanction;
- The right to appeal the (finding and) sanction of the conduct body, in accordance with the standards for appeal established by the University;
- The right to review all documentary evidence available regarding the complaint, subject to the privacy limitations imposed by state and federal law, usually 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, usually within 48 hours of the hearing, except in cases where a witness's identity will not be revealed to the Respondent for compelling safety reasons (this does not include the name of the alleged victim/Complainant, which will always be revealed);
- The right to a hearing closed to the public;
- The right to petition that any member of the conduct body be removed on the basis of bias;
- The right to have the University request the presence of student, faculty and staff witnesses; and have the right to ask questions of witnesses through the investigators; and the right to challenge documentary evidence;
- The right to have complaints heard by conduct and appeals officers who have received annual sexual misconduct adjudication training;
- The right to have University policies and procedures followed without material deviation;
- The right to have an adviser or advocate accompany and assist in the campus hearing process. This adviser can be anyone but the adviser may not take part directly in the hearing itself, though he/she may communicate with the Respondent as necessary;
- The right to a fundamentally fair hearing, as defined in these procedures;
- The right to a campus conduct outcome based solely on evidence presented during the conduct process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to written notice of the outcome and sanction of the hearing;
- The right to a conduct panel comprised of representatives of both genders; and
- The right to be informed in advance, when possible, of any public release of information regarding the complaint.

## **Frequently Asked Questions about the Gender-Based/Sexual Misconduct Policy (Title IX)**

Some of the most commonly asked questions regarding the University's Gender-Based/Sexual Misconduct Policy and procedures are summarized below:

➤ ***Does information about a complaint remain private?***

The privacy of all parties to a complaint of sexual misconduct must be respected, except insofar as it interferes with the University's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. Dissemination of information and/or written materials to persons not involved in the complaint procedure is not permitted. Violations of the privacy of the Complainant or the respondent may lead to conduct action by the University as it can be viewed as a form of retaliation if being done to malign or impinge a person's character.

In all complaints of sexual misconduct, all parties will be informed of the outcome. If there is a report of an act of alleged sexual misconduct to an official representative of the University and there is evidence that a felony has occurred, California University Police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution is legally required to notify law enforcement authorities. The University must also statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

➤ ***Will my parents be told?***

No, not unless you tell them. Whether you are the Complainant or the Respondent, the University's primary relationship is with the student and not the parent. However, in the event of major medical, disciplinary or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student, in a life-threatening situation or if a student has signed a permission form that allows such communication.

➤ ***Will the Respondent (accused student) know my identity?***

Yes, if you file a formal complaint. Sexual misconduct is a serious offense and the accused student has a right to know the identity of the Complainant/alleged victim. If there is a hearing, the University does provide options for questioning without confrontation, including using a room divider or using separate hearing rooms.

➤ ***Do I have to name the perpetrator?***

Yes, if you want formal disciplinary action to be taken against the alleged perpetrator. No, if you choose to respond informally and do not file a formal complaint (but you should consult the complete Confidentiality Policy above to better understand the University's legal obligations depending on what information you share with different University officials). Victims should be aware that not identifying the perpetrator may limit the institution's ability to respond comprehensively but will result in an investigation based on the information provided.

➤ ***What do I do if I am accused of sexual misconduct?***

DO NOT contact the alleged victim. You may immediately want to contact someone in the campus community who can act as your adviser. You may also contact the Office of Student Conduct, which can explain the University's procedures for addressing sexual misconduct complaints. As a Respondent, you will be contacted for an interview by the Title IX Officer or Representative. You may ask any question you have during this interview. You may also want to talk to a confidential counselor at the Counseling Center or seek other community assistance. See below regarding legal representation.



➤ ***Will I (as a victim) have to pay for counseling/medical care?***

Not typically, if the University provides these services already. Through crime victim compensation, the Commonwealth of Pennsylvania pays for the forensic examination. The student will not need to provide an insurance card.

➤ ***What about legal advice?***

Victims of criminal sexual assault need not retain a private attorney to pursue prosecution because representation will be handled by the District Attorney's Office. You may want to retain an attorney if you are the Respondent or are considering filing a civil action. Respondents (accused students) may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct proceeding.

➤ ***What about changing residence hall rooms?***

If you want to move, you may request a room change. Room changes under these circumstances are considered emergencies. It is typical institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you want the Respondent to move, and believe that you have been the victim of sexual misconduct, you must be willing to pursue a formal University complaint. No-Contact Directives can be imposed and temporary room changes for the accused student can usually be arranged quickly. Room changes can only be accommodated if space is available.

Other accommodations available to you might include:

- Assistance from University support staff in completing the relocation
- Arranging to dissolve a housing contract and pro-rating a refund
- Transportation accommodations
- Other accommodations for safety as necessary

➤ ***What should I do about preserving evidence of a sexual assault?***

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, although evidence can often be obtained from towels, sheets, clothes, etc., for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to a hospital emergency room before washing yourself or your clothing. The nearest hospital to the University with a SANE (Sexual Assault Nurse Examiner program) is Washington Hospital. California University of Pennsylvania End Violence Center victim advocates are on-call 24 hours a day. Campus police, CAs, resident directors or the nurses at the campus Health Center can contact these advocates for you. The advocates can provide transportation to Washington Hospital and will accompany and stay with the victim throughout the process. The Sexual Assault Nurse Examiner (a specially trained nurse) at the hospital is usually on call 24 hours a day, 7 days a week. If a victim goes to the hospital, local police will be called, but the victim is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim later decide to exercise it.

*For the Victim:* the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). If you have not changed clothes, bring a change of clothes with you to the hospital, if possible, as they will likely keep the clothes you are wearing as evidence. You can take a support person with you to the hospital, and the person can accompany you through the exam, if you want. Do not disturb the crime scene – leave all sheets, towels, etc. that may bear evidence for the police to collect.

➤ ***Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?***

Usually not. The severity of the infraction will determine the nature of the University's response, but whenever possible the University will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern and the University does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

**Limited Immunity:** A student who admits to violating the Irresponsible Alcohol Use or Misuse of Drugs sections above in the course of reporting an incident as a victim of physical assault, endangering behavior, inappropriate sexual behavior, stalking or harassing behavior or when calling for medical assistance will not be charged for those violations. This includes those calling on another's behalf and who stay with that individual. Limited immunity may be given to students admitting to other violations in these circumstances at the sole discretion of the Associate Dean for Student Conduct. The University may follow up on such admissions in an informal manner.

➤ ***Will the use of drugs or alcohol affect the outcome of a sexual misconduct complaint?***

The use of alcohol and/or drugs by either party will not diminish the Respondent's responsibility. On the other hand, alcohol and/or drug use is likely to affect the Complainant's memory and, therefore, may affect the outcome of the complaint. Use of alcohol and/or other drugs will never excuse a violation of the sexual misconduct policy.

➤ ***Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?***

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the current complaint.

➤ ***What should I do if I am uncertain about what happened?***

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the University's sexual misconduct policy, you should contact the Office of Student Conduct, Victim's Advocate Office (End Violence Center) or the Title IX Coordinator (Special Assistant to the President for EEO). The University provides advisers who can help you to define and clarify the event(s), and advise you of your options.

➤ ***Where can I obtain a Complaint Form?***

A Complaint Form is available online at [www.calu.edu/SEcomplaint](http://www.calu.edu/SEcomplaint) or you can visit the Office of Social Equity, South Hall 112 (Monday - Friday between the hours of 8 a.m. - 4 p.m. or by appointment) to pick-up and/or complete the form in person. If you need further assistance, please call the Office of Social Equity at 724-938-4014.







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