

# SEXUAL ASSAULT (TITLE IX) POLICIES AND PROCEDURES

## Sexual Harassment, Sexual Assault, Sexual Misconduct, Relationship (Dating) Violence and Stalking Policy

### Non-discrimination Statement

Texas Lutheran University (TLU) policy prohibits discrimination based on sex in employment and education programs and activities both on and off campus. Prohibited conduct is set forth in this policy, including under definitions. This policy applies to all students and employees and to conduct on school grounds, off-campus, and at school-sponsored activities, and through technology resources, including those provided by or used at TLU.

TLU policy and Title IX of the Education Amendments of 1972 prohibit discrimination on the basis of sex in employment and education programs and school-sponsored activities and/or official campus activities. Title IX protects all persons from sex discrimination, which includes sexual harassment and sexual violence. TLU will process all sex discrimination complaints it receives, including complaints of sexual harassment, sexual violence, and stalking regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an employment or education program or activity or had continuing effects on campus. If alleged off-campus sexual harassment or sexual violence occurs in the context of an education program or activity or had continuing effects on campus, the complaint will be treated the same as a complaint involving on-campus conduct. This includes complaints of sexual assault or harassment by students, employees, and third parties.

TLU strongly urges students, faculty, staff, and third parties to report incidents of conduct prohibited under this policy as soon as they become aware of a situation. Responsible employees (as defined below) are **required** to promptly report incidents of conduct prohibited under this policy.

### A. Title IX Coordinators

Complaints of sexual assault, sexual harassment or other conduct prohibited under this policy and inquiries concerning the application of Title IX and its regulations should be directed to the TLU Title IX Coordinator or the Deputy Coordinators listed below:

#### ***Title IX Coordinator***

Dr. Bernadette K. Buchanan  
*Associate Dean of Student Life & Learning for  
Title IX and Division Compliance*  
Alumni Student Center, ASC 107  
830-372-8060  
[bbuchanan@tlu.edu](mailto:bbuchanan@tlu.edu)

Please contact Dr. Buchanan if you have a complaint against a member of the TLU community concerning sexual harassment, sex discrimination, sexual assault, and conduct prohibited by this policy, or if you are a member of the TLU community with questions about Title IX.

#### ***Title IX Deputy Coordinator for Students***

Mr. Kyle Wych  
*Associate Dean of Student Life & Learning*  
Alumni Student Center, ASC 102C  
1000 West Court Street  
Seguin, TX 78155  
830-372-8060  
[kwych@tlu.edu](mailto:kwych@tlu.edu)

Please contact Mr. Wych if you have a complaint against a student concerning sexual harassment, sex discrimination, sexual assault, conduct prohibited by this policy, or if you are a student with questions about Title IX.

***Title IX Deputy Coordinator for Faculty***

Dr. William Davis  
*Professor and Chair of Chemistry*  
Krost Science Building, Room 302  
1000 West Court Street  
Seguin, TX 78155  
830-372-6046  
wdavis@tlu.edu

Please contact Dr. Davis if you are a faculty member with questions about Title IX or have a complaint against a faculty member concerning sexual harassment, sex discrimination, sexual assault or any conduct prohibited by this policy.

***Title IX Deputy Coordinator for Non-Faculty Employees and Third Parties***

Ms. Toi Turner  
*HR Administrator*  
O.G. Beck Administration Building  
1000 West Court Street, Suite 105A  
Seguin, TX 78155  
830-372-8019  
tturner@tlu.edu

Please contact Ms. Turner if you are a non-faculty employee with questions about Title IX or have a complaint against a non-faculty employee concerning sexual harassment, sex discrimination, sexual assault or any conduct prohibited by this policy.

***Title IX Deputy Coordinator for Athletics***

Mr. Michael Hunt  
*Head Coach for Men's and Women's Tennis*  
*Jones Complex*  
1000 West Court Street  
Seguin, TX 78155  
830-372-8128  
mhunt@tlu.edu

If you have a Title IX question or concern related to athletics, please contact Mr. Hunt.

The responsibilities of TLU's Title IX deputy coordinators for students, faculty and non-faculty employees and third parties include investigating or overseeing the investigation of all incidents of alleged sexual assault or harassment, ensuring that consistent standards and practices apply to all investigations, being available to meet with students and employees who believe sexual assault or harassment has occurred, and assisting campus security and local law enforcement as needed. Deputy coordinators for students, faculty and non-faculty employees and third parties report incidents whether resolved informally or formally to the university Title IX Coordinator. These reports allow the Title IX Coordinator to identify patterns in a particular area within the university and to coordinate compliance with federal regulations.

Students may also contact the U.S. Department of Education, Office for Civil Rights at (800) 421-3481 or [ocr@ed.gov](mailto:ocr@ed.gov).

## B. Policy Definitions

**Complainant** means a person who submits a complaint alleging a violation of this policy.

**Consent is the voluntary positive agreement between individuals to engage in specific sexual activity.**

“Consent” shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender. Once consent is withdrawn or revoked, the sexual activity must stop immediately.

- Consent must be **voluntary** and given without coercion, force, threats, or intimidation.
- Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation, or (f) any other factor that would eliminate an individual’s ability to choose whether to engage in sexual activity.
- Consent can be **withdrawn or revoked**. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity (or other sexual acts). Consent to sexual activity given on one occasion does not constitute consent to sexual activity on another occasion. The fact that two people are or were in a dating or sexual relationship does not constitute consent to engage in sexual activity.
- Consent cannot be given by a person who is **incapacitated**. A person cannot give consent if s/he is unconscious or coming in and out of consciousness. Examples of incapacitation include unconsciousness, sleep and blackouts. Whether an *intoxicated* person (due to using alcohol or other drugs) is *incapacitated* depends on the extent to which the person’s decision-making capacity, awareness of consequences, and ability to make fully informed judgments is impaired.
- Being intoxicated by drugs or alcohol does not diminish a person’s responsibility to obtain consent from the other party before engaging in sexual activity. Factors to be considered when determining culpability include whether the person knew, or whether a reasonable person in the accused’s position should have known, that the victim could not give, did not give, or revoked, consent; was incapacitated; or was otherwise incapable of giving consent.
- For more information about consent and what it entails please check out the following websites:
  - <http://www.loveisrespect.org/healthy-relationships/what-consent/>
  - <https://www.rainn.org/articles/what-is-consent>

Individuals who consent to sex must be able to fully understand what they are doing. Under TLU’s Title IX and student and employee disciplinary/sexual misconduct policy, “no” always means “no,” and “yes” may not always mean “yes.” For example, when alcohol or other drugs are used, a person will be considered unable to give valid consent if the person cannot appreciate the who, what, where, when, why, or how of a sexual interaction. In addition, silence — without clear action demonstrating permission — will not be assumed to indicate consent. Further, there is a difference between seduction and coercion; coercion is defined as unreasonably pressuring another person for sex. Coercing someone into engaging in sexual activity violates Title IX, student conduct and workplace policy in the same way as physically forcing someone into engaging in sexual activity.

**Dating violence** means an act between individuals who are or have been in a dating relationship that has resulted in physical harm, psychological/mental harm, bodily injury, assault, or sexual assault or is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault. The existence of such a relationship shall be determined based on the consideration of the following factors:

- a. The length of the relationship;
- b. The nature of the relationship; and
- c. The frequency and type of interaction between the persons involved in the relationship.

“Dating violence” does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

**Domestic violence** is abuse or 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 with

whom the complainant is cohabiting (or has cohabited) with a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the State of Texas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Texas. An act of violence constitutes domestic violence if it is committed against a family member, a household member or someone the offender is currently dating or dated in the past, including a spouse, former spouse, person related by blood or marriage, a foster child or foster parent, and persons who are parents of a child in common.

**Hostile Educational Environment.** Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school.

**Intimate Partner Violence (IPV).** Domestic violence by a spouse or partner in an intimate relationship against the other spouse or partner. Intimate violence can take a number of forms including physical, verbal, emotional, economic and sexual abuse.

**Rape** means nonconsensual sexual intercourse or sexual penetration, which, in addition to intercourse, means nonconsensual oral or anal intercourse, or any other intrusion, however slight, by a sex organ into another person's body. It may or may not involve force or a threat of force, coercion, violence, or immediate bodily injury, threats of future retaliation, or duress.

**Rape** occurs when an action compels another person to submit to or engage in sexual penetration against the person's will, including when the victim is mentally incapable of consent. A person commits sexual assault if he or she causes the penetration of the anus or sexual organ of another person by any means, without that person's consent, causes the penetration of the mouth of another person by the sexual organ of the actor without that person's consent, or causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor. A sexual assault is without the consent if:

- a. The actor compels the other person to submit or participate by the use of physical force or violence;
- b. The actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes the actor has the ability to execute the threat;
- c. The other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
- d. The actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or resisting it;
- e. The other person has not consented and the actor knows the other person is unaware the sexual assault is occurring;
- f. The actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; or
- g. The Actor compels the other person to submit or participate by threatening to use force or violence against any person and the other person believes that the actor has the ability to execute the threat.

**Acquaintance Rape** is a form of sexual violence committed by an individual known to the victim. This includes a person the victim may have just met, such as at a party, been introduced to through a friend, or met on a social networking website.

**Respondent** means the person alleged to be responsible for prohibited conduct alleged in a complaint.

**Responsible Employee** means a TLU employee who has a **duty** to promptly report incidents of sex discrimination, sexual harassment, sexual assault, sexual misconduct, domestic or dating violence, and stalking to the university Title IX Coordinator or Deputy Title IX Coordinators. Responsible employees are not confidential reporting resources.

**Retaliation** means adverse educational or employment consequences, including workplace conduct or other conduct that adversely affects the academic, employment, or other institutional status of a student or employee of the university, visitor, applicant for admission to or employment with the university, because an individual has, in good faith, brought a complaint under this policy, opposed an unlawful practice, participated in an investigation, or requested accommodations. Examples of retaliation include, but are not limited to unfair grades, denial of promotion, non-selection/refusal to hire, denial of job benefits, demotion; suspension, discharge, threats, reprimands, negative evaluations, harassment, or other adverse treatment that is likely to deter a reasonable student or employee from pursuing his or her rights. Retaliation is strictly prohibited.

**Sex Discrimination** is an adverse action taken against an individual because of sex, including sexual harassment, sexual violence, domestic violence, dating violence, and stalking as prohibited by Title IX, Title IV, VAWA/Campus SaVE Act, and other laws and regulations. Both men and women can be victims of sex discrimination.

**Sexual Assault** occurs when physical, sexual activity is engaged without the consent of the other person, or when the other person is unable to consent to the activity. The activity or conduct may include physical force, violence, threat, intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation (through the use of drugs or alcohol) or taking advantage of the other person's intoxication (including voluntary intoxication).

**Sexual Harassment** is any unwelcome conduct of a sexual nature. This includes unwelcome verbal, nonverbal or physical conduct including but not limited to unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual violence, sexual advances, requests for sexual favors, and indecent exposure, where:

- a. Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for any decision affecting a student's academic status or progress, or access to benefits and services, honors, programs, or activities available at or through TLU; *or*
- b. Such conduct is unwelcome; *or*
- c. Submission to, or rejection of, the conduct by a TLU employee is explicitly or implicitly used as the basis for any decision affecting a term or condition of employment, or an employment decision or action; *or*
- d. Such conduct is sufficiently severe or pervasive to create a hostile educational or employment environment.

**Sexual Harassment** includes behavior such as unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature. It is conduct that affects a person's employment or education or interferes with a person's work or educational performance or creates an environment that a reasonable person would find it intimidating, hostile or offensive.

- a. **Hostile Environment** sexual harassment includes situations where harassment is sufficiently severe, pervasive or persistent and objectively offensive that it unreasonably interferes with, limits or denies the ability to participate in or benefit from the university educational or employment program or activities, sanctions can be imposed for the creation of a hostile environment. The determination of whether an environment is "hostile" must be based on all the circumstances. These circumstances could include, but are not limited to:

- The frequency of the speech or conduct;
- The nature and severity of the speech or conduct;
- Whether the conduct was physically threatening;
- Whether the speech or conduct was humiliating;
- The effect of the speech or conduct on the alleged victim's mental and/or emotional state;
- Whether the speech or conduct was directed at more than one person;
- Whether the speech or conduct arose in the context of other discriminatory conduct;

- Whether the speech or conduct unreasonably interfered with the alleged victim's educational or work performance;
  - Whether a statement is a mere utterance of an epithet, which engenders offense in a student or offends by mere discourtesy or rudeness.
- b. **Quid Pro Quo** sexual harassment means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature where submission to, or rejection of, such conduct results in adverse educational or employment action. Quid pro quo harassment may also exist when a threat of adverse action or a promise of a benefit is explicitly conditioned on submission to, or rejection of, such requests.

**Sexual Misconduct** is behavior or conduct of a sexual nature that is unprofessional and/or inappropriate for the educational or working environment. Behaviors that may constitute sexual misconduct include, but are not limited to:

- a. Repeatedly engaging in sexually oriented conversations, comments, or horseplay, including the use of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office, or classroom, even if such conduct is not objected to by those present;
- b. Gratuitous use of sexually oriented materials not directly related to the subject matter of a class, course, or meeting, even if not objected to by those present;
- c. Failure to observe the appropriate boundaries of the supervisor/subordinate or faculty member/student relationship, including the participation of a supervisor, teacher, advisor, or coach in an unreported consensual romantic or sexual relationship with a subordinate employee or student; or
- d. Engaging in sexual exploitation. Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for his or her own benefit or to benefit anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to, engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.

**Sexual Violence:** a spectrum of any sexual act committed against someone without that person's freely given consent. The spectrum defines the full range of experiences that are included under sexual violence – when a sexual act is used as a tool for violence, humiliation, or degradation. Some of those experiences are not considered criminal violations in most states, even though they may be experienced as violating or threatening. **Incapacitated** means the victim is temporarily incapable of appraising or controlling his/her conduct due to the influence of a narcotic, anesthetic or other substance administered without consent or due to any other act committed upon the victim without consent.<sup>1</sup> Sexual violence can be carried out by school employees, other students, or third parties. All acts of sexual violence are forms of sex discrimination prohibited by Title IX. Both men and women can be victims of sexual violence.

**Statutory Rape** is unlawful sexual intercourse with a minor under 17 years old, even if the intercourse is consensual.

**Stalking** means a course of conduct directed at a specific person (1) intended to harass, annoy, alarm, abuse, torment, or embarrass that person<sup>2</sup> or (2) which the actor knows or reasonably should know the other person will regard as threatening and causes or cause the person to fear:

- a. Bodily injury or death;
- b. Bodily injury to or death of a member of the other person's family or household or an individual with whom they have a dating relationship; or
- c. That an offense will be committed against the other person's property;

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<sup>1</sup> Persons who are drugged, incapacitated, or under the age of 17 are unable to give consent.

<sup>2</sup> Under section 42.07.

- d. To feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and
- e. Would cause a reasonable person to:
  - i. fear bodily injury or death for himself or herself;
  - ii. fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;
  - iii. fear that an offense will be committed against the person's property; or
  - iv. feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.<sup>3</sup>

**Cyberstalking** means to engage in a course of conduct to communicate or cause to be communicated, words, images, or language by or through the use of a computer, electronic mail or electronic communication,<sup>4</sup> directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose. This includes online harassment as defined by sections 33.07 and 42.07 of the laws of the State of Texas.

### C. Prohibited Conduct

Any conduct by an employee, student, or third party that denies or limits the ability of a student or employee to participate in or receive the benefits, services, or opportunities of employment or any TLU program or activity based on sex is prohibited. This includes any circumstance where:

1. An employment or educational decision or benefit is conditioned on submission to unwelcome sexual advances or conduct;
2. Submission to, or rejection of, unwelcome sexual conduct is used as a basis for denying employment or an opportunity to participate in or benefit from any school program or activity;
3. Conduct has the purpose or effect of unreasonably interfering with, denying or limiting a student ability to participate in or benefit from any school program or activity or a term, condition or benefit of employment;
4. Conduct alters the educational environment to the degree that it adversely affects the student's ability to participate in or benefit from any school program whether or not that student is the target of the harassment;
5. There is a pattern and practice of sexual harassment;
6. A teacher, administrator or other person in a position of authority engages in sex discrimination or sexual harassment of a student or employee; and/or
7. A student or a group of students engages in sexual harassment of another student or students.

The following are examples of behaviors that are prohibited under this policy. This policy specifically includes electronic communications, including but not limited to phone calls, text messages, e-mail, and communications using social media such as Instagram, Snapchat, Twitter, and Facebook. This is not intended to be an exhaustive list:

1. Unwelcome sexual flirtations, advances or propositions;
2. Derogatory, vulgar or graphic written or oral statements regarding one's sexuality;
3. Unwanted touching, patting, pinching, or other attention to an individual's body;
4. Attempted or actual physical assault;
5. Any nonconsensual sexual act, including but not limited to rape, sexual assault, sexual battery and sexual coercion;

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<sup>3</sup> Sections 42.072 and 42.07.

<sup>4</sup> "Electronic communication" means a transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic, or photo-optical system.

6. Unwelcome sexual comments, innuendoes, suggestions or jokes;
7. Display of sexually suggestive pictures or objects;
8. Domestic violence, dating violence, sexual violence, and stalking, including cyberstalking;
9. Sending text messages, e-mails, or other electronic communications with nude or sexually suggestive photos, videos, or other images; and
10. Sharing or sending nude or sexually suggestive images over the Internet.

#### D. Reporting sexual misconduct or filing a complaint

**Where to report:** Sexual assault, sexual harassment, sexual violence and other behavior prohibited by this policy should be reported to:

- Dr. Bernadette Buchanan, 830-372-8060 or [bbuchanan@tlu.edu](mailto:bbuchanan@tlu.edu) (*for complaints against any member of the TLU community*)
- Mr. Kyle Wych, 830-372-8060 or [kwych@tlu.edu](mailto:kwych@tlu.edu) (*for complaints against students*)
- Dr. William Davis, 830-372-6046 or [wdavis@tlu.edu](mailto:wdavis@tlu.edu) (*for complaints against faculty*)
- Ms. Toi Turner, *HR Administrator*, 830-372-8019 or [tturner@tlu.edu](mailto:tturner@tlu.edu) (*for complaints against administrators, staff, or non-employees/third parties*)
- Mr. Michael Hunt, 830-372-8128 or [mhunt@tlu.edu](mailto:mhunt@tlu.edu) (*for complaints against athletes*)
- A report can also be made to the Texas Lutheran University Police by dialing “0” on a campus phone or 830-372-8000, or Police Chief Irene Garcia by dialing ext. “8199” on a campus phone or 830-372-8199 or to the Seguin Police Department by dialing “911”

A complaint or report may be verbal or written and does not need to take a particular form.

Students may also report any incident of sexual violence or sexual harassment that may create or contribute to the creation of a hostile environment to any instructor or school employee. Students, staff and faculty may notify the head of their department or unit, their supervisor, or any member of the administration with whom they are comfortable. Any instructor or other employee receiving such a report is responsible for reporting it to the Title IX Coordinator. Failure to comply with this policy shall be grounds for disciplinary action, up to and including termination.

**What to expect.** A representative of TLU, typically a Deputy Title IX Coordinator, will meet with the complainant, give the complainant a copy of this policy, and explain:

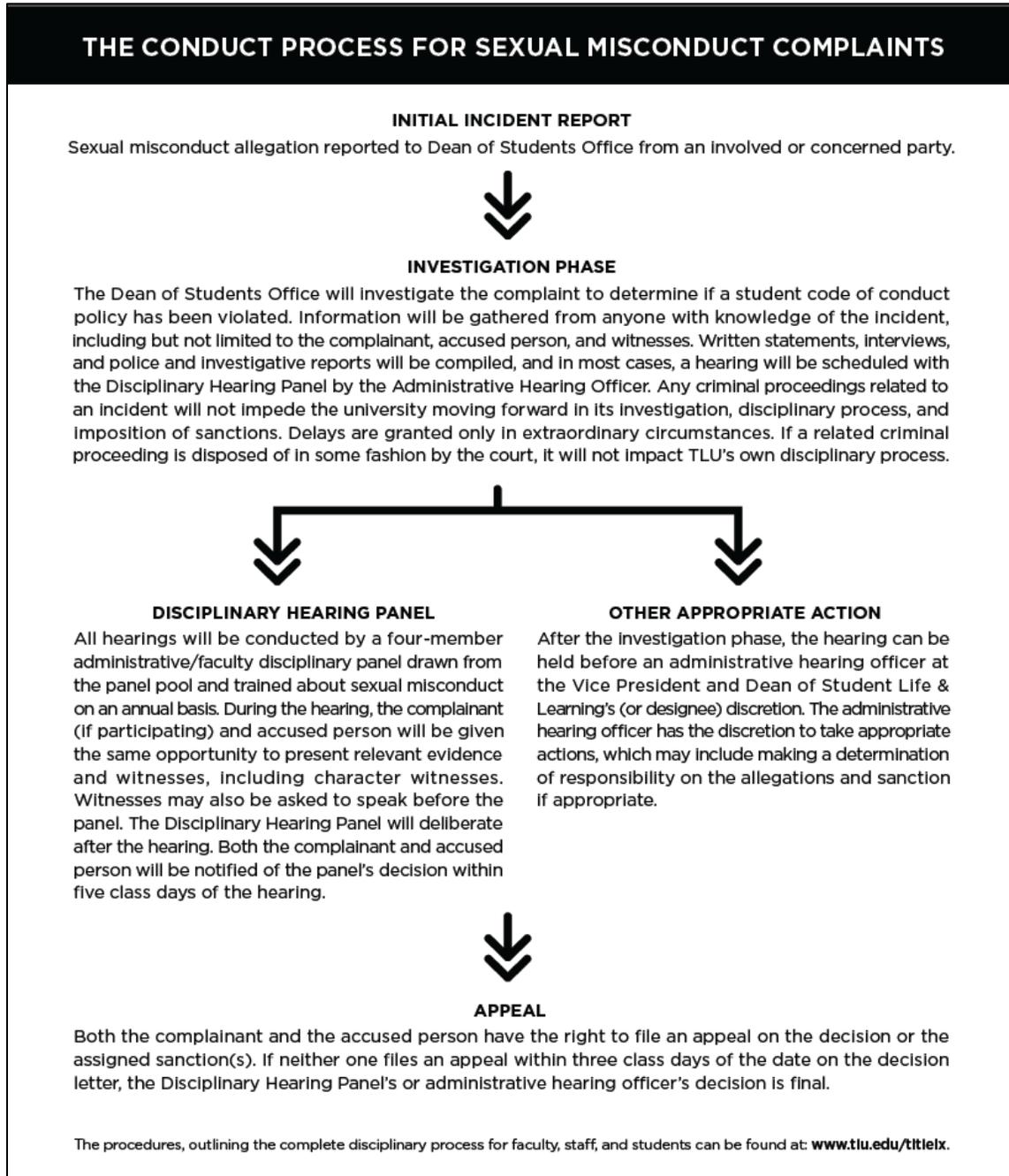
1. The importance of seeking immediate medical attention for sexual assaults;
2. The importance of preserving evidence;
3. The right to report a crime to campus or local law enforcement;
4. The right to *not* report a crime to law enforcement or file criminal charges;
5. The right to simultaneously file both a criminal complaint with campus security or local law enforcement and an institutional Title IX complaint;
6. The right to assistance from school officials with filing a criminal complaint, if assistance is requested;
7. Internal options, including informal and formal resolution<sup>5</sup> ;
8. Available health care, victim advocacy, academic support, mental health, legal assistance resources and counseling services available both on and off campus, including the campus health center, the campus counseling center and sexual assault resource centers, and pastoral counselors, which can be found here;
9. Even if a complainant asks TLU not to take any action, the university is obligated to investigate the complaint;
10. Prohibitions against retaliation;
11. Interim measures that may be put in place, including a no-contact order pending the outcome of the investigation, providing support services, changing living arrangements or course schedules, assignments, or tests, and temporary removal of the respondent from the campus community pending the outcome of an investigation;

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<sup>5</sup> Mediation cannot be used in cases of alleged sexual assault.

12. Options for avoiding contact with the respondent(s), including being allowed to change academic and extracurricular activities and living, transportation, dining, and working situations as appropriate;
13. Complaints against students may be referred to the Office of the Vice President and Dean of Student Life & Learning for adjudication through the student conduct process; and
14. Complaints against employees may be referred for disciplinary action by Human Resources and/or Academic Affairs.

When implementing interim protective measures and taking steps to separate complainants from respondents, TLU will attempt to minimize the burden on the complainant.



**Confidentiality.** TLU will make reasonable and appropriate efforts to preserve student complainants' and student respondents' privacy and to protect the confidentiality of information. TLU will only disclose information regarding complaints under this policy on a need to know basis, primarily to persons who are responsible for its investigation and any reporting requirements.

TLU strongly supports a complainant's interest in confidentiality in cases involving sexual violence. If a student complainant requests confidentiality, the Title IX Coordinator will determine whether TLU can honor this request while providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. A request for confidentiality could preclude a meaningful investigation; therefore, TLU will consider whether there are circumstances present that demonstrate a risk that the respondent may commit additional acts of sexual violence or other violence. These include whether other sexual violence complaints have been received about the same respondent, whether the respondent has a history of arrests, whether the respondent has records from a prior school indicating a history of violence, whether the respondent threatened further sexual violence or other violence against the complainant or others, and whether the sexual violence was committed by multiple perpetrators.

Other factors include whether the sexual violence was perpetrated with a weapon, and the age of the student subjected to the sexual violence.

If the complainant asks that the complaint not be pursued, TLU will take reasonable steps to investigate and respond to the complaint consistent with the request not to pursue an investigation.

Even when a student asks that a complaint not be pursued or that information be kept confidential, if necessary, TLU will take action to protect the student. This includes providing support services and changing living arrangements or course schedules, assignments, or tests as appropriate.

## **E. Investigation**

Complaints under this policy will be investigated by the Title IX Coordinator, deputy or a designee (referred as the "investigator"). Other university officials may assist in gathering facts during the investigation and information from TLU campus security or local law enforcement officials may be considered. Both parties will be given the same opportunity to present relevant evidence and witnesses, including character witnesses. If the respondent is allowed to review the complainant's statement, the complainant may also review any statement by the respondent. No other witness statements or documents will be available for review by the parties during the investigation. In cases of alleged domestic violence, dating violence, sexual assault, or stalking, proceedings under this policy shall provide a prompt, fair, and impartial investigation and resolution, and be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

TLU will make every effort to complete its investigation of Title IX sex discrimination complaints within 60 days. If additional time is needed, both the complainant and respondent will be notified. In addition, the complainant and respondent will receive periodic status updates on the progress of the complaint. During the investigation and any subsequent hearing process or appeal, TLU may implement interim actions including, but are not limited to no-contact orders pending the outcome of the investigation and/or appeal, providing academic support and counseling services, changing living arrangements or course schedules, assignments, or tests, temporary removal of the respondent from the campus community pending the outcome of an investigation, and options for avoiding contact, including being allowed to change academic and extracurricular activities and living, transportation, dining, and working situations as appropriate.

**Relevant Information for Investigation.** At the outset of an investigation, the Title IX Coordinator/Investigator will notify the respondent of the allegations against him or her and request a written response. In addition, the Title IX Coordinator/Investigator may collect and consider the following types of information:

- Statements by the complainant and respondent about the alleged incident(s);
- Statements by witnesses to the alleged incident(s);
- Evidence about the credibility of the complainant and the respondent;
- Evidence that the respondent has been found to have harassed other;
- Evidence that the complainant has made false allegations against other individuals;
- Evidence as to whether the complainant's reaction or behavior after the alleged harassment;
- Evidence as to whether the alleged victim filed a complaint or took other action to protest the conduct soon after the incident occurred; and
- Other evidence of the harassment (e.g., reporting conduct to parents, counselors or friends, or medical records).
- The fact of a current or previous consensual dating or sexual relationship between the parties will not imply consent or preclude a finding of sexual violence.

**Evidentiary/fact determinations.** The Title IX Coordinator/investigator has broad discretion in determining whether a proffered witness or documentary information would be relevant or helpful to a determination.

**Evidentiary Standard.** A "preponderance of the evidence" standard will be used.

**Time Frame for Investigation and Completion of Report.** An investigation and report should normally be completed within 60 calendar days after notice of a complaint. This time may be extended for good cause, including breaks or the unavailability of the complainant or respondent. A written decision should be completed and provided to the parties at the conclusion of the investigation.

**Cooperation.** All faculty, staff and students are required to cooperate in the investigation process. Refusal to cooperate will result in disciplinary action based on failure to cooperate in an official university investigation for employees and disciplinary action potentially leading to dismissal.

**Notice of Investigation.** At the outset of an investigation, the investigator will advise the respondent of the allegations against him or her in writing.

**Opportunity to Participate.** Both the complainant and the respondent will have the same opportunity to meet with the investigator, to submit relevant documentation or other evidence, including character evidence, and to request that the investigator speak with relevant witnesses and evaluate written documents and statements. The investigator may exclude any third party (including legal counsel, family members, or character witnesses) from such meetings and interviews.

**Pending Criminal Matters.** The internal investigation will proceed whether a related criminal matter is pending or not. If there is an ongoing criminal investigation, TLU will *not* wait for the conclusion of the criminal investigation or criminal proceeding to begin its own Title IX investigation. However, TLU may temporarily delay the fact-finding portion of a Title IX investigation while the police or other law enforcement officials are gathering evidence.

## F. Hearings

Once the Title IX investigation concludes, a decision must be made concerning disciplinary action. When the complaint involves a student respondent, the investigator's final report will be submitted to the Vice President and Dean of Student Life & Learning. The Vice President and Dean of Student Life & Learning or a designee will determine whether to charge the student with a disciplinary infraction. No complaint will be forwarded for a hearing unless there is reasonable cause to believe a policy has been violated. Reasonable cause is defined as some credible information to support each element of the offense, even if that information is merely a credible witness or an alleged victim's statement. A complaint wholly unsupported by any credible information will not be forwarded for a hearing.

## 1. Hearing Process

If the Vice President and Dean of Student Life & Learning refers the matter for a hearing, both the complainant and respondent will receive notice of the hearing and be given the opportunity to present evidence and witnesses, as well as have an advisor of their choice present, though that advisor may not participate in any of the proceedings. The Student Code of Conduct hearing process and hearing procedures contained in the Student Handbook will be followed unless a different process is stated below. The notice will be in writing and may be delivered by one or more of the following methods: in person by the Associate Dean of Students (or a designee); mailed to the local or permanent address of the student as indicated in official university records; or emailed to the student's university-issued email account. Once mailed, emailed and/or received in-person, such notice will be presumed delivered.

At the hearing, there shall be no authority to compel the attendance of witnesses. The following applies:

- a. Both parties will be given similar and timely access to information that will be used at the hearing.
- b. Any conflicts of interest between a party and the fact-finder or decision-maker at a hearing must be disclosed.
- c. Both parties will be given the same opportunity to present relevant evidence and witnesses, including character witnesses.
- d. If the respondent is allowed to review the complainant's statement, the complainant may also be allowed to review the respondent's statement.
- e. The parties are prohibited from personally questioning each other at hearings
- f. If the institution allows attorneys to attend the disciplinary hearings, the attorneys for both sides must have the same opportunity to speak and participate.
- g. If attorneys are allowed to attend in an advisory capacity, both sides must have the same opportunity to provide advice.
- h. TLU will maintain documentation of all disciplinary hearing proceedings, including written findings of facts, transcripts, and any audio recordings
- i. The fact of a current or previous consensual dating or sexual relationship between the parties does not itself imply consent or preclude a finding of sexual violence.
- j. If a complainant or respondent refuses to participate in a Title IX hearing that the Vice President and Dean of Student Life & Learning has determined should occur, the hearing shall proceed and the matter be determined in their absence.

## 2. Examining witnesses

The hearing can be held before an administrative hearing officer or disciplinary panel at the Vice President and Dean of Student Life & Learning's or a designee's discretion. The respondent and complainant may question their own or opposing witnesses, although the hearing officer of the disciplinary panel can require that questions be submitted to and asked by the panel or officer at its/his/her discretion. The complainant and respondent shall not be allowed to question one another during the hearing. Witnesses may be questioned by the hearing panel or administrative hearing officer. The respondent and complainant shall have an equal opportunity to submit questions to the hearing officer or disciplinary panel to be asked of witnesses.

## 3. Composition of the Hearing Panel

All hearings will be conducted by a four-member administrative panel drawn from the panel pool and trained about Title IX on an annual basis.

#### 4. Decision process

The past sexual history or sexual character of a complainant or respondent will be inadmissible in hearings unless determined to be highly relevant by the panel chair. Such information sought to be admitted by a party or the university will be presumed irrelevant until a showing of relevance is made, at least five days prior to the hearing, to the chair. Demonstration of pattern, repeated, and/or predatory behavior by the responding student, in the form of previous findings in any legal or campus proceeding, or in the form of previous good faith allegations, will generally be relevant to the finding, not just the sanction. The complainant and respondent will be notified in advance if any such information is deemed relevant and will be introduced in the hearing.

The four-member administrative panel will determine whether it is more likely than not that a violation of policy occurred and issue a written decision. The written decision will include, but not be limited to, whether the allegations were substantiated, and if so, disciplinary sanctions and remedial measures. The hearing decision will be provided to both parties, although the content of each letter may be modified subject to the limitations of FERPA and other federal or state privacy laws. In cases of alleged sexual assault, the result of the hearing and any sanction imposed will be disclosed to both parties regardless of whether the hearing concludes an assault was committed.

The complainant and respondent will both be sent notice of the hearing panel's findings in writing at the same time. The written recommendation will be relayed to the respondent and complainant, with any restrictions or sanctions. If the complaint is against a faculty member or other employee, the hearing decision will be submitted to the appropriate Vice President, who will make a recommendation concerning restrictions or sanctions to the President. The President or the President's designee will make the final determination as to any recommended actions or sanctions.

Any person who serves as a hearing officer, a disciplinary panel member or on a hearing board related to Title IX sexual misconduct must receive annual training on legal requirements and the university's policies and procedures related to sexual harassment and sexual violence.

#### **G. Appeals**

A student may appeal a decision of the panel to the Vice President and Dean of Student Life & Learning or designee. The appeal must be submitted in writing within three class days of receiving written notification of hearing outcome.

#### **Grounds for Appeal**

Appeal requests are limited to the following grounds:

1. A procedural error that significantly impacted the outcome of the hearing;
2. To consider new evidence that was not available during the original hearing or investigation and could substantially impact the original finding or sanction.<sup>6</sup>
3. A summary of this new evidence and its potential impact must be included;<sup>7</sup>
4. The sanctions imposed are disproportionate to the severity of the violation and the student's overall conduct record.

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<sup>6</sup> Failure to provide information during or participate in an investigation or a hearing, even resulting from concern over pending criminal or civil proceedings, does not make evidence "unavailable" at the time of the hearing.

<sup>7</sup> The Associate Dean of Students is expected to consult with the chair of the original panel to inquire as to whether the new evidence would, in the opinion of the chair, have substantially impacted the original finding or sanction.

Appeals must be filed in writing with the Dean of Students Office within three class days of the notice of the outcome of the hearing, and either the respondent or complainant may file an appeal. Appeals filed after the deadline will not be considered.

The Appeals Review Officer or designee will issue a decision in writing to the accused student no later than five class days after the request for an appeal has been submitted. This deadline may be extended in the event of complex or unusual circumstances. If this deadline is extended, the Appeals Review Officer or designee shall notify the accused of the delay in writing.

## **H. Sanctions and Protective Measures**

If a violation of this policy is proven by a preponderance of the evidence (*i.e.*, that it is more likely than not that sexual harassment occurred), immediate action, including protective measures, will be implemented to end the harassment and prevent its reoccurrence. The recommended action will depend on the degree of control the school has over the harasser and the nature, frequency and severity of the substantiated sexual harassment. In all instances, the Title IX Coordinator will follow up and communicate with the complainant at the conclusion of the investigation.

Depending on whether the respondent is a student, faculty, staff member, or third party, sanctions can include a verbal warning, written reprimand, a no-contact order, short-term or long-term suspension, expulsion, or dismissal/termination. Counseling for the complainant and respondent will also be considered as remedial action. In addition, the following protective measures may be imposed following a final determination of rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking:

**Protective or remedial measures.** Available protective and remedial measures include, but are not limited to:

- a. Providing an escort to ensure that the complainant can move safely between classes and activities;
- b. Ensuring the complainant and respondent do not share classes or extracurricular activities;
- c. Moving the perpetrator or complainant (if the complainant requests to be moved) to a different residence hall;
- d. Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;
- e. Arranging for the complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and
- f. Reviewing any disciplinary actions taken against the complainant to see whether there is a causal connection between the sexual violence and the misconduct that may have resulted in the complainant being disciplined

Any sanction imposed on someone being accused of sexual assault or harassment that relates directly to the victim, such as a "no contact" order, transfer to different classes or housing, or a suspension will be disclosed to the complainant. The perpetrator will not be notified of the individual remedies offered or provided to the complainant other than no-contact orders. In cases of alleged sexual violence, the result of the hearing and any sanction imposed will be disclosed to both parties regardless of whether the hearing concludes an assault was committed

## **I. Informal Resolution**

If the complainant requests mediation or informal resolution, he/she will not be required to work out problems directly with the respondent. Mediation cannot be used in cases of alleged sexual assault. In addition, the complainant has the right to terminate the informal resolution procedure at any time and pursue a formal complaint.

## **J. Accused Student's Rights Under the Family Educational Rights and Privacy Act (FERPA)**

Under FERPA, the accused student may ask to inspect and review information about the allegations against him or her if the information directly relates to the respondent and is maintained as an education record. In such a case, TLU will either redact the complainant's name and all identifying information before allowing the respondent to inspect and review the sections of the complaint that relate to him or her, or notify the respondent of the specific information in the complaint that is about the respondent. See 34 C.F.R. § 99.12(a).

## **K. Retaliation**

Retaliation against a student, employee, or other individual who reports or complains about sex discrimination to an appropriate school official or participates in a report, investigation or proceeding involving a claim or allegation under this policy because he or she made a complaint, testified, or participated in an investigation or proceedings is prohibited.

## **L. Dissemination of Policy**

This policy must be distributed to:

1. Students
2. Administrators, faculty, and other employees
3. Applicants for admission
4. Applicants for employment

This policy must be available:

1. On the TLU website
2. In hard copy at multiple campus locations
3. In both printed and electronic publications, including student, staff, and faculty handbooks, codes of conduct, and catalogs

## **M. Health Care, Victims' Advocacy, Support and Related Services and Providers.**

### **Campus Resources**

TLU Police Department  
Dial "0" from any campus phone  
830 372-8000  
[www.tlu.edu/safety](http://www.tlu.edu/safety)  
*On-campus law enforcement*

Dean of Students  
Alumni Student Center, Suite 102  
830-372-8060  
*Offers support services, conducts investigations, and coordinates responses to specific concerns*

Advocacy Coordinator  
Virgel Thompson  
Department of Justice/Office on Violence Against Women: Campus Grantee  
830-372-6313  
*Provides assistance to faculty, staff, and students going through crisis and looking for a referral*

### **Confidential Campus Resources**

TLU Counseling & Disability Services  
Dr. Marlene Moriarity  
mmoriarity@tlu.edu  
830-372-8009

*or*

Alumni Student Center  
Meadows Center, Suite 101  
830 372-7999

*Provides **confidential** counseling services and crisis services at no charge to TLU students*

TLU Health Center  
Ms. Cathy Anderson  
canderson@tlu.edu  
Clifton Hall Apartment  
830-372-8068

*Provides **confidential** medical services to TLU students*

TLU Campus Pastor  
Rev. Kara Stewart  
830-372-8161  
Center for Servant Leadership  
kstewart@tlu.edu  
830-372-8160

*Provides **confidential** spiritual assistance for students while going through a crisis*

File a Complaint Webpage  
[www.tlu.edu/file-a-complaint](http://www.tlu.edu/file-a-complaint)

*Provides an anonymous way for a member of the TLU community to file a formal complaint*

### **Community Resources**

Guadalupe Regional Medical Center Emergency Room  
1215 E. Court St.  
Seguin, Texas  
830-379-2411

Crime Victims' Services  
800-983-9933

Guadalupe Valley Family Violence Shelter  
Seguin, Texas  
830-372-2780  
Advocate@safesequin.org

Seguin Police Department  
350 N. Guadalupe St.  
Seguin, Texas  
830-379-2123

*References:*

The Violence Against Women Reauthorization Act of 2013, (VAWA), also known as the Campus SaVE Act.

Title IX of the Education Amendments of 1972, as amended.

Title VII of the Civil Rights Act of 1964, as amended.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended.

October 26, 2010 Dear Colleague Letter on harassment and bullying, issued by the U.S. Department of Education

April 4, 2011 Dear Colleague Letter on sexual violence, issued by the U.S. Department of Education

April 24, 2013 Dear Colleague Letter on Title IX retaliation, issued by the U.S. Department of Education;

April 29, 2014 Questions and Answers on Title IX and Sexual Violence, issued by the U.S. Department of Education.

Title IX Legal Manual, U.S. Department of Justice Civil Rights Division.

### **Sexual Misconduct Disciplinary Policy**

Members of Texas Lutheran University community, guests and visitors have the right to be free from sexual violence and discrimination. All members of the TLU community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The TLU sexual misconduct policy has been developed to reaffirm this expectation and to provide recourse for those individuals whose rights have been violated.

TLU maintains a policy of zero tolerance for sexual misconduct regardless of the sexual orientation or gender identity of individuals engaging in sexual activity. Zero tolerance means the university will remedy all unwelcome conduct of a sexual nature and will impose serious sanctions on anyone who violates this policy. Resolution by the university is intended to bring an end to harassing or discriminatory conduct, prevent its recurrence and remedy the effects on the alleged victim and the community. This policy has dual purposes: it serves as a measure to determine, after the fact, if behaviors trespassed on community values and as a guide for students on the university's expectations, preventatively, for sexual communication and interaction, responsibility and respect.

Consent is clear sexual permission and can only be given by a person who is of legal age. Consent can be given by word or action, but non-verbal consent is more ambiguous than explicitly stating one's wants and limitations. Consent to one form of sexual activity should not, and cannot, be taken as consent to any other sexual activity. Individuals who consent to sex must be able to fully understand what they are doing. Under TLU's student disciplinary policy and sexual misconduct policy, "no" always means "no," and "yes" may not always mean "yes." For example, when alcohol or other drugs are used, a person will be considered unable to give valid consent if the person cannot appreciate the who, what, where, when, why, or how of a sexual interaction. In addition, silence — without clear action demonstrating permission — will not be assumed to indicate consent. Further, there is a difference between seduction and coercion; coercion is defined as unreasonably pressuring another person for sex. Coercing someone into engaging in sexual activity violates the student conduct policy in the same way as physically forcing someone into engaging in sexual activity.

#### **A. Violations of the University Sexual Misconduct Policy**

Sexual misconduct is a serious offense and such violations are subject to any combination of conduct sanctions, as described in the Student Code of Conduct, with individuals found responsible for violation of the nonconsensual sexual intercourse policy facing a recommended sanction of university suspension or university expulsion. Deviations from this range are rare and only made where there are compelling mitigating circumstances. Suspensions, if given, are based on satisfying conditions rather than solely on a period of time. Predatory, pattern and/or repeat offenders face expulsion, which is also available for any serious offense whether pattern, predatory or repeat offending is evidenced or not. The other forms of sexual misconduct defined below cover a range of behaviors, and therefore a range of sanctions from warning to expulsion can be applied, depending on the nature of the misconduct. A partial list of university sexual misconduct policy violations is listed below.

## **Sexual Misconduct Policy Violations**

1. **Dating violence** means an act between individuals who are or have been in a dating relationship or marriage that is intended to result in physical harm, bodily injury, assault, or sexual assault or is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.
2. **Domestic violence** is abuse or 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 with whom the complainant is cohabiting (or has cohabited) with a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the State of Texas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Texas.
3. **Sexual harassment** also includes acts of verbal, non-verbal (e.g., written) and physical aggression, intimidation or hostility based on sex or gender stereotyping, even if these acts are not sexual in nature.
  - c. **Hostile Environment** sexual harassment includes situations where harassment is sufficiently severe, pervasive or persistent and objectively offensive that it unreasonably interferes with, limits or denies the ability to participate in or benefit from the university educational or employment program or activities, sanctions can be imposed for the creation of a hostile environment. The determination of whether an environment is "hostile" must be based on all the circumstances. These circumstances could include, but are not limited to:
    - The frequency of the speech or conduct;
    - The nature and severity of the speech or conduct;
    - Whether the conduct was physically threatening;
    - Whether the speech or conduct was humiliating;
    - The effect of the speech or conduct on the alleged victim's mental and/or emotional state;
    - Whether the speech or conduct was directed at more than one person;
    - Whether the speech or conduct arose in the context of other discriminatory conduct;
    - Whether the speech or conduct unreasonably interfered with the alleged victim's educational or work performance;
    - Whether a statement is a mere utterance of an epithet, which engenders offense in a student or offends by mere discourtesy or rudeness.
  - d. **Quid Pro Quo** sexual harassment means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature where submission to, or rejection of, such conduct results in adverse educational or employment action. Quid pro quo harassment may also exist when a threat of adverse action or a promise of a benefit is explicitly conditioned on submission to, or rejection of, such requests.
4. **Nonconsensual Sexual Intercourse (or attempts to commit the same):**
  - Any sexual intercourse (anal, oral or vaginal),
  - however slight,
  - with any object,
  - by a person upon another person,
  - without consent and/or by physical force
5. **Nonconsensual Sexual Contact (or attempts to commit the same):**
  - Any intentional sexual touching,
  - however slight,

- with any object,
  - by person upon another person,
  - without consent and/or by physical force
6. **Sexual Exploitation:** Taking nonconsensual or abusive sexual advantage of another for one's own advantage or benefit, or to benefit a person other than the one being exploited. Examples of sexual exploitation include, but are not limited to:
- Prostituting another student;
  - Non-consensual video or audio recording of sexual activity;
  - Coercing a student into providing sexually explicit pictures of the student or others
  - Exceeding the boundaries of express consent, such as allowing friends to hide in a closet to be witness to one's consensual sexual activity;
  - Engaging in voyeurism (Peeping Tommmery); and/or
  - Knowingly transmitting a sexually transmitted disease or infection to another person who is a member of the campus community.
7. **Stalking:** A person commits stalking when engaging in single or repeated acts toward another individual, including following the individual when such following is unwelcome and under circumstances which demonstrate an intent to place the individual in fear of bodily injury or intent to cause emotional distress. The university considers stalking a form of harassment; therefore, all disciplinary sanctions listed under harassment shall apply to stalking.

### **Frequently Asked Questions**

The following are some of the most commonly asked questions regarding the university's sexual conduct policy and procedures.

**1. Does a complaint remain confidential?**

Reports made to counselors, health service providers and clergy will be kept confidential. All other reports are considered private. The privacy of all parties to a complaint of sexual misconduct will be maintained, except insofar as it interferes with the university's obligation to fully investigate allegations of sexual misconduct. Where information is shared, 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.

In all complaints of sexual misconduct, the accusing party will be informed of the outcome. In some instances, the administration also may choose to make a brief announcement of the nature of the violation and the action taken, to the community, though personally identifying information about the alleged victim will not be shared. Certain university administrators are informed privately (e.g., the President of the university, Dean of Students, Title IX Coordinator, Chief of Police, etc.) of the outcome and any change to a student's status, as necessary. The university must statistically report the occurrence on campus of any of seven major violent crimes, including certain sex offenses, and hate crimes in an annual report of campus crime statistics. This statistical report does not include personally identifiable information.

**2. Will the student's parents/guardians be told?**

No, not unless he/she tells them. Whether the student is the accusing party or the responding party, the university's primary relationship is to the student and not to the parent/guardian; however, in the event of major medical, conduct action, or academic jeopardy, students are strongly encouraged to inform their parents. University officials may directly inform parents when requested to do so by a student, or in a life-threatening situation, in the case that the student is a minor, or if the student has signed the permission slip at registration which allows such communication.

**3. Will the student have to confront the alleged perpetrator?**

Yes, if the student files a formal complaint, but not directly. Sexual misconduct is a serious offense and the responding party has the right to question the accuser; however, the university does provide

options for allowing questioning without direct contact, including closed-circuit testimony, Skype, using a room divider or using separate hearing rooms.

**4. Does the student have to name the alleged perpetrator?**

Yes, if they want formal conduct action to be taken against the alleged perpetrator. No, if they choose to respond informally and do not file a formal complaint. One should consult the complete privacy policy described above to better understand the university's legal obligations regarding information that is shared with various university officials.

**5. What should a student do if they are accused of sexual misconduct?**

First, they should not contact their accuser. They may immediately want to contact someone who can act as their advisor; anyone may serve as their advisor. They may also contact the Associate Dean of Student Life & Learning, who can explain the university's procedures for dealing with sexual misconduct complaints. They may also want to talk to a confidential counselor in Counseling & Disability Services.

**6. What should a student do about legal advice?**

Complainants in cases of criminal sexual assault need not retain a private attorney to seek prosecution because legal issues will be handled through a representative from the District Attorney's Office. The student may want to retain an attorney if they are the responding party. Complainants may also want to retain an attorney if they are considering filing a civil action against the respondent. Both the accused and the complainant may also use an attorney as their advisor during the campus' investigative and hearing processes.

**7. How can Texas Lutheran University help to remedy the effects of discrimination?**

If the student wants to move or have the responding party moved, they may request a room change. Room changes under these circumstances are considered emergencies. It is the university's policy that in emergency room changes, the student is moved to the first available suitable room. Other accommodations available to the student might include:

- Assistance from university support staff in completing the relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Exam, paper or assignment rescheduling;
- Taking an "incomplete" in a class;
- Transferring class sections;
- Temporary withdrawal; and/or
- Alternative course completion options;
- A no-contact order;
- Counseling assistance;
- Escorts or other campus safety protections.

**8. What should the student do to preserve evidence of a sexual assault?**

Physical information of a sexual assault must be collected within about 120 hours of the assault for it to be useful in a criminal prosecution. If a student believes they have been a victim of a sexual assault, they should go to a hospital Emergency Room before washing themselves or their clothing. A sexual assault health professional (a specially trained nurse called a SANE) at the hospital is on call and will counsel them.

If they go to the hospital, local police will be called but they are not obligated to talk to the police or to prosecute. The exam will help to keep that option open for them should they decide later to exercise it.

The hospital staff will collect evidence, check for injuries and address the possibility of exposure to sexually transmitted infections. If the student has changed clothing since the assault, they should bring the clothing they had on at the time of the assault with them 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 forensic evidence useless.) If they have not changed clothes, they should bring a change of clothes with them to the hospital, if possible, as they will likely keep the clothes they are wearing as evidence. The student can take a support person with them to the hospital, and they can accompany the student through the exam, if they want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

**9. Will either party's prior use of drugs and/or alcohol be considered when reporting sexual misconduct?**

No, not unless there is a compelling reason to believe that prior use or abuse is relevant to the present complaint.

**10. Will a student be sanctioned when reporting an act of sexual misconduct if the student has illegally used drugs or alcohol?**

No. TLU offers amnesty in such situations. 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. (See Student Code of Conduct Section 7: C – Amnesty Provisions)

**11. What should a student do if they are uncertain about what happened?**

If a student believes that they have experienced non-consensual sexual contact, but are unsure of whether it was a violation of the university's sexual misconduct policy, they should contact the Title IX Coordinator and/or Associate Dean of Student Life & Learning. The TLU Counselor can also help them to define and clarify the event(s), and advise them of their options.

**a) Risk Reduction Tips**

Tips like these tend to make victims feel blamed if a sexual assault occurs. It is never the victim's fault, and these tips are offered in the hope that recognizing patterns can help men and women to reduce the risk of victimization. Generally, an assault by a known offender will follow a four-step pattern:

- 1) An individual's personal space is violated in some way. For example, the perpetrator may touch the victim in a way that does not feel comfortable.
- 2) If the victim does not express discomfort, the perpetrator may begin to view the victim as an easy target because she/he is not acting assertively.
- 3) The perpetrator may take the victim to a location that is secluded and where the victim is vulnerable.
- 4) The victim feels trapped or unable to be assertive and is raped or assaulted.

Decisive action early in an encounter may be the key to avoiding rape. An individual who can combine assertiveness and self-defense skills, who is self-confident and definite in his/her interactions with others, is less likely to become a victim of rape. If the individual can assertively defend his/her rights initially, he/she has a better chance of avoiding being raped than does a person who resorts to techniques such as pleading or trying to talk the perpetrator out of it. If you find yourself in an uncomfortable sexual situation, these suggestions may help you to reduce your risk:

- 1) Make your limits known before things go too far.
- 2) Give clear messages. Say "yes" when you mean yes and "no" when you mean no. Leave no room for misinterpretation. Tell a sexual aggressor "NO" clearly and loudly, like you mean it.
- 3) Try to extricate yourself from the physical presence of a sexual aggressor.
- 4) Grab someone nearby and ask for help.
- 5) Be responsible for your alcohol intake/drug use and realize that alcohol/drugs lower your sexual inhibitions and may make you more vulnerable to someone who views a drunk or high person as a sexual opportunity.

- 6) Watch out for your friends and ask that they watch out for you. A real friend will get in your face if you are about to make a mistake. Respect them if they do.
- 7) Be aware of any nonverbal messages you may be sending that conflict with what you are saying. Notice your tone of voice, gestures and eye contact.
- 8) Be forceful and firm when necessary. Don't be concerned with being polite. Your passivity may be interpreted as permission or approval for this behavior.
- 9) Do not acquiesce to something you do not want just to avoid unpleasantness. Do not allow "politeness" to trap you in a dangerous situation. This is not the time to be concerned about hurt feelings.
- 10) Trust your feelings or instincts. If a situation does not feel comfortable to you or you feel anxious about the way your date is acting, you need to respond. Leave immediately if necessary.

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) Do not make assumptions about:
  - Consent;
  - Someone's sexual availability;
  - Whether a person is attracted to you;
  - How far you can go; or
  - Whether a person is physically and mentally able to consent to you.
- 2) Clearly communicate your intentions to your sexual partner and give him/her a chance to clearly relate his/her intentions to you.
- 3) Mixed messages from your partner should be a clear indication that you should step back, defuse the sexual tension, and communicate better. Perhaps you are misreading your partner. Perhaps your partner has not figured out how far he/she wants to go with you yet. You need to respect the timeline with which your partner is comfortable.
- 4) Do not take advantage of someone's drunkenness or drugged state, even if he/she did it to him/herself.
- 5) Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Do not abuse that power.
- 6) Understand that consent to some forms of sexual behavior does not necessarily imply consent to other forms of sexual behavior.
- 7) On this campus, 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.
- 8) Do not force someone to have sex with you, or have sex with a partner who has not clearly consented to you by words or actions unmistakable in their meaning.

## **Pregnant and Parenting Students**

### Purpose:

To describe the university's commitment to provide a supportive learning environment for pregnant and parenting students.

### Additional Authority:

- Title IX of the Education Amendment of 1972
- University Policy on Sexual Harassment, Sexual Misconduct, Dating Violence, Domestic Violence, and Stalking

### Scope:

This policy applies to those seeking admission, currently admitted and those students enrolled at the university.

Definitions:

Pregnant or Parenting Student

For the purpose of this policy, pregnant or parenting student refers to those applying for admission, admitted, or enrolled in classes who have a qualifying condition.

Medically Necessary Leave of Absence

An absence from the classroom or extracurricular activities because of a qualifying condition and deemed necessary and documented by an appropriate health care professional.

Qualifying Condition

Conditions covered by this policy are pregnancy, complications related to pregnancy, false pregnancy, termination of pregnancy, childbirth, and recovery from any of these conditions.

1. Policy Statement

The university seeks to treat all students equitably, regardless of their actual or potential parental or familial status. It is the policy of the university to provide appropriate, reasonable adjustments to educational programs and activities to support pregnant students.

This policy establishes a process for pregnant and parenting students to request and obtain adjustments to educational programs and activities allowing them to continue their education at the university.

2. Requests for Adjustments for Pregnant and Parenting Students

A student in need of an educational adjustment should submit a request to the Dean of Students Office. If a student is unable to submit a request because of their condition, an appropriate representative of the student may contact the Dean of Students Office on their behalf and the student may confirm the request when they become able to do so.

The Dean of Students Office will consult with the student/appropriate representative and appropriate university officials, including faculty members and department chairs, to fashion an educational adjustment that is appropriate for the student. In the event the Dean of Students Office receives a request for adjustment that may be covered by Section 504 of the Rehabilitation Act or the Americans with Disabilities Act, the request will be forwarded to the Counseling and Disabilities Services Office.

3. Medically Necessary Leave of Absence

An educational adjustment under this policy may include an excused leave of absence for as long as medically necessary. To request a leave of absence and accompanying academic adjustments under this policy, a student should follow the request procedure outlined above.

- a. If reasonable, a student will be given extra time to make up course work and tests missed during the leave of absence. Whether or not it is reasonable to grant a student extra time to make up course work and tests missed will be determined by the Director of Counseling and Disability Services, appropriate faculty members, and the department chair. This determination will be based on, among other things, the length of the absence requested and the ability of the student to complete coursework outside of the classroom.
- b. If it is unreasonable for a student to receive extra time to complete a course, the student will be given the option to withdraw from the class without penalty.
- c. Pregnant or parenting students who must take a medically necessary extended leave of absence (generally no longer than 180 days) shall be allowed to return to the same academic and extracurricular status as before the leave began.

4. Reporting Harassment or Discrimination Due to a Qualifying Condition

Texas Lutheran University prohibits discrimination and harassment on the basis of sex. Pregnant or parenting students who believe they have been discriminated against or harassed because of a qualifying condition may file a complaint with the Title IX Coordinator. Complaints of discrimination or harassment under this policy will be processed in accordance with university policy on Sexual Harassment, Sexual Assault, Sexual Misconduct, Relationship (Dating) Violence, and Stalking.