

# Student-on-Student Sexual and Interpersonal Misconduct Policy and Protocol

## I. Introduction

Loyola Marymount University recognizes the significant, unacceptable and nationwide existence of sexual and interpersonal misconduct on college campuses. LMU is dedicated to the prevention of such misconduct and to providing a caring, supportive and effective response when such misconduct occurs. Accordingly, LMU encourages Students and University Community members to report such misconduct so that the University can take appropriate responsive action.

Title IX of the Education Amendments of 1972 (“Title IX”) is a federal law that prohibits discrimination on the basis of sex in education programs and activities. For more information regarding Title IX, and the LMU policy regarding Title IX Sexual Harassment, please see the [Student Title IX Policy](#). The Student-on-Student Sexual and Interpersonal Misconduct Policy and Protocol deals with sexual misconduct that falls outside the Title IX 2020 Regulations definition of Sexual Harassment. Sexual Misconduct under this policy includes all forms of sexual misconduct not covered under Title IX Sexual Harassment definition including potentially Sexual Assault, Sexual Battery and Sexual Exploitation and other interpersonal misconduct such as Dating Violence, Domestic Violence and Stalking. The Division of Student Affairs has established this Student-on-Student Sexual and Interpersonal Misconduct Policy and Protocol to assist and respond to non-Title IX complaints of student-on- student sexual and interpersonal misconduct.

Students should report all forms of sexual misconduct (student-on-student; student and non-student; faculty/staff-on-student) and interpersonal misconduct to a Student Affairs professional staff member, or the Senior Vice President for Student Affairs, by filing a report with the LMU Department of Public Safety (DPS) in person (Foley Annex), by phone (310.338.2893/222 emergency line on campus) or through their [E-Report Form](#), or by contacting LMU’s Title IX Coordinator, Sara Trivedi:

1. By phone: 310.568.6105;
2. By e-mail: [Sara.Trivedi@lmu.edu](mailto:Sara.Trivedi@lmu.edu);
3. By mail: One LMU Drive, Suite 1900, Los Angeles, CA, 90045; or
4. In person: University Hall 1900

A Student Conduct Code case for alleged student-on-student sexual or interpersonal misconduct that is not covered under the Title IX Policy will be initiated and adjudicated under the relevant provisions of the Student Conduct Code. Student participants (Complainants, Respondents and identified Witnesses) in the Student Conduct Code process will first speak with LMU’s DPS. Should a Complainant wish to move forward with the conduct process, and the allegations rise to the level of potential severe sanctioning, the Complainant and Respondent will each have separate pre-hearing meetings with a representative from the Office of Student Conduct and Community Responsibility (OSCCR) prior to the hearing to review the investigative reports and address the conduct process format. Following these pre-hearing meetings, a hearing with cross-examination will be scheduled in a format utilizing videoconferencing. If the allegations do not rise to the level of potential severe sanctioning, the conduct process as outlined in Section VII(A) of the Student Conduct Code will be utilized. OSCCR makes every effort to adjudicate these matters promptly, usually within 120 days, assuming timely cooperation of all parties.

Sexual or interpersonal misconduct involving a Student and any non-student in the University Community is handled under the [LMU Discriminatory Harassment and Complaint Process](#). Should a Student report sexual or interpersonal misconduct that occurred to the Student when they were a child, LMU is required to contact local law enforcement to report the child abuse.

All persons, including University faculty and staff, are prohibited from taking any retaliatory action against any other member of the University Community including, but not limited to, the Complainant, Respondent or Witnesses to an alleged incident of sexual or interpersonal misconduct. Students engaging in any retaliatory action(s) will be subject to disciplinary action under the Student Conduct Code and appropriate sanctions for determined violations may include dismissal from the University. Faculty/staff engaging in retaliatory action(s) will be subject to discipline.

For additional information on sexual and interpersonal misconduct awareness, prevention and training, including bystander intervention, programming and events on campus intended to bring awareness to these issues and opportunities for you to get involved, please visit [LMU CARES](#) or call 310.258.4381.

## II. Definitions

**A.** For purposes of this policy, **Sexual Assault** is defined as engaging in sexual intercourse, or any of the sexual activities listed below, with another person without that person's consent. Sexual Assault includes, but is not limited to, rape, sexual battery, anal intercourse, oral copulation or penetration of a body cavity by a foreign object. Sexual intercourse includes the penetration, however slight, of the vagina or anus with any object or body part and of the mouth with a body part and/or object in a sexual manner.

**B.** For purposes of this policy, **Sexual Battery** is defined as the intentional touching of another person's intimate parts without Consent, intentionally causing a person to touch the intimate parts of another without consent, or using a person's own intimate part to intentionally touch another person's body without consent.

**C.** For purposes of this policy, **Sexual Misconduct** is defined as unwelcome conduct of a sexual nature including, but not limited to, unwelcome sexual advances, unsolicited requests for sexual favors, or physical conduct of a sexual nature, such as making contact with an intimate body part (including, but not limited to, the mouth, the sex organs, the anus, the groins, the buttocks and/or the breasts) of another person without that person's consent, including as a result of sexual coercion. Sexual Misconduct is defined to include the definition of Sexual Harassment as defined in California Education Code Section 66262.5.

For purposes of this policy, Sexual Misconduct includes, but is not limited to, exposing one's genitals in non-consensual circumstances, coercing another against their will to expose their genitals or breasts and prostituting another person.

**D.** For purposes of this policy, **Sexual Exploitation** is defined as sexual misconduct that occurs when a person takes unjust or abusive sexual advantage of another for their benefit or for the benefit of anyone other than the exploited party without that person's Consent. Examples of Sexual Exploitation include, but are not limited to, invasion of sexual privacy, audio or video recording or photographing of a sexual nature utilizing webcam, camera, Internet exposure, etc., without knowledge and consent of all persons, going beyond the boundaries of consent (such as letting another person hide and watch you have consensual sex without the knowledge of the other party), engaging in unconsented voyeurism, coercing another against their will to expose their genitals or breasts and prostituting another person.

**E. Consent** is defined as the unambiguous and willing participation or cooperation in act, behavior or attitude that is commonly understood to be consistent with the exercise of free will. 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(s) to engage in the sexual activity. Consent requires participants who are lawful adults, fully conscious, equally free and legally competent to act, have clearly communicated their willingness, cooperation or permission to participate in the specific sexual activity engaged in, are positive and clear about their desires and are able to cease ongoing consensual activity at any time. Refusal to Consent does not have to be verbal; it can be expressed with clear gestures, body language or attitude. Lack of protest or resistance does not mean Consent, nor does silence mean Consent. Prior sexual history between the Complainant and Respondent, by itself, does not constitute Consent, nor does consenting to sexual activity with one person imply Consent to sexual activity with another person.

1. Consent is not freely given if:

a. It is obtained through the use of force, through the fear of or the threat of force, through the abuse of a power position over another (such as employment status or position within an organization) or by kidnap; or

b. A reasonable person, in the position of the alleged perpetrator at the time the alleged conduct occurred, should have known that the other person was unable to give Consent for any of the following reasons:

i. The individual is unable to make an informed decision as a result of the use of alcohol, drugs or other substances (including, but not limited to, predatory drugs or prescribed medications); or

ii. The individual is unable to consciously respond for whatever reason including lack of consciousness, sleep, illness or shock; or

iii. The individual is under the age of 18 and therefore legally incapable of giving Consent; or

iv. The individual is known by reason of impairment, mental condition or developmental or physical disability to be reasonably unable to Consent.

c. The individual has acted or spoken in a manner that expresses a lack of Consent or a refusal to Consent.

2. The following are invalid excuses for failing to obtain affirmative Consent from the Complainant:

a. The Respondent's belief in affirmative Consent arose from the intoxication or recklessness of the Respondent; or

b. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

**F.** For purposes of this policy, **Domestic Violence** is defined as a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabited with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under California law or by any other person against an adult or youth victim who is protected from that person's acts under California law.

**G.** For purposes of this policy, **Dating Violence** is defined as violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the following factors:
  - a. The length of the relationship;
  - b. The type of the relationship;
  - c. The frequency of interaction between the persons involved in the relationship.

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

**H.** For purposes of this policy, **Stalking** means engaging in a course of conduct directed at a specific person(s) that would cause a reasonable person under similar circumstances and with similar identities to the Complainant to fear for their safety or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly or through third parties, by any action, method, device or means, follows, monitors, observes, surveils, threatens or communicates to or about a person or interferes with a person's property.

For the purposes of this definition substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other

professional treatment or counseling.

**I.** For the purposes of this policy, **Supportive Measures** are defined as non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to LMU's education program without unreasonably burdening the other party, including measures designed to protect the safety of all parties, LMU's educational environment and/or deter sexual or interpersonal misconduct.

**J. "Complainant"** means the individual(s) who file(s) a Student Conduct Code complaint with the University.

**K. "Respondent"** means the individual(s) against whom a Student Conduct Code complaint is made.

**L. "Preponderance of the Evidence"** means such evidence as when weighed with that opposed to it has more convincing force and the greater probability of truth.

**M. "Retaliation"** means adverse, non-permitted action taken by an individual or a third party against a person who reports a violation of this policy, assists someone with a report of a violation of this policy or participates in any manner in an investigation or resolution of a report of a violation of this policy. Retaliation may, among other non-permitted conduct or behaviors, include threats, intimidation, coercion, Harassment, spreading negative information about an individual, exclusions from academic and non-academic programs and/or adverse actions related to employment.

### III. California Law

The following excerpts are only partially explanatory of certain California laws pertaining to sexual and interpersonal misconduct. These excerpts are not intended to be an exhaustive description or list of California laws pertaining to sexual misconduct, inappropriate or criminal sexual behavior or interpersonal misconduct.

**A.** Excerpts from Sections 11165.1 and 261 of the California Penal Code: Sexual Assault includes rape, statutory rape, rape in concert, incest, sodomy, lewd or lascivious acts upon a child, oral copulation, sexual penetration, child molestation and the following:

1. Penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is emission of semen.
2. Sexual contact between the genitals or anal opening of

one person and the mouth or tongue of another person.

3. Intrusion by one person into the genitals or anal opening of another person, including the use of an object for this purpose, except that, it does not include acts performed for a valid medical purpose.

4. The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs and buttocks or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

5. The intentional masturbation of the perpetrator's genitals in the presence of a child.

Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

1. Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal Consent, and this is known or reasonably should be known to the person committing the act.

2. Where it is accomplished against a person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another.

3. Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

4. Where a person is at the time unconscious of the nature of the act, and this is known to the accused.

As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

a. Was unconscious or asleep.

b. Was not aware, knowing, perceiving or cognizant that the act occurred.

c. Was not aware, knowing, perceiving or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

d. Was not aware, knowing, perceiving or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

5. Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense or concealment practiced by the accused, with the intent to induce the belief.

6. Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury or death.

7. Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. The perpetrator does not actually have to be a public official.

California law also states that "The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime" (Penal Code section 263). California law further defines both marital rape (Penal Code section 262) and "statutory rape" (Penal Code section 261.5).

Though laws vary from state to state, intercourse in which Consent was not obtained or was obtained under coercive conditions will usually be considered rape.

**B.** Excerpt from Section 67386 of the California Education Code:

The governing boards of independent postsecondary institutions shall adopt a policy concerning Sexual Assault, Domestic Violence, Dating Violence and Stalking, as defined in the federal Higher Education Act of 1965 involving a Student, both on and off campus. This policy shall include an affirmative Consent standard in the determination of whether Consent was given by both parties to sexual activity.

"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 they have the affirmative Consent of the other or others to engage in the sexual activity. Lack of protest or

resistance does not mean Consent, nor does silence mean Consent. Affirmative Consent must be ongoing throughout 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.

**C.** Excerpts from Section 261.6 and 261.7 of the California Penal Code:

In prosecutions under Section 261, 262, 286, 287 or 289, in which Consent is at issue, "Consent" shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

A current or previous dating or marital relationship shall not be sufficient to constitute Consent where Consent is at issue in a prosecution under Section 261, 262, 286, 287 or 289. Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of Consent. In prosecutions under Section 261, 262, 286, 287 or 289, in which Consent is at issue, evidence that the victim suggested, requested or otherwise communicated to the defendant that the defendant use a condom or other birth control device, without additional evidence of Consent, is not sufficient to constitute Consent.

**D.** Excerpts from Section 646.9 of the California Penal Code:

Any person who willfully, maliciously and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for their safety, or the safety of their immediate family is guilty of the crime of Stalking, punishable by:

1. Imprisonment in a county jail for not more than one year; or
2. By a fine of not more than \$1,000; or
3. By both that fine and imprisonment, or by imprisonment in the state prison.

For the purposes of this section, "harasses" means engages in a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments or terrorizes the person, and that serves no legitimate purpose. For the purposes of this section, "course of conduct" means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of

"course of conduct."

**E.** Excerpts from Section 13700 of the California Penal Code and 6211 of the California Family Code:

"Domestic Violence" means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant or person with whom the suspect has had a child or is having or has had a dating or engagement relationship, a child of a party or a child who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected or any other person related by consanguinity or affinity within the second degree.

For purposes of this subdivision, "cohabitant" means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to:

1. Sexual relations between the parties while sharing the same living quarters;
2. Sharing of income or expenses;
3. Joint use or ownership of property;
4. Whether the parties hold themselves out as spouses;
5. The continuity of the relationship; and
6. The length of the relationship.

#### **IV. Privacy**

**A.** LMU identifies "responsible employees" as those who are obligated to report all details of an incident, including the identities of those involved, to DPS whenever that information is brought forward to the responsible employee. DPS will notify the Title IX Coordinator when a report has been filed.

Students reporting an incident of sexual or interpersonal misconduct to a responsible employee may request that their information be kept private. The responsible employee is required to report the information to DPS, however the student will have the choice whether or not they wish to speak with DPS. Students should be aware that if they request for their information to remain private, then the University's ability to effectively investigate and adjudicate the instance(s) of sexual or interpersonal misconduct may be impaired.

The University cannot guarantee privacy in all instances,

and the following factors will be considered by the Title IX Coordinator in consultation with the Senior Vice President for Student Affairs, or designee, in determining whether the privacy request can be honored or if an investigation is necessary:

1. The Respondent has known multiple or prior allegations of sexual or interpersonal misconduct and a potential for a campus safety risk exists; or
2. The location in which the alleged incident occurred is a location where previous complaints of sexual or interpersonal misconduct occurred creating the potential for an unsafe environment for the LMU community; or
3. A threat to the campus community at large or a particular community member has been identified; or
4. The sexual or interpersonal misconduct was perpetrated with a weapon, physical restraints, or where the respondent used force or violence; or
5. The victim is a minor; or
6. The University is able to conduct a thorough investigation and obtain relevant evidence in the absence of the Complainant's cooperation; or
7. Some combination of the above factors exists.

The Title IX Coordinator, in consultation with the Senior Vice President for Student Affairs, or designee, is responsible for determining whether the request of the Complainant to have information kept private can be honored. If the decision is made that privacy cannot be honored, then the University will only inform the necessary individuals and entities on campus required to perform a thorough investigation and adjudication of the complaint. In the event the Complainant requests that the University inform the Respondent that the Complainant asked the University not to investigate or seek discipline, the University will honor this request. The University will respond to any accusations of Retaliation against the Complainant or witnesses brought upon by the investigation or adjudication of the misconduct.

**B.** Responsible employees include faculty, administrative staff and some student staff. Responsible employees do not include the following:

1. Professional, licensed counselors, such as the psychologists at Student Psychological Services (SPS), 310.338.2868, are not required to report any information regarding alleged sexual or interpersonal misconduct, to DPS, the Title IX Coordinator or any other reporting body,

without consent from the Student.

Pastoral counselors, such as Catholic priests and women religious, are not required to report any information regarding alleged sexual or interpersonal misconduct, to DPS, the Title IX Coordinator or any other reporting body, without Consent from the Student provided they receive the information in performance of their pastoral duties.

2. Student Health Services (SHS) Staff, 310.338.2881 or [LMUhealth@lmu.edu](mailto:LMUhealth@lmu.edu), such as doctors and nurse practitioners, are not required to report any information regarding alleged sexual or interpersonal misconduct, to DPS, the Title IX Coordinator or any other reporting body on campus, without Consent from the Student. The SHS Staff will be required to report signs of physical or sexual abuse to law enforcement.

3. LMU Community Resource Advisors (LMU CRAs), whose identities and contact information can be found on the [LMU CARES website](#), may speak with Students regarding incidents of sexual and interpersonal misconduct without automatically triggering a University investigation into the matter. These individuals do have time and place reporting responsibilities under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act) but are not obligated to report identifying information of the Complainant. If the Respondent's name is presented to an LMU CRA, they will be obligated to report that information to the Title IX Coordinator. Reports by the LMU CRA will not trigger a University investigation unless the Title IX Coordinator, in consultation with the Senior Vice President for Student Affairs, or designee, determines that an investigation is necessary because of the existence of one or more of the factors described in Section IV (A).

## **V. Sexual & Interpersonal Misconduct Policy**

**A.** Any Student alleged to have participated in sexual or interpersonal misconduct will be referred to the Office of Student Conduct & Community Responsibility (OSCCR) and, if found responsible, will be subject to disciplinary action. Complainants of sexual and interpersonal misconduct are not required to be members of the LMU community; they may be third parties or others unaffiliated with the University. If a Complainant chooses not to participate in the University conduct process, the University reserves the right to initiate the conduct process if, in the opinion of OSCCR, sufficient evidence exists without the participation of the Complainant to present the case to the Conduct Officers and obtain a determination of a violation by the putative Respondent utilizing the Preponderance of the Evidence standard. Outcomes related to sexual and interpersonal misconduct cases run the full spectrum as outlined in Section IV of the

Student Conduct Code and include disciplinary warning through suspension or dismissal from the University.

**B.** Once a report of alleged sexual or interpersonal misconduct is received and the investigation process has been initiated by either the Complainant or the Title IX Coordinator, or designee, LMU will provide written notice to both the Complainant and Respondent of the following:

1. Notice of LMU's conduct process;
2. Notice of the allegations of the sexual or interpersonal misconduct and sufficient details known at the time;
3. Notice that the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility can be made at the conclusion of the conduct process;
4. Notice that the Complainant is presumed to be acting in good faith in making their report of sexual or interpersonal misconduct.
5. Notice that the Complainant and Respondent may have an Advisor of their choice;
6. Notice that the Complainant and Respondent may inspect and review evidence gathered during the investigation of the alleged behavior and will have 10 days to review and respond to the evidence;
7. Notice that per Cal Education Code 66262.5, the University reserves the right to exclude certain pieces of information, including, but not limited to, an individual's past sexual history; and
8. Notice of LMU's prohibition on knowingly making or submitting false statements during the conduct process. If, in the course of the investigation, LMU decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice of allegations, LMU will provide notice of the additional allegations in writing to all parties whose identities are known at the time.

**C.** All alleged incidents of student-on-student sexual and interpersonal misconduct will be adjudicated in accordance with the Student Conduct Code utilizing the Preponderance of the Evidence standard and will involve a hearing with cross examination conducted by two staff Conduct Officers.

The investigation and adjudication of such misconduct is not an adversarial process between the Complainant, the Respondent and/or any witnesses, but rather an educational

process for the University to uphold our Student Conduct Code and comply with obligations under existing law.

The Complainant does not have the burden to prove, nor does the Respondent have the burden to disprove, the underlying allegation(s) of misconduct.

Student Conduct Code proceedings shall be prompt, fair and impartial and adjudicated by officials that have received regular training regarding incidents of this nature.

**D.** All alleged incidents of student-on-student sexual and interpersonal misconduct will be investigated and adjudicated in a timely manner. This timeframe takes into account the time necessary for the Investigator(s) to schedule and conduct the relevant and necessary interviews, so as to put together a comprehensive investigative report that includes all relevant evidence; the time needed to schedule and meet with the Complainant, Respondent and Witnesses to obtain evidence and statements; to schedule and conduct the pre-hearing meetings; to schedule and conduct the hearing; and to write the final decision letters. The same time frame applies to the appeals process. In normal circumstances, assuming timely cooperation from the parties and witnesses, staff will use their best efforts to complete the process within 120 days.

While the University strives to complete the investigation, adjudication and appeals process within 120 days, there may be instances where a good cause delay extends the University's timeline. Good cause delays include, but are not limited to, the following: absence of a party, a party's Advisor or a Witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; examinations or school closures. The University will communicate in writing to the Complainant, Respondent, and relevant participants if a good cause delay occurs.

**E.** In cases alleging sexual and interpersonal misconduct the Senior Vice President for Student Affairs, or designee, may institute Supportive Measures at the request of the Complainant and/or Respondent. Supportive Measures provided to either the Complainant or Respondent are kept private, to the extent that maintaining privacy does not impair LMU's ability to provide Supportive Measures. Both Complainant and Respondent will receive written notification of their access to Supportive Measures.

Supportive Measures include, but are not limited to, academic, residential, transportation and/or employment accommodations, intended to ensure the well-being of the Complainant, the Respondent, the investigatory process and/or the University Community while the complaint is being investigated and prior to the determination on the charge(s).

Supportive Measures may be extended through the pendency of conduct proceedings and potentially beyond as necessary.

Any such Supportive Measure shall not be referred to or offered as evidence at the hearing on the underlying charge(s). Any such Supportive Measure shall be designed and implemented in a manner intended to achieve their purpose while at the same time limiting, to the extent practicable, any adverse effect to the Complainant's and/or Respondent's educational program.

**F.** No Contact Orders (NCO) will also be utilized by the DPS both during the investigation and through the completion of the hearing process. An NCO may be extended beyond the completion of the hearing process. Both parties will be expected to sign a document stating their awareness of the NCO and the stipulations of no contact, however failure or refusal to sign an NCO by either party does not impact the enforcement of the NCO. DPS will provide information about available community resources.

**G.** In line with the Good Samaritan Policy found in this Community Standards Booklet, violations of the Student Conduct Code regarding underage or excessive consumption of alcohol and/or marijuana or use or possession of illegal substances will not be utilized to commence disciplinary proceedings against a Complainant if the information is divulged through the process of reporting sexual or interpersonal misconduct. The University does reserve the right to refuse to grant amnesty to reporters under certain extenuating circumstances. Criminal investigations and other police action may still occur at the discretion of the law enforcement agency responding to the incident.

Per LMU's Good Samaritan Policy, assisting Students who report sexual or interpersonal misconduct is of paramount importance to the University. In order to facilitate reporting, the University may choose not to charge Students who report sexual or interpersonal misconduct or any material witnesses thereto with Student Conduct Code violations for certain behavior that otherwise would be considered violations (e.g. underage consumption of alcohol and/or use of marijuana or other illegal drugs). The Good Samaritan Policy only applies to alcohol, marijuana and other drug violations and does not excuse behaviors which go beyond alcohol, marijuana and other drug intoxication such as, for illustration purposes only, disorderly conduct, failure to comply, physical assault, Sexual Assault, sexual violence, vandalism, property damage, etc.).

**H.** Student Conduct Code proceedings involving allegations of sexual and interpersonal misconduct will frequently include a pre-hearing and a hearing with cross examination.

Prior to a hearing with cross examination, a separate pre-hearing meeting with the Complainant and Respondent will be scheduled. Both parties will be permitted to review DPS' investigatory report and supporting evidence, identify additional Witnesses and ask questions about the conduct process during the prehearing meeting. Any evidence available but not disclosed prior to the hearing with cross examination might not be considered at a subsequent hearing.

Upon completion of the prehearing meeting, the hearing with cross examination will be scheduled whereby a panel of not less than two staff Conduct Officers will adjudicate the case. These Conduct Officers will regularly be trained in the adjudication of these types of incidents.

The Conduct Officers assigned to the case conduct the cross examination of the Complainant(s), Respondent(s) and any Witnesses. Neither party nor Advisors may conduct the cross examination. Complainants and Respondents are permitted to submit written questions to the Conduct Officers in advance of the hearing to be asked of the opposing party and any Witnesses. The Conduct Officers will review the submitted questions and determine whether the questions are repetitive, irrelevant or harassing prior to the hearing. The Complainant and Respondent will be informed if their question will not be asked, or if they will be asked with altered language utilized. At the hearing, the Complainant and Respondent will have the opportunity to object to a question asked of them.

Conduct Officers assigned sexual and interpersonal misconduct cases receive training regarding the adjudication of sexual and interpersonal misconduct. For information regarding what training is conducted please contact OSCCR at 310.338.1821.

**I.** Prior sexual history of Complainant or Respondent with people outside of each other will not be utilized as evidence in these disciplinary proceedings.

**J.** In cases with the potential for severe sanctioning, once a Student Conduct Code determination of the charges has been made, a determination notification letter will be concurrently sent to Complainant and Respondent.

**K.** The University reserves the right to take disciplinary action regarding allegations involving current LMU Students irrespective of the length of time since the alleged misconduct occurred.

**L.** Student Conduct Code proceedings are independent from criminal or civil proceedings and will normally proceed without regard to the pendency or potential pendency of

criminal or civil proceedings.

## VI. Reporting Sexual and Interpersonal Misconduct

Choosing to report sexual or interpersonal misconduct takes bravery and LMU encourages all Students to report sexual or interpersonal misconduct regardless of the amount of time that has passed since the alleged misconduct occurred.

Once a report is received, the Title IX Coordinator, or designee, will discuss with the Complainant the availability of Supportive Measures (regardless of whether the Complainant agrees to be interviewed by DPS).

If you believe you have experienced sexual or interpersonal misconduct, you are encouraged to file a report with DPS either in person (Foley Annex), by phone (310.338.2893), or through their E-Report Form, or by contacting LMU's Title IX Coordinator, Sara Trivedi:

1. By phone: 310.568.6105;
2. By e-mail: [Sara.Trivedi@lmu.edu](mailto:Sara.Trivedi@lmu.edu);
3. By mail: One LMU Drive, Suite 1900, Los Angeles, CA, 90045; or
4. In person: University Hall 1900

Reports may be made at any time to DPS, or to the Title IX Coordinator during non-business hours, by using the telephone number or e-mail address, or by mail to the office address listed above.

Students who are unsure whether what they experienced, witnessed or what has been reported to them constitutes sexual or interpersonal misconduct, should contact DPS and report the incident. DPS will take appropriate responsive action based on the information provided.

Per LMU's Good Samaritan Policy, assisting students who report sexual or interpersonal misconduct is of paramount importance to the University. In order to facilitate reporting, the University will not hold Students responsible for making a report that does not go through the Conduct Process, so long as the report was made in good faith.

Students who experience sexual or interpersonal misconduct, but who are not ready to report, should utilize [Callisto](#). Callisto is an online program designed to create a more empowering reporting experience for Students who may have experienced sexual or interpersonal misconduct.

## VII. Complainant/Respondent Rights

Complainants and Respondents in a sexual or interpersonal misconduct case have the right to:

1. Access to an Advisor, if they do not have one of their own choosing, to assist with the conduct process. Complainants and Respondents may select the Advisor of their choice, regardless of family relationship or lack of affiliation to the University (see Section IX for more details);
2. Receive written notification of available on-and off campus counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, Student financial aid and other services available;
3. Receive written notification of the procedures for institutional disciplinary action and their rights and options as defined in sexual and interpersonal misconduct cases;
4. Request and receive Supportive Measures as approved by the Dean of Students in collaboration with the Title IX Coordinator;
5. Make a complaint to DPS;
6. File a police report and take legal action separate from and/or in addition to filing a Student Conduct Code complaint seeking disciplinary action;
7. Present material Witnesses to the alleged incident;
8. In cases with the potential for severe sanctioning, the opportunity to cross examine the opposing party and any Witnesses to determine credibility of information;
9. In cases with the potential for severe sanctioning, be informed of the disciplinary finding (responsible or not responsible) as well as any sanctions, as applicable, in writing;
10. In cases with the potential for severe sanctioning, appeal rights as outlined in the Student Conduct Code (Section VIII);
11. Refuse any/all of the above. If a Complainant refuses to participate in a hearing with cross examination, the University will not proceed with the conduct process unless sufficient evidence exists without the participation of the Complainant. If a Respondent refuses to participate in a hearing with cross examination, the University will nonetheless proceed with the conduct process and, if supported by the evidence presented, hold the Respondent accountable for proved violations of the

subject Student Conduct Code charges.

### **VIII. Conduct Process**

Students charged with violations of the Student-on-Student Sexual or Interpersonal Misconduct Policy and Protocol, and/or whose alleged misconduct and asserted Code violations may result in severe sanctioning (suspension or dismissal from the University), are accorded a variety of protections. Please review Student Conduct Code Section VI(D) for more information.

In instances where severe sanctioning is not a possible disciplinary sanction, students will go through the non-severe sanctioning conduct process. Please review Student Conduct Code Section VI(C) for more information.

Students have the right to appeal the decision and/or the sanctions assigned. Please review Student Conduct Code Section VIII for more information.

### **IX. Student Affairs Resource Administrators (SARA)**

When an allegation of sexual or interpersonal misconduct is brought to the attention of LMU, the Associate Dean of Students, or designee, will assign a separate SARA to both the Complainant and Respondent (if a Respondent has been identified). The SARAs will make themselves available, separately, to assist both the Complainant and Respondent in identifying University and external resources that are available to them in the context of alleged sexual or interpersonal misconduct. SARAs will also review what Supportive Measures may be available to the Complainant and/or Respondent (as outlined in Section V(C) of this policy).

Complainants will be assigned a SARA regardless of whether they provide LMU with the name of the Respondent or willingly participate in the conduct process. All named Respondents are assigned a SARA.

It is encouraged, but not required that Complainants and Respondents meet with their assigned SARA.

The SARAs are members of the Division of Student Affairs who are trained to assist the parties in identifying University and external resources and explaining the University's conduct process or alternative resolution opportunities in cases of alleged Student Conduct Code violations relating to sexual and interpersonal misconduct. The role of the SARA is to:

**A.** Provide information, in writing, regarding resources on and off campus such as SPS, SHS, Student Housing, DPS, proper

law enforcement authorities, Rape Treatment Center at Santa Monica-UCLA Medical Center, Campus Ministry and OSCCR;

**B.** Explain all stages of the LMU Student Conduct Code process, including potential outcomes for both Complainant and Respondent;

**C.** Provide information, explanation and review so that the parties can make an informed decision about the options available to them, including reporting to law enforcement, the informal resolution process, filing and responding to Student Conduct Code complaints, documenting their decisions and requesting Supportive Measures;

**D.** Follow up with the Student throughout the Student Conduct Code process and thereafter to ensure that no Retaliation is taking place and to continue to provide the Student access to the resources that the Student requires.

### **X. Advisor**

Complainants and Respondents may choose an Advisor of their choice. The Advisor may be anyone, regardless of familial relationship or lack of affiliation with the University; however, the Advisor must not be serving in any other capacity in the conduct process (i.e., Witness or Conduct Officer) but may be the Complainant's or Respondent's SARA. If Complainants or Respondents want a trained Advisor from the University community, they may obtain a referral from their assigned SARA. Advisors will assist Students in understanding the conduct process but will not serve as representation for Students in Student Conduct Code proceedings.

If the Student chooses an Advisor for incidents involving sexual and/or interpersonal misconduct, that Advisor is still subject to the requirements set forth in Section VI(D)(4) of the Student Conduct Code.

### **XI. Informal Resolution Process**

If the Complainant and Respondent both agree to go through the informal resolution process, the OSCCR may opt to postpone initiation of the conduct process in matters deemed potentially appropriate for an informal resolution process.

The informal resolution process at LMU is voluntary for all participants, and the appropriateness of such process must be approved by the University. The initial determination of eligibility for the informal resolution process will be left to the Associate Dean of Students, or designee, and the Associate Dean, or designee, reserves the right to terminate the process at any time.

Upon receipt of a report alleging sexual or interpersonal

misconduct, both the Complainant and Respondent may be offered the opportunity to resolve the complaint through an informal resolution process. Should a Complainant or Respondent wish to bring their complaint through the informal resolution process, they will need to let the Title IX Coordinator, or designee, know in writing. If one party does not agree to go through the process, then the appropriate conduct process will commence should the Complainant wish to proceed with the conduct process. Once the voluntary, written agreement is provided to proceed with the informal resolution process, the Complainant and Respondent will be provided written notice disclosing the allegations and the requirements of the informal resolution process. Prior to the resolution of the informal resolution process, the Complainant and/or Respondent are permitted to request the informal resolution process end and go through the conduct process.

The informal resolution process allows a Respondent to accept responsibility for the harm caused. As part of the successful completion of the informal resolution process, the Respondent will not be charged with a violation of the Student Conduct Code, but may receive specific outcomes, agreed upon by both parties, that must be completed in order for successful completion of the informal resolution process. The informal resolution process is designed to redress the harm caused by the underlying conduct and prevent its recurrence in a manner that meets the needs of the Complainant and effected parties while still maintaining the safety of the overall campus community.

## **XII. Retaliation**

The University will respond to any accusations of Retaliation against the Complainant, Respondent or Witnesses brought upon by the investigation or adjudication of the misconduct. As previously mentioned, Retaliation is prohibited and will not be tolerated by the University. Any person(s) engaging in any retaliatory action(s) will be subject to discipline under the Student Conduct Code and appropriate sanctions for determined violations may include dismissal from the University.

All persons, including University faculty and staff, are prohibited from taking any retaliatory action against any other member of the University Community including, but not limited to, the Complainant, Respondent or witnesses to an alleged incident of sexual or interpersonal misconduct. Any Student engaging in any retaliatory action(s) will be subject to discipline under the Student Conduct Code and appropriate sanctions for determined violations may include dismissal from the University.

Retaliation by non-students will be adjudicated and determined in accordance with the LMU Discriminatory

Harassment and Complaint Process. Any Student who believes that they have been retaliated against by a student for filing or being named in a complaint for sexual or interpersonal misconduct or having participated in the investigation of such a complaint, should promptly notify DPS at 310.338.2893 or [public.safety@lmu.edu](mailto:public.safety@lmu.edu). Any person who believes that they have been retaliated against for the above-mentioned reasons by a faculty or staff member as an individual or on behalf of the University should contact the Title IX Coordinator at 310.568.6105 or [Sara.Trivedi@lmu.edu](mailto:Sara.Trivedi@lmu.edu).