



## AZUSA PACIFIC UNIVERSITY COLLEGE

**Title:** Sexual Harassment, Stalking and Sexual Violence Policy (Title IX)

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Policy type:

Approved by: Chancellor/CEO

Originator: Office of the Chancellor/CEO

### Policy Statement

#### **Statement of Nondiscrimination**

Azusa Pacific University College's mission statement describes the university as "an evangelical Christian community of disciples and scholars." Deep convictions about how we treat one another, anchored in the biblical truth that all human beings are created by God and bear His image, are foundational to our identity as a Christ-centered community. In keeping with those convictions, the University is committed to providing a learning, working, and living environment that promotes personal integrity, civility, and mutual respect and is free from discrimination on the basis of sex, which includes all forms of sexual violence.

Sex discrimination violates an individual's fundamental rights and personal dignity. UC considers sex discrimination in all its forms to be a serious offense. This policy refers to all forms of sex discrimination by employees, students, or third parties, including, but not limited to, sexual harassment, sexual assault, sexual violence, domestic and dating violence, and stalking.

The University has additional policies regarding sexual misconduct; please refer to the Student Catalog and/or the Employee Handbook for policies and expectations.

Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance, reads as follows: "No person in the United states shall, on the basis of sex, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any education program or any activity receiving Federal financial assistance..." (Title IX of the Education Amendments of 1972, codified at 20 U.S.C. section 1681, and its implementing regulation at 34 C.F.R. Part 106.)

Under Title IX, discrimination on the basis of sex can include sexual harassment; unwelcomed sexual advances; or sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion. The Campus SaVE Act, federal legislation enacted in 2013, adds domestic violence, dating violence, and stalking as categories of behavior that are expressly in violation of Title IX.

The University does not tolerate unlawful sex discrimination and will endeavor to keep the community free of such conduct through education, training, clear policies and procedures, and appropriate consequences for those who violate this policy. When an instance of sex discrimination is reported, the University will take action to promptly and equitably investigate the complaint, address its effects, and prevent further discrimination or retaliation.

## **B. The University's Title IX Coordinator**

The University has, in accordance with Title IX, appointed a Title IX Coordinator and a Deputy Coordinator who assist the Title IX Coordinator. The University's Title IX Coordinator is the individual designated by the University Chancellor with responsibility for carrying out the University's responsibilities under Title IX, including receiving reports of alleged violations of Title IX from Responsible Employees, overseeing the University's response to Title IX complaints, and identifying and addressing recurring or systemic violations. The Coordinator has knowledge of the requirements of Title IX and the University's related policies and procedures.

The Title IX Coordinator is assisted by a team of Deputy Title IX Coordinators and Investigators. Together they comprise the University's Title IX Committee. The Committee, or some combination of some members of the Title IX Committee, is aware of and investigates all Title IX complaints raised at the University, evaluates a complainant's request for confidentiality, reviews the University's disciplinary procedures to ensure that procedures comply with the prompt and equitable requirements of Title IX, and ensures training is provided to University students and employees as required by Title IX.

Questions or concerns related to this policy may be directed to the Title IX Coordinator.

Please refer to the Title IX UC website for our current Title IX officers.

[apu.edu/uc/resources/titleix](http://apu.edu/uc/resources/titleix)

## **II. Definitions:**

**Affirmative Consent** - Affirmative consent means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of the other or others to engage in the sexual activity. Lack of protest or resistance does not mean consent, nor does silence mean consent. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time. The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

Affirmative consent may be given by words or actions unmistakable in meaning. In order to be effective, affirmative consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to another person that they do 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.

In order to give affirmative consent for purposes of this policy, one must be of legal age.

In the evaluation of complaints of sexual violence under this policy, it is not a valid excuse to alleged lack of affirmative consent that the respondent believed that the complainant consented to the sexual activity under either of the following circumstances:

- The respondent's belief in affirmative consent arose from the intoxication or recklessness of the respondent, or
- The respondent did not take reasonable steps, in the circumstances known to the respondent at the time, to ascertain whether the complainant affirmatively consented.

**Incapacity to Consent** - Affirmative consent will not be found to have been given when it is determined by a preponderance of the evidence that the respondent knew or reasonably should have known that the complainant did not have the capacity to consent at the time of the sexual activity – that is, that the complainant was unable to consent to the sexual activity because the complainant was either:

- asleep,
- unconscious,
- incapacitated due to the influence of drugs, alcohol, or medication such that the complainant could not understand the fact, nature or extent or consequences of the sexual activity, or
- unable to communicate due to a mental or physical condition.

If an individual has sexual activity with someone known to be or should be known to be mentally or physically incapacitated due to (alcohol or other drug use, sleep, unconsciousness, or blackout), he or she is in violation of this Policy and may be in violation of the law. Any time sexual activity takes place between individuals, those individuals must be capable of controlling their physical actions and be capable of making rational, reasonable decisions about, and understand the consequences of, their sexual behavior. In some cases, the complainant may be unable to consent legally due to age or mental condition.

**Complainant** - A complainant is any person who alleges to be the victim of sex discrimination, including but not limited to any act of sexual violence.

**Domestic and Dating Violence** - Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse of the complainant, or by a person with whom the complainant shares a child in common, or by a person who is cohabiting with or has cohabited with the complainant as a spouse, or by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of California, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Nonconsensual Sexual Contact** – Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a man or a woman upon a man or a woman, without affirmative consent.

**Nonconsensual Sexual Intercourse** – Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a man or woman upon a man or a woman, without affirmative consent.

**Sexual Harassment** – Sexual harassment is unwelcome conduct of a sexual nature. It can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence, when one or more of the following criteria are met:

- submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment or of the individual's status in a program, course or activity; or
- submission to or rejection of such conduct by an individual is used as a basis for employment decisions, a criterion for evaluation, or a basis for academic decisions or other decisions which affect an individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance and/or educational experience and/or creating an intimidating, hostile, and/or offensive work and/or educational environment.

**Respondent** – A respondent is any individual who is alleged to have discriminated on the basis of sex as defined in this policy.

**Responsible Employee** – A responsible employee is a University employee designated herein as having the obligation to report incidents of alleged sexual violence to the Title IX Coordinator. Responsible employees include the Title IX Coordinator and Deputy Coordinators, other professional Student Success staff, and any employee designated as a Campus Security Authority as provided in the next sentence. Responsible employees do not include campus mental-health counselors, pastoral counselors, social workers, psychologists, health center employees, or any other person with a professional license requiring confidentiality, or who is supervised by such person.

**Sex Discrimination** – Sex discrimination is any behaviors and/or actions that deny or limit a person's ability to benefit from, and/or fully participate in the educational programs or activities or employment opportunities based on an individual's sex. Examples of sex discrimination include sexual harassment, sexual violence, failure to provide equal opportunity in employment, education programs and co-curricular programs including athletics, discrimination based on pregnancy, and employment discrimination.

**Sexual Assault** – Sexual assault is a general term that covers a broad range of inappropriate and/or unlawful conduct, including rape, sexual battery, and sexual coercion. As defined under California law, rape is nonconsensual sexual intercourse that involves the use or threat of force,

violence, or immediate and unlawful bodily injury or threat of future retaliation and duress. Sexual battery includes the nonconsensual touching of a person's intimate parts, or the clothing covering the immediate area of those parts, or forcing a person to touch another's intimate parts.

**Sexual Coercion** – Sexual coercion is the act of using pressure (including physical, verbal, or emotional pressure), alcohol, medications, drugs or force to have sexual contact against someone's will or with someone who has already refused.

**Sexual Exploitation** – Sexual exploitation occurs when an individual takes or attempts to take nonconsensual or abusive sexual advantage of another for his/her own advantage or benefit, or to the benefit or advantage of anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual harassment, stalking, and sexual violence offenses.

**Sexual Violence** – Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the person's age or use of drugs or alcohol, or because an intellectual or other disability prevents the person from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by employees, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

**Stalking** – Stalking is harassing or threatening another person to the point where that individual fears for his/her safety or the safety of his/her family. Stalking can occur in various forms including, but not limited to, in person and via electronic means (cyberstalking/cyberbullying). Stalking means to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; and to place under surveillance with the intent to kill, injure, harass or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to—that person; a member of the immediate family of that person; or the spouse or intimate partner of that person.

### **III. COMPLAINTANT'S RIGHTS AND OPTIONS**

#### **A. Reporting**

UC encourages those who have experienced any form of sex discrimination to report the incident promptly, to seek all available assistance, and to pursue University disciplinary proceedings and, where applicable, criminal prosecution. UC takes complaints very seriously and will work with complainants to ensure their safety as much as possible and to remedy the situation. UC encourages those who have experienced or witnessed sex discrimination to report these offenses to the Title IX Coordinator, one of the Deputy Title IX Coordinators, the Department of Campus Safety, or to another Responsible Employee.

Upon receiving a report from a complainant, a Responsible Employee should

make every effort to ensure that the Complainant understands (i) the Responsible Employee's duty to report the allegation, including the name of the Complainant and respondent, and the relevant facts (date, time, and location of the incident, and the known circumstances) to the Title IX Coordinator; (ii) the Complainant's option to request confidentiality, which the Title IX Coordinator or designee will consider; and (iii) the Complainant's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services who are not required to report the incident without the consent of the Complainant.

In cases where a report is made by a third-party, the Complainant will be notified by the Title IX Coordinator that a report has been received. The Title IX Coordinator or the Coordinator's designee will meet with the Complainant to discuss the Complainant's options and resources available inside and outside the University.

**B. Timing**

The University is committed to providing a prompt, thorough, and fair resolution to all complaints. When the confidential investigation report has been completed, the complainant and respondent will be concurrently notified of the outcome within 5 (five) business days of the outcome being determined. While each investigation is unique the investigation will be concluded, including reporting to the parties, within 60 calendar days of the initial complaint. Except in extraordinary cases, such as when witnesses and/or relevant evidence are unavailable. In situations when the process is delayed, both the complainant and the respondent will be notified in writing the reason for the delay.

**C. Interim Measures**

During the investigation and until resolution of the complaint, interim measures may be issued by the Title IX Coordinator or the Coordinator's designee, including but not limited to: restrictions on contact between the complainant and the respondent, bans from areas of campus, and appropriate changes in academic, campus housing, or employment schedule. Failure to adhere to the parameters of any interim measure is a violation of policy and may lead to additional disciplinary action.

**D. Limited Immunity**

The University understands that reporting parties sometimes are hesitant to report because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. To encourage reporting, the university pursues a policy of offering reporting parties limited immunity from being charged with policy violations related to the particular incident. While violations to policy cannot be completely overlooked, the university will in some circumstances recommend sanctions directed toward education and prevention rather than more punitive forms of disciplinary action.

#### **E. Confidentiality**

Those who have disclosed sexual harassment, stalking, and sexual violence violation should know that university employees (Faculty,, Campus Safety Officers, staff members, etc.), excluding University Counseling Center staff, Community Counseling Center staff, Student Health Center staff, Campus Pastors, and the University Chaplain who may be bound by confidentiality standards, will report sexual conduct to the Title IX Coordinator.

All inquiries, complaints, and investigations are treated with discretion. Identity of the Complainant may be revealed to the respondent(s) of such conduct.

The university is committed to protecting the privacy of all individuals involved in a report of sexual harassment, stalking, and sexual violence violations. All university employees who are involved in the university's Title IX response, including the Title IX Coordinator, Deputy Title IX Coordinators, investigators, and appeal review committee members, receive specific instruction about respecting and safeguarding private information. Throughout the process, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a thorough review of the report.

Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without the express permission of the individual. These campus professionals include Campus Pastors, counselors from the University Counseling Center and Community Counseling Center, and health providers from the Student Health Center, all of whom have legally protected confidentiality. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others. When a report involves suspected abuse of a minor under the age of 18, these confidential resources may be required by state law and University Policy to notify child protective services and/or local law enforcement, and the University Office of General Counsel.

#### **F. Prohibition Against Retaliation**

All persons are absolutely prohibited from taking any action against any other member of the university community either for alleging discrimination prohibited by Title IX or for cooperating in grievance proceedings related to such allegations, including but not limited to, the complainant, respondent,<sup>1</sup> or witnesses to an alleged incident of sex discrimination. Any person engaging in any retaliatory action(s) will be subject to a separate complaint under the Student Standards of Conduct and this policy as applicable and appropriate sanctions or disciplinary action for determined violations up to and including dismissal from the university or termination of employment.

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<sup>1</sup> Discipline imposed on respondents who are found to have engaged in sex discrimination under the policy and accompanying procedures does not constitute retaliation.

## **G. False Complaints**

Any Complainant who knowingly makes false charges alleging violations of this policy will be subject to disciplinary action up to and including termination of employment or dismissal from the University.

## **H. Resources**

On-campus offices:

- Office of Student Success
- [Women's Resource Center](#)

For employee

- Office of Human Resources

Off-campus resources:

- Project Sister, (909) 626-HELP, [projectsister.org](http://projectsister.org)
- National Sexual Assault, (800) 656-HOPE, [rainn.org](http://rainn.org)

## **IV. INVESTIGATION AND DISCIPLINARY PROCEDURES**

The status of the respondent will determine which office will be assigned to investigate and adjudicate the complaint. Detailed investigation and disciplinary procedures are outlined in the following area:

- Where the respondent is a student, please refer to our student portal for the Title IX Officer listing or the UC Title IX website [apu.edu/uc/resources/titleix](http://apu.edu/uc/resources/titleix)
- Where the respondent is an employee, please refer to our employee handbook or on the UC Title IX website. [apu.edu/uc/resources/titleix](http://apu.edu/uc/resources/titleix)

## **V. TRAINING, EDUCATION AND PREVENTION**

In support of UC's sexual harassment, stalking, and sexual violence policies, UC provides the following sexual assault educational resources and prevention education for all students and employees.

- Title IX and sexual assault prevention education for staff during orientation
- Online training is available for all new students and transfer students

Any individual who experiences sexual assault or needs to talk to someone may utilize one or more of the resources listed in Section III.E of this policy.

## **Training for Those with Title IX Responsibilities**

UC will ensure that Title IX Coordinator and Deputy Coordinators, investigators, and responsible employees with the authority to address sexual violence are trained how to respond promptly, effectively, and appropriately to reports of sexual violence, that other responsible employees know their obligation to report sexual violence to appropriate university officials, and that all other employees understand how to respond to reports of sexual violence.

As a part of the training of employees, UC will ensure that professional counselors, pastoral counselors, and non-professional counselors also understand the extent to which they may keep a report confidential.

## **Bystander Intervention**

If acts of violence against other individuals are observed, members of the UC community have the option to intervene to help stop the act, only if it is safe and positive to do so without risking further harm. Suggested options include:

- Dial 911
- Contact Campus Safety
- Yell and draw attention to a witnessed act of violence from a safe distance in order to frighten off the perpetrator
- Remain in the area to provide witness information to the authorities