

Addendum to the Title IX Sexual Harassment/Sexual Misconduct Policy in compliance with SB 493

**La Sierra University
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January 1st, 2022.

La Sierra University Mission Statement

As members of the diverse La Sierra University community, we are committed to inquiry, learning, and service. Our community is rooted in the Christian gospel and Seventh-day Adventist Church values and ideals. Our mission is: To seek truth, enlarging human understanding through scholarship; To know God, ourselves, and the world through reflection, instruction, and mentoring; To serve others, contributing to the good of our local and global communities. We pursue this mission with excellence, integrity, compassion, and mutual respect.

Believing that all humanity is created in the image of God, the University celebrates the diversity of its students, faculty and staff with regard to race, national origin, ethnicity, sex, gender and age. The university recognizes this diversity as a valuable asset in the preparation of all its students for positions of service and leadership in professions, business, government, in the civic community, and in the church.

Article I Policy Statement

La Sierra University is committed to provide a safe educational environment to all and to comply with state and federal regulations regarding sexual harassment and sexual misconduct. Therefore, La Sierra University has a Title IX policy in place in compliance with the Office of Civil Rights (OCR) regulations.

Title IX of the Education Amendments of 1972 mandates that:

“No person in the United States shall, based on sex, be excluded from participation in, denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. Sections 1681-1688.

On May 6, 2020, OCR amended Title IX in terms of its definition of prohibited conduct and investigation processes, among other aspects. Moreover, court decision *VRLC et al v. Cardona*, modified OCR regulations vacating Section 106.45 (b)(6)(i) whereas a party is no longer obligated to submit to cross-examination at a live hearing.

La Sierra University issued an amended Title IX policy on August 14, 2020 following both the federal mandate and the Cardona court ruling.

On January 1st, 2022, California Senate Bill 493 (SB 493) will be in effect. This is a California State legislation that, although does not alter federal legislation, adds additional protections to persons in institutions of higher education with respect to sexual harassment and clarifies the process for adjudicating complaints of sexual or gender-based violence, including dating or domestic violence allegations that may fall under SB 493.

Therefore, in accordance with SB 493, La Sierra University is issuing this addendum to its policies and will follow the state mandate whereas it is not in contradiction or in conflict with the federal mandates imposed by Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act, among other federal legislation.

A. Religious Exemption

La Sierra University is a religious institution of higher education, a part of the Seventh-day Adventist system of higher education, that takes seriously anti-discrimination provisions under federal and state law, and is committed to providing a learning and living environment that promotes student safety, transparency, personal integrity, civility and mutual respect.

La Sierra University is exempted by the State of California from California Education Code 66270, to the extent the application of California Education Code 66270 is not consistent with the institution's religious tenets.

Furthermore, the University is exempt from Title IX to the extent application of Title IX would not be consistent with the institution's religious tenets. See 20 U.S. Section 1681(a)(3).

The exemptions stated above allow the University to create and enforce policies consistent with its religious tenets, even when those tenets would otherwise conflict with California Education Code 66270 or Title IX. The exemptions may apply to, but are not limited to, University practices or policy requirements addressing student conduct, housing, admissions, marriage, sports participation and facilities use.

For more information, see the La Sierra Student Handbook (<https://lasierra.edu/fileadmin/documents/sliffe/la-sierra-student-handbook.pdf>) and the La Sierra Faculty Handbook (<https://lasierra.edu/fileadmin/documents/about-la-sierra/provost/faculty-handbook.pdf>).

In some cases the University's religious tenets, policies and practices on matters of sexual orientation, sexual conduct outside marriage, same-sex marriage, and gender identity and

expression, may appear to conflict with interpretations of California Education Code 66270 and Title IX, but the above-referenced exemptions allow the University's policies and practices to do so.

For more information about the Seventh-day Adventist Church's position on matters involving marriage, sexual orientation, and gender identity and expression, see the church's Official Statements at <http://www.adventist.org/en/information/official-statements/statements/>

The University retains all rights afforded to it under federal law and the laws of the State of California.

B. Persons Covered

Prohibited conduct violates the community values and principles of our institution and disrupts the living, learning, and working environment for La Sierra University students, faculty, staff and other community members. Thus, the following policy under SB 493, applies to all members of the La Sierra University community: students, faculty (including adjunct), administrators, and staff (including temporary employees), as well as the University's vendors, contractors, volunteers, interns, visitors, guests, and third parties.

C. Locations Covered

La Sierra University encourages reporting of alleged prohibited conduct no matter where it occurred so it can take prompt action to ensure the safety of the parties and campus community.

This policy, and also the Title IX policy, applies to all on-campus and some off-campus conduct, as described below. This information is also included in the institution's Title IX policy, Article I, Section F.

According to OCR's Title IX Final Rule, Section 106.44, the Title IX statute applies to persons in the United States with respect to education programs or activities that receive Federal financial assistance. Under the Final Rule, schools must respond when sexual harassment/sexual misconduct allegedly occurs in the school's education program or activity, against a person **in** the United States.

Under OCR's Title IX Final Rule Section 106.44 (a), education program or activities includes locations, events, employment, education or circumstances over which the University exercises substantial control over both the Complainant and the Respondent and the context in which the sexual harassment allegedly occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

Therefore, under this policy the University retains jurisdiction over education programs and/or activities, including but not limited to, employment, on campus learning, off-campus learning, online education, remote work and virtual learning, fieldtrips, cultural and artistic presentations and athletic events among other related activities.

In regard to reports of alleged incidents of sexual harassment/sexual misconduct that occur outside the University's campus, are unrelated to University's activities, occur outside of the United States or its territories, or where the respondent is no longer associated with the institution, La Sierra University will have limited, if any, jurisdiction. However, as stated in Article I, Sections H and J of this policy, La Sierra University will always offer reasonable supportive measures and will issue referrals accordingly to the reporting party.

D. Time Limits on Reporting

La Sierra University encourages reporting of any allegation of a violation to our Title IX policy or allegations that may fall under SB 493. This is included in the institution's Title IX policy in Article I, Section F. Therefore, the University will not impose any time limitation on reporting allegations to the Title IX Coordinator.

However, if the Respondent is no longer subject to the University's jurisdiction because they are no longer associated with the University in any capacity, like education or employment, the University's response may be limited and the Title IX Coordinator may decide if an investigation should be completed or if the allegations should be dismissed.

Furthermore, if significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or may not be under the University's jurisdiction. Therefore, at the discretion of the Title IX Coordinator it may still be possible to offer remedies and/or accommodations, and the Title IX Coordinator may determine to document the allegations for future reference.

When reporting has been impacted by the passage of time the University will apply the policy in place at the time of the alleged misconduct, and the procedures in place at the time the alleged violation is reported.

E. Title IX Coordinator and SB 493 Coordinator

La Sierra University has designated a Title IX Coordinator, who has the primary responsibility for coordinating the University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under the Title IX Policy.

Moreover, in compliance with SB 493, La Sierra University has designated the Title IX Coordinator as its SB 493 Coordinator, in order to facilitate and coordinate the institution's grievance procedures regarding sexual harassment and sexual misconduct. The Title IX Coordinator has, and will continue to receive, training in what constitutes sexual harassment/sexual misconduct, and trauma -informed investigative hearing practices.

Complaints of alleged policy violations, or inquiries or concerns regarding the Title IX policy or the policy under SB 493, should be submitted to the Title IX Coordinator to:

951-785-2849
titleix@lasierra.edu
<https://lasierra.edu/sexual-misconduct>
Convenience Center Building
Suite AA – Second Floor, near the Security Office

Inquiries may also be submitted to:

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

F. Duty to report

In accordance with OCR's federal mandate and SB 493, and in following the institution's policies, this policy establishes that all La Sierra University employees, except those employees in confidential positions, are mandated to report any suspected violation of both the Title IX policy and the policy regarding SB 493.

Furthermore, the institution's Human Resources Handbook establishes the following:

"All university employees, except confidential resources, must immediately report all known information about suspected prohibited conduct to the Title IX Office. This includes the names of the parties and known details of the conduct. This duty applies no matter how the information is learned; whether from direct report from an affected party, from social media, or from a concerned third party."

G. Notice of Non-discrimination

In accordance with SB 493 Section 66281.8 (b), La Sierra University shall implement, and at all times comply with, all of the following requirements:

(1) It shall disseminate, by electronic or other means, a notice of nondiscrimination, including, but not limited to, all information required to be included in the notice provided pursuant to SB 493 Section 66281.5, to all of the following:

(A) Each employee of the postsecondary institution.

(B) Each volunteer who will regularly interact with students.

(C) Each individual or entity under contract with the postsecondary institution to perform any service involving regular interaction with students at the institution.

La Sierra University has designated the Human Resources Office, the Student Life Division, the Admissions Office, the Title IX Office, the Office of the Provost, among other offices, with the task to disseminate this notice of non-discrimination.

This notice of non-discrimination will also be included in the institution's website and portal and on the Title IX webpage.

H. Duty to respond

In accordance with OCR's new regulations regarding Title IX, La Sierra University has a duty to respond to allegations of sexual harassment/sexual misconduct in situations that allegedly occurred on campus or are related to campus events.

However, SB 493, Section 66281.8 (b)(3)(B), indicates that:

“The institution shall take reasonable steps to respond to each incident of sexual harassment involving individuals subject to the institution’s policies that occur in connection with any educational activity or other program of the institution, as well as incidents that occurred outside of those educational programs or activities, whether they occurred on or off campus, if, based on the allegations, there is any reason to believe that the incident could contribute to a hostile educational environment or otherwise interfere with a student’s access to education.”

La Sierra University acknowledges that in some instances the alleged conduct and/or the alleged respondent may not be under the institution's jurisdiction. This may be when the alleged respondent is not affiliated with the institution or when the alleged conduct did not occur on campus or during campus related activities.

In such cases, La Sierra University's response may include, but is not limited to, the following:

1. Contact law enforcement,
2. Inform La Sierra University Safety Office,
3. Make referrals to health/medical institutions, support groups, counseling and rape crisis centers, among other organizations,
4. Make referrals to the judicial system,
5. Issue No Trespass Orders

I. Supportive Measures in cases where party may not be affiliated with the institution

Notwithstanding the limitations that the institution may encounter in cases where the respondent is not affiliated with the University or in cases where the alleged events are not related to campus or to campus events, supportive measures will always be offered and provided if reasonable and appropriate. Supportive measures the University may provide include, but are not limited to, are the following:

- Referrals to counseling and rape crisis centers
- Referrals to law enforcement
- Referrals to campus security
- Referrals to health providers
- No Contact Orders
- Housing changes
- Academic schedule changes
- Employment schedule changes

Furthermore, as a private institution, La Sierra University may also determine to issue a No Trespass Orders in cases where the alleged respondent is not affiliated with the institution.

Complainants will be offered supportive measures whether or not a formal complaint has been filed or a determination regarding responsibility has been made.

J. Supportive Measures

In accordance with OCR's Final Rule supportive measures are prompt actions and/or services that may be implemented by the University in an individualized manner, designed to restore or preserve the Complainant's equal access to education without treating a Respondent as responsible until after a fair grievance process has concluded. La Sierra University Title IX policy establishes its policy regarding supportive measures in Article III, Section H. **The same procedures regarding supportive measures will be applied in cases investigated under SB 493.**

Supportive measures may be put in place once the University has actual knowledge of a Title IX complaint and may not be designed to be punitive, nor disciplinary and should be imposed avoiding burdening the Respondent. **These provisions will also be offered for cases under SB 493.**

According to OCR's Final Rule Section 106.45 (b)(1)(ix), supportive measures may be implemented regardless of whether a Complainant files a formal complaint, so that if a Complainant later decides to file a formal complaint, the Complainant has already been receiving supportive measures that help a Complainant maintain educational access.

The Title IX Coordinator will contact the Complainant (i.e., person who is alleged to be the victim of sexual harassment) to discuss supportive measures, consider the Complainant's wishes

regarding supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint.

Complainants will be offered supportive measures whether or not a formal complaint has been filed or a determination regarding responsibility has been made.

These measures should be temporary in duration pending the results of a formal investigation. Depending on the final result of the investigation process it may be determined by the decision maker that the supportive measures will become permanent.

The Title IX Coordinator will assess supportive measures for both the Complainant and Respondent, and will be responsible for coordinating the provision of supportive measures through multiple University departments or offices. In determining and implementing such measures, the Title IX Coordinator will review all available information and seek to equitably apply such measures to both parties.

Supportive measures do not indicate that the University has reached any conclusion about allegations of a violation(s) of Title IX policy.

In situations where the Complainant wishes to remain anonymous and/or the Respondent is unknown it may not be possible to implement certain supportive measures; e.g., a no contact order would necessitate identification of the Respondent.

Supportive measures include, but are not limited to, the following:

- Imposition of a campus no-contact order
- Housing or workspace change
- Modify housing contracts
- Adjustment of course schedules or employment schedules
- Alternate learning arrangements
- Alternate course completion options
- Withdrawal from class without penalty
- Reschedule or retake exams without penalty
- Reschedule assignments
- Time off from class or work, or a voluntary leave of absence

- Transportation arrangements
- Safety planning
- Access to counseling
- Access to medical providers
- Limit access to facilities/events
- Modify schedule to separate parties
- Campus escort
- University imposed leave
- Any other remedy that can be tailored to specific individuals to reasonably achieve the goals of this policy.

The University will keep confidential any accommodations or supportive measures provided to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures or accommodations. The Title IX office will advise Campus Safety of any order it may need to enforce, such as those related to no-contact or no access.

The Title IX Coordinator will advise the relevant Administration or Faculty regarding academic accommodations. To seek a supportive measure, please contact the Title IX Coordinator at 951.785.2849 or titleix@lasierra.edu.

Violations of directives related to supportive measures or accommodations may lead to an investigation and disciplinary action which may include, but are not limited to, sanctions including exclusion, expulsion, or dismissal from the University, and termination of employment, including revocation of tenure.

K. Emergency Removal

According with OCR's Final Rule Section 106.44 (c) the University is allowed to implement the emergency removal of a Respondent prior to the conclusion of a grievance process (or even where no grievance process is pending), in order to protect the safety of the University's community where the University determines an immediate safety threat exist. The immediate threat must be assessed by the University's Security office in coordination with the Dean of Students office among other University's offices.

The same process will be applied in cases investigated under SB 493.

In accordance with OCR's Final Rule Section 106.44 (c) nothing precludes the University from removing a Respondent from the University's education program or activities on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or any other individual arising from the allegations of the violation of this policy justifies removal, and the University provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

As aforementioned, complainants will be offered supportive measures whether or not a formal complaint has been filed or a determination regarding responsibility has been made.

L. Student Conduct referrals

In cases where the alleged conduct may not be addressed under the institution's Title IX policy but may or may not fall under SB 493, the SB 493 Coordinator will determine if the appropriate way to investigate the allegations submitted will be under the provisions included in the Student Conduct Handbook.

In those cases, the SB 493 Coordinator will refer the matter to the institution's Student Conduct office for further inquiry.

Situations that may be referred to Student Conduct, include but are not limited to, the following:

1. Alleged violations of the Student Handbook.
2. Alleged violations that may have occurred off-campus while student(s) were abroad (not in the United States or its territories).
3. Alleged violations in which it is alleged that a student(s) has been involved in prohibited conduct against a person(s) not affiliated with the institution.
4. Alleged violations, that do not fall under Title IX nor under SB 493, in which it is alleged that a student(s) has been involved in prohibited conduct against an employee(s) or a third party.

M. Human Resources Office referrals

In cases where the alleged conduct may not be addressed under the institution's Title IX policy but may or may not fall under SB 493, the SB 493 Coordinator will determine if the appropriate way to investigate the allegations submitted will be under the provisions included in the Employee Handbook.

In those cases, the SB 493 Coordinator will refer the matter to the institution's Human Resources Office for further inquiry.

Situations that may be referred to the Human Resources Office include but are not limited to, the following:

1. Alleged violations of the Employee Handbook.
2. Alleged violations that may have occurred off-campus while employee(s) were abroad (not in the United States or its territories).
3. Alleged violations in which it is alleged that an employee(s) has been involved in prohibited conduct against a person(s) not affiliated with the institution.
4. Alleged violations, that do not fall under Title IX nor under SB 493, in which it is alleged that an employee(s) has been involved in prohibited conduct against an employee(s) or a third party.

N. Confidentiality

The following sections of SB 493 establish how the institution should handle requests of confidentiality.

According to SB 493 Section 66281.8 (b)(3)(D)(i), ***“If a complainant requests confidentiality, which could preclude a meaningful investigation or potential discipline of the potential respondent, or that no investigation or disciplinary action be pursued to address alleged sexual harassment, the institution shall take the request seriously, while at the same time considering its responsibility to provide a safe and nondiscriminatory environment for all students, including for the complainant.”***

According to SB 493, although the institution shall generally grant the request there may be instances in which the institution will have to determine whether it should disclose the identity of the complainant. In determining whether to disclose a complainant’s identity or proceed to an investigation over the objection of the complainant, the institution may consider whether any of the following apply:

- (I) There are multiple or prior reports of sexual misconduct against the respondent.
- (II) The respondent reportedly used a weapon, physical restraints, or engaged in battery.
- (III) The respondent is a faculty or staff member with oversight of students.
- (IV) There is a power imbalance between the complainant and respondent.
- (V) The complainant believes that the complainant will be less safe if the complainant’s name is disclosed or an investigation is conducted.
- (VI) The institution is able to conduct a thorough investigation and obtain relevant evidence in the absence of the complainant’s cooperation.

Furthermore, according to SB 493, Section 66281.8 (b)(3)(D)(ii)

“If the institution determines that it can honor the student’s request for confidentiality, it shall still take reasonable steps to respond to the complaint, consistent with the request, to limit the effects of the alleged sexual harassment and prevent its recurrence without initiating formal action against the alleged perpetrator or revealing the identity of the complainant.”

These steps may include, but are not limited to, the following:

- increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred;
- providing additional training and education materials for students and employees;
- or conducting climate surveys regarding sexual violence.

The institution shall also take immediate steps to provide for the safety of the complainant while keeping the complainant's identity confidential as appropriate. These steps may include changing living arrangements or course schedules, assignments, or tests. The complainant shall be notified that the steps the institution will take to respond to the complaint will be limited by the request for confidentiality.

According to SB 493 Section 66281.8 (b)(3)(D)(iii)

“If the institution determines that it must disclose the complainant’s identity to the respondent or proceed with an investigation, it shall inform the complainant prior to making this disclosure or initiating the investigation. The institution shall also take immediate steps to provide for the safety of the complainant where appropriate. In the event the complainant requests that the institution inform the respondent that the student asked the institution not to investigate or seek discipline, the institution shall honor this request.”

O. Consideration of past sexual history as evidence

According to SB 493, Section 66281.8 (b)(4)(A)(vi) and Section 66281.8 (b)(4)(A)(vi)(II)

- The investigator or hearing officer shall not consider the past sexual history of a complainant or respondent except in the limited circumstances permitted by this clause.
- The investigator or hearing officer shall not consider prior or subsequent sexual history between the complainant and anyone other than the respondent for any reason unless directly relevant to prove that physical injuries alleged to have been inflicted by the respondent were inflicted by another individual.

P. No Contact Orders

La Sierra University may determine to issue temporary or permanent No Contact Orders in order to provide supportive measures or permanent remedies regarding sexual harassment/sexual misconduct allegations.

OCR's regulations establish that No Contact Orders may be issued in a reciprocal/mutual manner, if appropriate and reasonable.

Furthermore, in accordance to SB 493, Section 66281.8 (b)(4)(A)(xxi)(III)(ib)

“Upon the issuance of a mutual no- contact directive, an institution shall provide the parties with a written justification for the directive and an explanation of the terms of the directive. Upon the issuance of any no-contact directive, the institution shall provide the parties with an explanation of the terms of the directive, including the circumstances, if any, under which violation could be subject to disciplinary action.”

Q. Preponderance of the Evidence Standard

In accordance with OCR’s Final Rule Section 106.45(b)(7)(i), La Sierra University has determined to use the preponderance of the evidence as the legal standard to conduct **all** Title IX investigations. **The preponderance of the evidence standard will also be applied in cases investigated under SB 493.**

Preponderance of the evidence is a legal standard that means the greater weight of the evidence; that the evidence on one side outweighs, preponderates over, or is more than, the evidence on the other side. The preponderance of the evidence standard determines if it is more likely than not that the alleged conduct occurred. In other words, under the preponderance of the evidence standard, the burden of proof is met when the party with the burden, convinces the fact finder that there is a greater than 50% chance that the claim is true.

The same preponderance of evidence standard will be applied for formal complaints against students as for formal complaints against employees, including faculty.

R. Federal Law and SB 493

La Sierra University acknowledges that federal law supersedes state law. Therefore, and in accordance to SB 493 and federal guidelines including OCR’s Title IX regulations, the institution will follow federal law when any other state legislation may be in contradiction or in conflict with federal mandates.

Article II Prohibited Conduct

A. Definitions of Prohibited Conduct

Article II, Section A, pages 22 to 28, of the La Sierra University Title IX policy includes OCR’s definitions of prohibited conduct.

These definitions are in effect and in compliance with federal regulations.

In addition, and in compliance with SB 493, La Sierra University will also include the following definitions when considering allegations of sexual harassment, sexual violence and sexual exploitation. These definitions, codified under Section 66262.5(a)(1) of SB 493 which follow California Education Code Section 212.5, will be considered in cases where the alleged prohibited may not fall under Office of Civil Rights (OCR) federal regulations, but may be

addressed under state legislation SB 493. This policy will also affect third parties including contractors.

1. Sexual Harassment under SB 493

Sexual Harassment, is defined as:

a. unwelcome sexual advances, or
b. requests for sexual favors, or
c. other verbal, visual, or physical conduct of a sexual nature made by someone from in the work or educational setting, i.e. under any of the following conditions:

- submission to the conduct is explicitly or implicitly made a term or condition of an individual's employment, academic status, or progress, or
- submission to, or reject of, the conduct by the individual is used as the basis of employment or academic decisions affecting the individual, or
- the conduct has the purpose or effect of having a negative impact upon the individual's work or academic performance, or of creating an intimidating, hostile, or offensive work or educational environment, or
- submission to, or rejection of, the conduct by the individual is used as the basis for any decision affecting the individual regarding benefits and services, honors, programs, or activities available at or through the educational institution.

2. Sexual Battery under SB 493

Sexual battery means 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.

3. Rape under SB 493

Rape, defined as penetration, no matter how slight, of the vagina or anus with any part or object, or oral copulation of a sex organ by another person, without the consent of the victim.

The following definition of Sexual Exploitation under SB 493 will be considered in addition to the provisions included under La Sierra University Title IX policy regarding Sexual Exploitation.

4. Sexual Exploitation under SB 493

Sexual exploitation means a person taking sexual advantage of another person for the benefit of anyone other than that person without that person's consent, including, but not limited to, any of the following acts:

- The prostituting of another person.
- The trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion.

- The recording of images, including video or photograph, or audio of another person's sexual activity or intimate parts, without that person's consent.
- The distribution of images, including video or photograph, or audio of another person's sexual activity or intimate parts, if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to the disclosure.
- The viewing of another person's sexual activity or intimate parts, in a place where that other person would have a reasonable expectation of privacy, without that person's consent, for the purpose of arousing or gratifying sexual desire.

5. Violation of a Supportive Measure

In responding to a report of prohibited conduct, the University may implement supportive measures. According to La Sierra University policy, violation of supportive measures is a separate policy violation and is not dependent on substantiation of the reported or underlying policy violation.

6. Retaliation

La Sierra University Title IX policy forbids retaliation in Article II, Section A.

According to this policy, retaliation means an adverse action (e.g. conduct that threatens, harasses, coerces or intimidates), taken against a person for making a good faith report of prohibited conduct, providing information, exercising one's rights or responsibilities under this policy, or for otherwise being involved in the process of responding to, investigating, or addressing allegations of sexual misconduct.

Retaliation can be substantiated without a finding that there is responsibility for prohibited conduct. Third parties can be the victims or perpetrators of retaliation.

Allegations of retaliatory actions, such as intimidation, threats, or coercion against any individual for having engaged in the above activities, will be addressed by La Sierra University.

Anyone who is aware of possible retaliation or has other concerns regarding the response to a complaint of Sexual Discrimination, Sexual Assault, Sexual Harassment, Dating Violence, Domestic Violence, Stalking, Retaliation or any other conduct prohibited by this policy, should report such concerns to the Title IX Coordinator who will ensure that the matter is investigated and make recommendations to the University to enable appropriate actions to be taken in a fair and impartial manner.

Individuals who engage in such actions are subject to disciplinary action that may include, but is not limited to sanctions including exclusion, expulsion, or dismissal from the University, and termination of employment, including revocation of tenure.

Harassment and retaliation against members of the University's community are not protected expression or the proper exercise of academic freedom. The University will consider academic

freedom in the investigation of reports of discrimination based on sex that involve individuals' statements or speech in accordance with rights established in the First Amendment of the United States Constitution and the State of California laws.

B. Affirmative Consent

La Sierra University follows the definition of affirmative consent that has been established by the State of California. This definition is included in Article II, Section B of the institution's Title IX policy. This definition is also included in this addendum to our policy under SB 493, as follows:

1. Definition of affirmative consent in California

In accordance with California state law, (SB 967, 2014) engaging in any sexual activity requires affirmative consent (also known as Yes means Yes). Therefore, engaging in any sexual activity without first obtaining affirmative consent is considered sexual assault in the State of California. In the State of California, affirmative consent can be withdrawn and may be revoked at any time. Once consent is withdrawn or revoked, the sexual activity must stop immediately.

According to California law, affirmative consent means affirmative, knowing, active, informed, conscious, voluntary, present and ongoing, mutual agreement to engage in sexual activity.

Under California law, a person has not affirmatively consented to engage in sexual activity when a person is subjected by coercion to engage in unwanted sexual activity and is persuaded to engage in sexual conduct by force or threats or under duress, coercion, intimidation, or physical, emotional or psychological pressure.

Thus in following California law, this policy establishes that **affirmative** consent must be all of the following:

Knowing: positive cooperation in act and attitude with **knowledge** and agreement to the nature of the sexual act in which the person has agreed to engage.

California law requires that all individuals understand, are aware of, and agree to the "who" (which partners), "what" (what acts), "when" (when the acts occur), and "how" (how the acts are performed and **under what conditions**).

Active: Consent must take the form of "clearly understandable words or actions" that reveal one's expectations and agreement to engage in specific sexual activity. This means that silence, passivity, submission, and/or the lack of verbal protest or physical resistance (including the lack of a "no") should not - in and of itself - be understood as consent. Consent cannot be inferred by an individual's manner of dress, the giving or acceptance of gifts, the extension or acceptance of an invitation to go to a private room or location, going on a date, or consumption of alcohol and/or drugs.

Informed: affirmative consent according to California law must be informed which means that it is freely and actively given, and communicated through mutually understandable words or actions that indicate a willingness to participate in the sexual activity and that both parties are aware, and thus have all the information, in regards to the sexual activity that they have agreed to engage in. Informed affirmative consent means that the parties are aware of the conditions of the sexual encounter.

Therefore, it will be considered that there is no affirmative consent, in the following instances, but not limited to, when a person agrees to engage in sexual activity using a condom, but the other participant does not inform that the condom has been broken or altered on purpose; when the sexual encounter is filmed, recorded, photographed, streamed via any online platform or documented in any form and the other party has not agreed to such conditions; or when the sexual encounter differs from what the parties agreed upon before or during the sexual act. Examples will be, but are not limited to, when a party wants to engage in violent sexual activity, multi-partner sexual activity, or any other sexual behavior that deviates from what the parties had agreed upon before or during the sexual encounter.

Conscious: which means that neither party is incapacitated and thus incapable of giving affirmative consent. (More on Incapacitation infra).

Voluntary: which means that affirmative consent cannot be the result of force (violence, physical restraint, or the presence of a weapon), threats (indications of intent to harm, whether direct or indirect), intimidation (extortion, menacing behavior, bullying), coercion (undue pressure, manipulation, threats, blackmail depending on the frequency, intensity, level of isolation of the Complainant, and duration of the pressure) or fraud (misrepresentation or material omission about oneself or the present situation in order to gain permission for sexual or intimate activity).

Present and ongoing: In the State of California affirmative consent requires that the parties involved must offer their affirmative consent to engage in sexual activity at all times, which means making sure that the party which with an individual is engaging in sexual activity are still active during the sexual encounter. If during a sexual encounter a person changes their behavior and stops responding actively to the sexual activity, goes limp, or shows they are uncomfortable, among other behavior that may indicate that the person has stopped actively or voluntarily engaging in sexual activity, the other party must stop and inquire if something is wrong and if the person wants to stop the sexual encounter.

Mutual: which means that both parties involved must agree to engage in sexual activity at all times. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Consent to one form of sexual activity (or one sexual act) does not constitute consent to other forms of sexual activity. Consent given to sexual activity on one occasion does not constitute consent on another occasion.

The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identify, or gender expression among other considerations.

The existence of a dating or social relationship between those involved, or the fact of past sexual activities between them, should never by itself be assumed to be an indicator of affirmative consent.

A request for someone to use a condom or birth control does not, in and of itself, constitute affirmative consent.

2. Age of Consent

The California age of consent to engage in sexual activity is 18 years old. California statutory rape law is violated when a person has sexual intercourse with an individual who is under 18 years of age who is not their spouse.

Furthermore, in California it is illegal to engage in sexual intercourse with a minor, even if the other participant is also a minor.

In accordance with California law, sexual intercourse by a party with a minor who is not their spouse will be considered by the University as unlawful and nonconsensual. Furthermore, the University will comply with any reporting obligations under the Child Abuse and Neglect Reporting Act.

3. Incapacitation

Under California law, a person who is incapacitated is not capable to give affirmative consent.

According to this policy, a person will be considered to be incapacitated to give affirmative consent to engage in any sexual activity if the person is asleep, unconscious or incapacitated due to the influence of drugs, alcohol or medication in such a way that the person could not understand the fact, nature or extent of the sexual activity.

Furthermore, under this policy it will be determined that a person is incapacitated to give affirmative consent to engage in any sexual activity if the person lacks or lacked at the moment of the alleged event/s the physical and/or mental ability in order to make informed, rational decisions.

Moreover, under this policy a person's own intoxication from drugs or alcohol does not diminish that person's responsibility to obtain affirmative consent before engaging in sexual activity.

According to this policy, it should also be considered that a person with a medical or mental disability may also lack the capacity to give consent to engage in sexual activity.

Therefore, even when a person obtained consent to engage in any sexual activity with another person, consent will not be considered to have been given or be considered affirmative consent if the Respondent knew or reasonably should have known that the Complainant was unable to offer affirmative consent because the Complainant was under any of the circumstances listed above.

In addition, under this policy, a person will not be considered to have given affirmative consent if the person was unable to communicate their refusal to engage in any sexual activity due to their mental and/or physical condition.

Signs of incapacitation include individuals demonstrating that they are unaware of where they are, how they got there, or why or how they became engaged in a sexual interaction.

Some indicators of a lack of capacity to give consent due to consumption of drugs or alcohol may include, but are not limited to:

-A lack of full control over physical movements (for example, difficulty walking or standing without stumbling or assistance).

-A lack of awareness of circumstances or surroundings (for example, lack of awareness of where one is, how one got there, who one is with, or how or why one became engaged in sexual interaction).

-An inability to effectively communicate for any reason (for example, slurring speech, difficulty finding words).

A person may appear to be giving consent but may not have the capacity to do so, in which case the apparent consent is not effective. If there is any doubt as to another person's capacity to give consent, one should assume that the other person does not have the capacity to give consent.

In evaluating affirmative consent cases involving incapacitation, the University will determine whether a reasonable, sober person should have known that the Reporting party was incapacitated and thus unable to consent to sexual activity. Reasonable belief (based on the totality of circumstances which the Reporting party knew or reasonably should have known) in affirmative consent is a defense to sexual assault and non-consensual sexual contact.

In the case when both the Complainant and the Respondent allege that they were both intoxicated, the allegation will be investigated and it will be determined if either the Complainant or the Respondent were intoxicated to the point where they were incapacitated and neither party could reasonably consent to engage in sexual activity.

4. Revocation of Affirmative Consent

Under this policy, and in accordance with California law, affirmative consent can be withdrawn or revoked at any time, including after penetration. **Once consent is withdrawn or revoked, the sexual activity must stop immediately.**

5. Revocation of Consent in Case of Violence During Sexual Activity

This policy also acknowledges that there are instances when a party will not be able to inform the other party that they are revoking their consent to engage in sexual activity either verbally or in any other way. This may occur in instances when the party feels that they are in danger or that by informing the other party of their revocation of consent they might be attacked physically.

This policy also acknowledges that there are instances in which a party may have consented to engage in sexual activity but not to engage or participate in violent sexual activity. In those cases, it will be considered that the party has not consented to engage in sexual activity that may involve violent acts such as unwanted slapping, choking, gagging, spitting or similar acts even if the party does not inform the other party for fear of their safety among other considerations.

This also will include revocation of consent if the party, who initially consented to engage in sexual activity with another person, realizes that the other party wishes, among other conduct, to include another person or persons to engage in the sexual activity.

Article IV Grievance Process

A. Parties' rights

In accordance to OCR's Title IX regulations, La Sierra University has established an investigation process that is impartial, neutral and in which both parties' rights includes, but are not limited to:

- Equal access to supportive measures,
- Have a non-biased, neutral investigator and hearing officers,
- Present evidence and evaluate the evidence received,
- Have an advisor of their choice, and in case the party is not able to find an advisor, the institution will provide an advisor to the party,
- Decline to participate in a live hearing,
- Decline to respond to all or some questions during a live hearing,
- Present witnesses in their favor,
- Submit questions for the other party to respond to,
- Appeal the final outcome of the investigation.

La Sierra University will grant the aforementioned rights, among other rights, to the parties in cases investigated under SB 493.

B. Submission of a report of sexual harassment/sexual misconduct

Any suspicion of a violation or any report of an alleged violation to La Sierra University policy on sexual harassment/sexual misconduct under both Title IX and SB 493 may be submitted to the attention of the Title IX Coordinator electronically, via phone, via mail or using the University's portal.

The Title IX Coordinator will contact the reporting party and will determine if the allegation should be addressed under the institution's Title IX policy, or under the provisions granted by SB 493 or if the situation should be referred to Student Life Division or the Human Resources Office.

C. Anonymous Reporting

Reports may also be made anonymously, by the Complainant or a third party, without identification of the Complainant. Anonymous reports may be preliminarily investigated to the extent possible, in order to assess the underlying allegation(s) and to determine if remedies can be provided or if the University should make a referral to the University's Security office among other offices.

However, anonymous complaints limit the University's ability to investigate, respond, and provide remedies, depending on what information is shared.

D. Presumption of Non-Responsibility

In accordance with OCR's Final Rule Section 106.45 (b)(1)(iv), the University presumes the Respondent is not responsible for the alleged violation during the grievance process and maintains that presumption unless a determination of responsibility is made at the conclusion of the grievance process. This is often referred to as a "presumption of innocence", and reinforces the fact that the school bears the burden of proof and helps to ensure the standard of evidence is applied correctly.

The presumption of non-responsibility should not be interpreted to mean that a Complainant is not truthful or not credible based on the Complainant's status as a Complainant.

Furthermore, the presumption of non-responsibility should not be interpreted to mean that a Respondent is considered truthful, or that the Respondent's statements are credible or not credible, based on the Respondent's status as a Respondent.

La Sierra University will also follow the presumption of non-responsibility in all cases addressed under SB 493.

E. False allegations

OCR's Final Rule Section 106. (b)(1)(iv) allows for the University to impose sanctions under its Student Code of Conduct and under its Employee's Handbook to parties or witnesses who deliberately submit false and/or malicious accusations, as opposed to allegations which, even if erroneous, are made in good faith. This is included in the institution's Title IX policy Article III, Section N.

La Sierra University will impose the same sanctions in cases investigated under SB 493.

F. Amnesty for Sexual Misconduct Complaints

La Sierra University encourages reporting of sexual misconduct and seeks to remove barriers to an individual/group making a report. The University recognizes that individuals who have been engaging in sexual conduct outside marriage, drinking or using drugs at the time of the incident

may be hesitant to make a report because of potential consequences for their own conduct. Individuals who report sexual misconduct that was directed at them or another person, either as a Complainant, Respondent or a third party witness, will not be subject to disciplinary action by the University for their own personal involvement in sexual activity, provided their own personal involvement in sexual activity does not violate this Title IX policy, and/or consumption of alcohol or drugs at or near the time of the incident provided that any such violations did not and do not place the health or safety of any other person at risk. However, they will be asked to sign a statement indicating their awareness of the University's policy regarding sexual activity outside marriage, and/or the consumption of alcohol and drugs.

This policy is included in the institution's Title IX policy, Article III, Section O.

La Sierra University will also follow this policy in all cases investigated under SB 493.

G. Grievance Process

In accordance to OCR's Title IX regulations, La Sierra University has a grievance process in place. The grievance process is included in La Sierra University Title IX policy, Article IV, Sections A through EE.

La Sierra University will follow the same grievance process for investigations that may be conducted under SB 493.

Please refer to La Sierra University Title IX policy, Article IV, Sections A through EE regarding the grievance process, investigation process, and appeal process regarding investigations related to sexual harassment/sexual misconduct.

Prepared by:

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La Sierra University

Title IX Coordinator and designated SB 493 Coordinator