

# **Title IX Sexual Misconduct Policy**

## **Notice of Nondiscrimination**

Brenau University is committed to maintaining an environment free from all forms of discrimination. As a recipient of Federal funds, the University complies with Title IX of the Higher Education Amendments (1972). Title IX prohibits discrimination in any educational program or activity on the basis of sex. Brenau University recognizes sexual harassment, sexual assault, dating violence, domestic violence, and stalking may create an environment of discrimination and has created the following policy to define, educate and address issues relating to sexual discrimination.

## ***Scope of the Brenau University Title IX Policy***

*The University reserves the right to make changes to this policy as needed and without notice.*

This policy complies with Title IX of the Higher Education Amendments of 1972 under the provisions of the 2020 Title IX Rule and applies to any education program or activity of Brenau University and includes locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurs. This policy applies to:

- all reports of prohibited conduct occurring on / after the effective date of this policy. Where the date of the reported prohibited conduct precedes the effective date of this policy, the definitions of misconduct in existence at the time of the report will be used. The grievance process under this policy, however, will be used to investigate and resolve all reports made on or after the effective date of this policy, regardless of when the incident(s) occurred.
- all Brenau University faculty, staff, and students
- all Brenau University instructional sites
- all guests and individuals conducting business on all University property.

When used in this policy, "complainant" refers to an individual who is alleged to be the victim of conduct that could constitute sexual harassment. "Respondent" refers to an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. A "third-party" refers to any other participant in the process, including a witness or an individual who makes a report on behalf of a complainant.

The process begins with a formal complaint filed by a complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that the University help resolve the allegation of sexual harassment through informal resolution or investigation and a live hearing. The process could begin with an anonymous complaint; however, the ability of the University to process this complaint could be compromised.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University.

A possible violation of the Title IX Policy is handled through an administrative process. A complainant may also pursue criminal or civil legal recourse concurrently; one is not dependent upon another.

Nothing in this policy derogates the legal right of a parent or guardian acting on behalf of the complainant, respondent, or third-party, including, but not limited to, filing a formal complaint.

Throughout the duration of the Title IX process, parties are expected to report potential conflict of interest to the Title IX coordinator or designee.

## ***Definitions***

For the purpose of the following policy, the University has adopted the following definitions:

1. Reasonable Person - means a reasonable person under similar circumstances and with similar identities to the complainant.
2. Incapacitation - a state where an individual cannot make an informed and rational decision to engage in sexual activity because of a lack of conscious understanding

of the fact, nature, or extent of the act (e.g., to understand who, what, when, where, why, or how of the sexual interaction) and/or is physically helpless.

3. Consent - agreement to participate in sexual activity must be actively agreed upon by all parties, and must be informed, knowing, and voluntary. Consent is demonstrated through mutually understood words or gestures and can never be given by an individual incapacitated by alcohol or drugs or other mental incapacitation.
4. Force - the use or threat of physical violence to require an individual to participate in an unwanted activity.

### **Prohibited Conduct**

Prohibited conduct may be described as:

Conduct on the basis of sex that satisfies one or more of the following:

- A. An employee of Brenau University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (quid pro quo);
- B. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity
- C. Sexual assault as defined in 20 U.S.C. 1092(f)(6)(A)(v),
- D. Dating Violence as defined in 34 U.S.C. 12291(a)(10),
- E. Domestic Violence as defined in 34 U.S.C. 12291(a)(8),
- F. Stalking as defined in 34 U.S.C. 12291(a)(30).

### **Prohibited Conduct Explained**

#### **A. Sex-based harassment**

1. **Sex-based harassment** - harassment based on sex, which may include acts of aggression, intimidation, or hostility, whether verbal, physical, graphic, or otherwise. To qualify as sex-based harassment, the conduct need not involve conduct of a sexual nature.

2. **Harassment** - means conduct that creates an intimidating, offensive, or hostile working or learning environment or that unreasonably interferes with work or academic performance based on a person's protected sex status.

\*A single isolated incident may create a hostile environment if the incident is sufficiently severe, particularly if the conduct is physical.

3. **Sexual Assault** - means an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, as defined in 20 U.S.C. 1092(f)(6)(A)(v). Sexual intercourse includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth to genital contact.

The Following Crime Definitions regarding specific types of sexual assault are from the National Incident-Based Reporting System (NIBRS) User Manual (From the Federal Bureau of Investigation Uniform Crime Reporting Program Sex Offenses). Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

- **Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
  - **Incest**- Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - **Statutory Rape** - Sexual intercourse with a person who is under the statutory age of consent.
5. **Dating violence** - 34 USC 12291(a)(10) The term "dating violence" means violence committed by a person:
- A. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - B. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - The length of the relationship.
    - The type of relationship.
    - The frequency of interaction between the persons involved in the relationship.
6. **Domestic violence** - 34 USC 12291(a)(8) The term "domestic violence" includes felony or misdemeanor crimes 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 cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
7. **Stalking**- 34 USC 12291(a)(30) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- A. fear for his or her safety or the safety of others; or
  - B. suffer substantial emotional distress.

### ***Confidentiality and Anonymity***

Brenau University's ability to respond to a complaint of prohibited conduct, to prevent its recurrence, or to address its effects may be severely limited if the complainant requests confidentiality, does not provide the name of the respondent, or asks that the formal complaint not be filed. The University is further limited when a report is made anonymously. In cases

where the complainant requests confidentiality or requests Brenau University not pursue an investigation, the Title IX coordinator or his/her designee will conduct a preliminary assessment of the alleged misconduct and may weigh the complainant's request against the following factors, including, but not limited to: the severity of the alleged sexual misconduct, the complainant's age, or whether there have been other complaints or reports of sexual misconduct against the same respondent. The Title IX coordinator may determine that, in the interest of providing a safe and nondiscriminatory environment for students, it is necessary to act on information it has received.

In cases where the complainant files a formal complaint, or where the University is required to conduct a formal investigation, Brenau cannot keep the complainant's identity from the respondent. Further, both complainant and respondent have the right to copies of all case files.

### ***Amnesty***

Brenau University encourages the reporting of conduct violations and crimes that occur on campus or against students. A victim might be hesitant to report a crime to a University official for fear of being charged with a policy violation themselves (i.e., underage drinking at the time of a sexual assault). It is in the best interest of the community that a victim of a crime report the incident to a university official. To encourage reporting, the University offers victims of crimes, and may offer those who assist victims of crimes, amnesty from University policy violations related to the incident. Such amnesty is given at the discretion of the vice president for Student Services or their designee.

### ***Reporting an Incident***

In order for the Title IX process to begin, the University must have actual knowledge. Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the University's Title IX coordinator or Title IX deputy coordinator. Making a report means telling the Title IX coordinator, the Title IX deputy coordinator, or an official with authority what happened, and this may be done in person, by telephone, in writing, or by email. Should a report be made to an official with authority, that person is responsible for immediately notifying the Title IX coordinator.

At the time a report is made, a complainant does not have to request any particular course of action, nor does a complainant need to know how to label what happened. Choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. The University provides support that can assist each individual in making these important decisions and will respect an individual's autonomy in deciding how to proceed, to the greatest extent possible. In this process, the University will balance the individual's interest with its obligation to provide a safe and nondiscriminatory environment for all members of the University community.

The University will facilitate the resolution of all formal complaints in a fair and impartial manner. A complainant, the respondent, and all individuals involved will be treated with dignity and respect. In response to all reports of prohibited conduct, the University will make an immediate assessment of any risk of harm to the complainant, respondent, or to the broader campus community and will take steps necessary to address those risks. These steps may include supportive measures and / or emergency removal of the respondent to provide for the safety of

the complainant and the campus community. Emergency removal will be determined by the Title IX coordinator in consultation with the appropriate campus leaders, including but not limited to the vice president for Student Development & Engagement or his/her designee.

For complaints that will be handled through the investigation and live hearing process, all investigations and proceedings will be conducted presuming the respondent is not responsible for the accusations.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment). However, the formal process only begins with a signed report by the complainant or the Title IX coordinator.

If the conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in this Policy even if proved; did not occur in the University's education program or activity; or did not occur against a person in the United States, then the University must dismiss the Formal Complaint with regard to that conduct for purposes of sexual harassment under this Policy. However, such a dismissal does not preclude action under another provision of the University's Code of Conduct. The Title IX Coordinator or designee may provide the relevant information to the Dean of Students or Director of Human Resources as is appropriate.

If the Title IX Coordinator dismisses the Formal Complaint or any allegations therein, both Complainant and Respondent have the right to appeal that decision. Appeals must be made in writing to the Assistant Vice President for Risk Management & Operations, who serves as the appeals officer, within five business days of the dismissal.

Individuals are encouraged to call 911 if they feel they are in immediate danger.

All victims of sexual assault have the right to a criminal investigation, and are encouraged to contact the local authorities.

When applicable, individuals are encouraged to seek medical treatment immediately at the local emergency room and ask for a Sexual Assault Nurse Exam (SANE). Students who would like support in this process are encouraged to contact the Title IX Coordinator during regular business hours or the Coordinator on Call (in Student Development & Engagement) after regular business hours. Evidence may be preserved by avoiding bathing or showering, brushing teeth, changing clothes, or washing hands. If the person chooses to change clothes, all clothing worn at the time of the assault should be placed in a paper bag. Even if the person is uncertain about taking the matter to the police, if the person changes their mind later on, the evidence cannot be recreated.

Any individual who feels they have been a victim of sexual misconduct should consider the following methods of University reporting and how those reports are handled. Ideally, all incidents should be reported directly to:

**Campus Safety & Security**

520 Washington St.  
Director 770-534-6202  
security@brenau.edu

Marlon Galviz,  
770-297- 5896  
mgalviz@brenau.edu

The only Brenau University staff members who are able to keep the alleged Title IX

prohibited conduct completely confidential include:

**University Counseling**

Gay Baldwin, University Counselor  
Owens Student Center  
Director 102 Prior Street; Office 104  
770-534-6121  
gbaldwin@brenau.edu  
Director universitycounselor@brenau.edu

**Employees of the Center for Health & Wellbeing:**

**& Psychological Services**

Lucinda Grapenthin, North Atlanta Clinic  
470-228-8942  
lgrapenthin@brenau.edu  
J. Marshall Bruner, Gainesville Clinic  
770-297-5959  
mbruner@brenau.edu

**Employees of the Center for Health & Well Being**

Jesica Elison, Director  
611 Spring Street  
healthservices@brenau.edu  
770-534-6135

**University Chaplain**

Andrea Corso-Johnson  
102 Prior Street; Office 106  
acorsojohnson@brenau.edu  
770-297-5903

The Title IX Coordinator is a staff member charged with overseeing the University response to allegations of sexual misconduct and is assisted by a Title IX Deputy Coordinator. Brenau University's Title IX Coordinator and Deputy Coordinator are:

Emily Zank  
Assistant Vice President for Academic Affairs  
431 Brenau Ave  
770-534-6191  
ezank@brenau.edu or TitleIX@brenau.edu

Javius Morrow  
Adjunct Faculty Coordinator and Administrative Assistant for Academic Affairs  
202 Boulevard NE, Gainesville, GA 30501 RM 114  
770-534-615  
jmorrow1@brenau.edu

There are other resources available to sexual assault victims.

In the Gainesville community victims are encouraged to contact the local resource Rape Response Crisis Line: 770-503-7273 (Toll Free: 800-721-1999).

Online and Regional students may contact the National Sexual Assault Hotline: 800-656-HOPE.

***Supportive Measures***

Supportive Measures are non-disciplinary services offered as appropriate, as reasonably available, and without fee or charge to both the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. These Supportive Measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening Complainant and Respondent.

- A. Upon receipt of a Formal Complaint, the University may provide reasonable and appropriate Supportive Measures designed to eliminate any existing hostile environment and protect the Parties involved. The University will make reasonable

efforts to communicate with the Parties to ensure that all safety, emotional and physical well-being concerns are being addressed. Supportive Measures may be imposed regardless of whether Formal Complaint is filed by the Complainant or the University, and regardless of whether a crime is reported to Campus Police or local law enforcement.

- B. A Complainant or Respondent may request a "No-Contact Order" or other protection, or the University may choose to impose this or other Supportive Measures at its discretion to ensure the safety of all Parties, the broader Brenau community, and / or the integrity of the process.
- C. Brenau will maintain the privacy of any Supportive Measures provided under this Policy to the extent practicable and will promptly address (or refer to the appropriate University office so that it may address) any violation of the Supportive Measures. All individuals are encouraged to report concerns about failure of another individual to abide by any action imposed by an interim measure. The University will take immediate and responsive action to enforce a previously implemented restriction if such restriction was violated.
- D. Supportive Measures will be implemented at the discretion of the University. Supportive measures may include, but are not limited to the following list below, regardless of whether the Respondent is a student or an employee. Supportive measures may continue after a case is resolved if it is in the best interest of the Complainant, Respondent, or the campus community. Examples are as follows:
  - 1. Imposition of campus "No-Contact Order"
  - 2. Rescheduling of exams and assignments
  - 3. Providing alternative course completion options
  - 4. Change in class schedule
  - 5. Change in work schedule or job assignment
  - 6. Change in on-campus housing
  - 7. Limit an individual or organization's access to certain University facilities or activities pending resolution of the matter
  - 8. Emergency removal per the aforementioned guidelines for students, and administrative leave per the Human Resources policies for employees.

### ***Intimidation/Retaliation***

- A. The University nor any other individual may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
- B. Intimidation, threats, coercion, or discrimination, including charges against an



individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

- C. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation, provided, however, that a determination regarding responsibility alone is not sufficient to conclude that any party made a materially false statement in bad faith.

### ***Initial Intake Meeting***

- A. When a possible Title IX incident is reported, the Title IX Coordinator will be notified. When appropriate, the Complainant will be encouraged to seek immediate medical care, take advantage of counseling services, and encouraged to file a report with University or local authorities. The Complainant will never be forced to file a report with local police or campus security, and the Complainant will be apprised of their right to not pursue a Formal Complaint even after contacting the authorities. If the Complainant is under the age of 18, the circumstances of the report will be evaluated in order to determine whether law enforcement, parent, legal guardian, or other emergency contact will be made.
- B. The Complainant may receive supportive measures after reporting an incident and before filing a Formal Complaint. These measures are intended to protect the Complainant from contact and / or potential retaliation from the Respondent and / or related parties. The Complainant is advised to refrain from retaliatory behavior, as are any parties acting on the behalf of the Respondent.
- C. Supportive measures include but are not limited to: relocation of residence, academic considerations, or rescheduling of class sections. Supportive measures are administered and / or directed by the Title IX Coordinator and / or the Title IX Deputy Coordinator.
- D. With the Complainant, the Title IX Coordinator will review the resources available and explain to the Complainant the process for filing a Formal Complaint and the method of investigation and adjudication. The Title IX Coordinator will explain the Informal and Formal resolution procedures.

### ***Rights of Complainants and Respondents***

- Right to be informed of the process and all available options
- Right to be informed of resources
- Right to Supportive Measures
- Right to a timely investigation
- Right to an Adviser of choice
- Right to review and inspect evidence
- Right to appeal as directed by guidelines

### ***Adviser of Choice***

- A. Both Respondent and Complainant have the right to have an Adviser of Choice. Should a

Party desire, a list of University employees trained as Advisers is available from the Title IX Coordinator or Deputy Coordinator.

- B. The Title IX Coordinator, Deputy Coordinator, Investigator(s), nor any other University official associated with a Title IX case will discuss the case with any Adviser.
- C. If either the Respondent or Complainant does not have an Adviser present at the live hearing, the University will provide an adviser of the University's choice, at no fee or charge. The University Adviser will conduct cross-examination on behalf of that party, and the Adviser assumes no responsibility for the outcome of the adjudication process.
- D. It is the responsibility of the Complainant and Respondent to communicate with his or her Adviser regarding allegations, times and dates of meetings, hearings, outcomes and any other information regarding the case.
- E. Should either Party's Adviser cause the process to be excessively delayed, the University reserves the right to request a different Adviser.
- F. The Investigators, Title IX Coordinator, or any University employee privy to information regarding the case will not discuss said case with any Adviser.
- G. The Adviser:
  - 1. may attend any meeting or hearing regarding the case with the respective Complainant or Respondent, if invited by the respective Complainant or Respondent.
  - 2. may not participate directly in any hearing or meeting involving the case with one exception; Advisers must ask cross-examination questions on behalf of the Party he or she is advising.
  - 3. may provide advice to the Complainant or Respondent he/she is advising through brief, quiet conversation or written notes in any meeting or hearing related to the case.
  - 4. may be a member of the University community, but is not required to be.
  - 5. may be an attorney, but is not required to be.
  - 6. may not address the Investigators, Title IX personnel, or Hearing panel directly.
  - 7. must conduct themselves with decorum at all times during the process.

***After a Formal Complaint is Received - Complainant***

- A. If the Complainant is under the age of 18, the circumstances will be evaluated in order to determine whether law enforcement, parent, legal guardian, or other emergency contact will be made.

- B. The Complainant may receive supportive measures after reporting an incident.
- C. Complainants are not to be retaliated against. Retaliation is defined as a strike back against an accusation, a form of revenge or reaction, or an additional act of discrimination based on the complaint filed.
- D. The Complainant will receive, via email, a copy of the Notice of Allegations sent to the Respondent.
- E. The investigation and hearing will be conducted in a timely manner. Note that many factors influence the timeliness of the case moving forward. As such, all Parties and University employees who play a role in the matter are to respond promptly.
- F. The Complainant has the right to request an appeal on the grounds of improper procedure, new or previously unavailable, or compelling information related to the case.

#### ***After a Formal Complaint is Filed - Respondent***

- A. If the Respondent is under the age of 18, the circumstances will be evaluated in order to determine whether law enforcement, parent, legal guardian, or other emergency contact will be made.
- B. The Respondent may receive supportive measures after reporting an incident.
- C. Respondents are not to be retaliated against. Retaliation is defined as a strike back against an accusation, a form of revenge or reaction, or an additional act of discrimination based on the complaint filed.
- D. Respondents will be notified of the allegations of sexual harassment, including sufficient details as known at the time.
- E. The investigation and hearing will be conducted in a timely manner. Note that many factors influence the timeliness of the case moving forward. As such, all Parties and University employees who play a role in the matter are to respond promptly.
- F. The Respondent has the right to request an appeal on the grounds of improper procedure, new or previously unavailable, or compelling information related to the case.

#### ***Investigating a Complaint***

- A. Upon receipt of the Formal Complaint, the Title IX Coordinator or designee will review the issue and
  - 1. work toward resolution in cooperation with the parties involved (Informal Resolution) or
  - 2. Assign Investigator(s) to begin the Formal Resolution process.
- B. Informal resolution may include, but is not limited to mediation, agreed no contact, or mutually agreeable sanctions. Either party may withdraw from the informal process at any time up to two business days following resolution. The University must approve agreements Parties agree upon as a resolution via the informal resolution process.
- C. The Investigators will interview both Parties and relevant witnesses, including fact and

expert witnesses, and gather documentary evidence provided by the Parties and any identified witnesses. This evidence will include both inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the Parties.

- D. The Investigators will prepare an Interview Report. The Investigators will share the Interview Report with the interviewee. The interviewee will have the opportunity to correct or comment on any statements made in the report. If the interviewee has no corrections to, or comments on, the Interview Report, the interviewee will sign an acknowledgment that the interviewee has reviewed and agrees that the Interview Report is accurate. If the interviewee has corrections or comments to the report, the interviewee may submit a written response directly to the Investigators within 3 business days reflecting any additions or changes which the interviewee believes are necessary to ensure the accuracy of the interviewee's statement. If no response is received from the interviewee, it will be included in the preliminary Title IX investigation report and the Final Title IX investigation report as appropriate.
- E. The Investigators may use, if available, any or all of the following: Police Reports, Video or Audio recordings, Witness statements, Campus Reports, etc. Investigations are not limited to the aforementioned items. The University cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the University obtains that Party's voluntary, written consent.
- F. The Investigator may conduct follow-up interviews with both Parties and witnesses based upon testimonial and documentary evidence gathered during Initial Fact-gathering. The Parties and witnesses can expect that, in these follow-up interviews, the Investigator will seek responses to specific allegations or evidence. To the extent additional material, witnesses or evidence are identified during Rebuttal Fact-Gathering, the Investigator will conduct additional interviews and gather additional evidence. Rebuttal Fact-Gathering may be repeated as necessary to ensure a complete gathering of evidence.
- G. The Investigators will prepare a Preliminary Report. The Preliminary Report is a written summary of the evidence gathered in the course of the Preliminary Investigation. The Investigators will state specific factual findings in the Preliminary Report (e.g., "Complainant was incapacitated" or "Respondent believed that Complainant was not incapacitated"). The standard for determining each factual finding is "Preponderance of Evidence." This standard of proof is that the evidence presented during the investigation must be considered to be more likely than not to be factual. The Investigators will not state ultimate findings as to whether the Respondent has, or has not, violated one or more of the University's policies.
- H. The Investigators will attach as exhibits to the Preliminary Report all interview reports and any documentary evidence gathered as part of the investigation that is directly related to the allegations in the Formal Complaint, including any evidence upon

which the University does not intend to rely in reaching a determination regarding responsibility and any inculpatory or exculpatory evidence whether obtained from a Party or other source.

- I. When the Investigators determine that the Preliminary Investigation is complete, the Investigators will submit the Preliminary Report to the Title IX Coordinator. The Title IX Coordinator may require the Investigators to conduct additional investigation; if so, the Investigators will conduct additional investigation consistent with the procedures outlined above.
- J. Once the Coordinator has agreed that the Preliminary Investigation is complete, the Coordinator will provide an electronic copy (or hard copy) of the Preliminary Report to the Parties and their respective Advisers, if any, for review. Neither the Complainant nor the Respondent nor their Advisers may publically share any portion of the Preliminary report and will be required to sign a Non-Disclosure Agreement prior to receiving the report.
  1. The Parties may (but are not required to) respond to the Preliminary Report; the Parties will have 10 business days upon receipt of the report to submit any response to the report. The Parties may respond in one or both of the following ways:
    - i. The Parties may provide a written response to the Preliminary Report, or any portion of it, including each Interview Summary. The Investigator will consider any written response provided by the Parties in preparing the Final Report.
    - ii. The Parties may submit a written request for additional investigation. Such requests may include, but are not limited to, the following:
      1. Request for follow-up interview(s) with existing witnesses to clarify or provide additional information, including offering questions to the investigator to pose to witnesses;
      2. Request for interviews with new witnesses; or

3. Request to consider new evidence.

Any request for additional investigation shall explain the reason for the request.

2. If neither of the Parties requests additional investigation, the Investigators will prepare the Final Report. If either (or both) Parties request additional investigation, the Investigators will review the request(s) in consultation with the Title IX Coordinator. The Investigators will conduct the requested additional investigation if the Investigators, in consultation with the Title IX Coordinator, determine that the request(s) will assist the Investigators in completing the investigation. The Investigators and Title IX Coordinator will assess whether investigation of the additional information requires a substantial deviation from the recommended timeframe for completion of the investigation; if so, the Title IX Coordinator will notify the Parties in writing with an anticipated revised time frame.
- K. The Final Report will have attached as exhibits the testimonial and documentary evidence from the Preliminary Investigation, the Preliminary Report, the Addendum (if applicable), and all of the Parties' responses throughout the Formal Resolution proceeding. Once the Investigators are satisfied that the Final Report is complete, the Investigator will submit the Final Report to the Title IX Coordinator. The Title IX Coordinator will send to each Party and their respective Adviser, if any, the Final Report in an electronic form. All parties will be expected to sign a non-disclosure agreement related to the final report prior to receiving access to the files.
- L. No sooner than 10 (ten) Business Days after sending the Final Report, the Title IX Coordinator will meet individually with the Complainant and the Respondent.
- M. If both Parties wish to resolve the case without an adjudication, the Coordinator can facilitate an Informal Resolution of the Formal Complaint that does not necessitate a full adjudication. The Parties must agree to this Informal Resolution in writing. At the conclusion of an Informal Resolution, and upon receipt of official notification via College email, the Complainant and the Respondent have 2 (two) Business Days to change their mind about the resolution of the case. If either the Complainant or the Respondent changes their mind regarding the agreed upon resolution, they must do so in writing and submit it to the Title IX Coordinator. Should the Party's request not be *received* in writing (including electronically), or does not submit within 2 (two) Business Days, the Informal Resolution will be considered final and binding.
- N. If either of the Parties do not wish to participate in the Informal Resolution prior to an adjudication by the Hearing Panel, the Title IX Coordinator will schedule a hearing on the case not less than 10 (ten) Business Days from the receipt of notification.
- O. If the conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in this Policy even if proved, did not occur in the University's education program or activity, or did not occur against a person in the United States, then the University must dismiss the Formal Complaint with regard to that conduct for purposes

of sexual harassment under the Title IX Policy. However, such a dismissal does not preclude action under another provision of the University's Code of Conduct.

- P. The University may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; the Respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
- Q. Upon dismissal of the Formal Complaint either required or permitted, the University will promptly send written notice of the dismissal and reasons for the dismissal simultaneously to each Party.
- R. If the Title IX Coordinator dismisses the Formal Complaint or any allegations therein, both Complainant and Respondent have the right to appeal that decision. Appeals may be made in writing to the Assistant Vice President for Risk Management & Operations.

#### ***Adjudication of a Complaint through Formal Hearing***

- A. Title IX procedures may include voluntary Informal Resolution (e.g. mediation). However, either party has the right to discontinue the Informal Resolution process at any time and begin the Formal Hearing process. Complaints involving allegations that an employee sexually harassed a student are not appropriate for the Informal Resolution process.
- B. Every attempt will be made to adjudicate Title IX complaints within a reasonable amount of time barring a legitimate reason.
- C. Both parties will be fully informed of the hearing process prior to the proceedings.
- D. A hearing board will be seated by the Title IX Coordinator or designee. Those on the hearing board will be trained to adjudicate matters arising out of alleged violations of this Policy.
- E. The committee will consist of the chair (non-voting) and three (3) additional employees who serve as staff or faculty. If the case involves a faculty member, at least one member of the hearing panel will be a faculty member.
- F. Hearings will be recorded, and they will be live. The Respondent or Complainant may request the use of technology so neither party must be physically present with the other. This request should be communicated to the Title IX Coordinator at least two (2) business days prior to the hearing.
- G. The chair of the hearing committee will read the investigation report aloud.
- H. Neither party **will** be allowed character witnesses.
- I. The advisers for both parties may conduct cross examination of all parties and witnesses who give testimony during the hearing.

- J. In determining whether an alleged incident constitutes a violation of this Policy, the decision-makers will look at the record as a whole and at the totality of the circumstances. An adequate, reliable and impartial investigation will occur, and a decision rendered based on a preponderance of evidence.
- I<. University sanctions for someone found responsible for violation of this Policy may include, but are not limited to, expulsion, forced withdrawal, disciplinary suspension, disciplinary probation, demotion, termination, reprimand, and /or campus restrictions.

### **Appeals**

Either the Complainant or the Respondent or may appeal the decision of the Hearing Panel within 5 (five) Business Days of the receipt of the decision. Appeals must be in writing and based on one of the following grounds for appeal. The grounds for appeal must be specifically stated in the written appeal.

Grounds for Appeal:

- A. New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- B. Procedural irregularity that affected the outcome of the matter; or
- C. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against the Complainants or the Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

An appeal is not to rehear the case, but to review whether any of the above, if present, influenced the outcome of the case.

Appeals for cases arising under this Policy will be heard by an Appeals Officer. The Coordinator will receive the written materials and appoint an Appeals Officer, typically the Assistant Vice President for Risk Management & Operations.

The Appeals Officer will have access to all documents including, but not limited to:

- Recordings, both audio and video
- Communications, including electronic and non-electronic written documents
- Reports
- Responses to reports
- Addenda
- Other documents associated with the case that are not made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision



of treatment to the Party, unless the College obtains that Party's voluntary, written consent

If the Appeals Officer determines that a ground for appeal is substantiated, the case will be returned to the Coordinator. Otherwise, the decision of the hearing panel stands. When a case is returned to the Coordinator, the Coordinator may:

1. Decide to drop the case (e.g., based on insufficient information to believe that a policy violation may have occurred), or
2. Send the case to the original hearing panel for reconsideration, or
3. Send the case to a new hearing panel with the same or different charges, and/or (re)implement any aspect of the disciplinary process. When a case is sent back for a new hearing, it is possible that a different decision (i.e., the decision of responsibility and/or sanctions) may subsequently result.