



Title IX Sexual Misconduct Policy & Resolution Process

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Brenau University
Title IX Sexual Misconduct Policy
The University reserves the right to make changes to this policy as needed and without notice.

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Brenau University is committed to maintaining an environment free from all forms of discrimination and has policies and processes in place regarding the reporting, investigation, and resolution of complaints of discrimination, including sex-based discrimination.

Title IX Statement on Non-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 and process to define, educate, and address issues relating to sexual discrimination. This Policy also prohibits retaliation and / or intimidation against a person who reports, complains about, or who otherwise participates in good faith in any matter related to this Policy. All of the foregoing conduct shall be referred to as "Prohibited Conduct."

Brenau University also prohibits other forms of discrimination and harassment as defined and described in the *Faculty and Staff Guidelines* 3-01 and 4-07 (accessible on ADP; for more information contact Human Resources) and as described in the *Student Handbook* (accessible on the intranet; for more information, contact Student Development & Engagement).

Inquiries about Title IX may be referred to Brenau University's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights (<https://ocrcas.ed.gov/contact-ocr>), or both. Brenau University's Title IX Coordinator is Emily Zank (ezank@brenau.edu or titleix@brenau.edu).

General Information

Upon receipt of a Formal Complaint, the university takes prompt action under Title IX to eliminate Prohibited Conduct (if any), prevent its recurrence, and remedy its effects. In addition, the university fulfills its obligations under the Violence Against Women Reauthorization Act of 2013 ("VAWA") amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act") in response to reported Prohibited Conduct.

The Violence Against Women Act (VAWA) is a federal law that works alongside Title IX and the Clery Act to provide protections and resources to individuals affected by domestic violence, dating violence, sexual assault, and stalking. The Clery Act is a federal law that requires universities to report and disclose information about crime on and around campus. It also mandates that institutions have policies and procedures in place to address and respond to crimes like sexual assault, dating violence, domestic violence, and stalking.

When used in this policy, "Complainant" refers to an individual who is alleged to be the recipient 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. For more information see "Definitions" section.

At each stage of the resolution process, the Title IX Coordinator diligently works to vet all involved for potential conflict of interest or bias in advance.

Scope of the Brenau University Title IX Policy

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.
- sex discrimination (which includes sex-based harassment) occurring under and of Brenau University's education program or activity in the United States
- Brenau University faculty, staff, and students
- Brenau University instructional sites and other buildings (owned or controlled), including conduct occurring in a building owned or controlled by a student organization officially recognized by Brenau University
- guests and individuals conducting business on all University property

The process begins with a Formal Complaint filed by a Complainant or signed by the Title IX Coordinator alleging sexual discrimination or sexual harassment against a Respondent and requesting that the university help resolve the allegation through informal resolution or the formal process of 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. Brenau University strongly encourages reports of Prohibited Conduct regardless of who engaged in the conduct.

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. If the Complainant is a student enrolled primarily at another institution (IE high school dual enrollment, another university with which Brenau has a relationship), the Title IX Coordinator at the institution the Complainant attends will lead the process with full cooperation from the Title IX Coordinator at the Respondent's institution.

A possible violation of the Title IX Policy is handled through an administrative process, not a legal proceeding. Therefore, the Title IX Live Hearing is not bound by the standard rules of evidence; it does not intend to mimic legal conduct processes. Decisions made under the Title IX Live Hearing process are based on preponderance of the evidence. A Complainant may also pursue criminal or civil legal recourse concurrently. One is not dependent on 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.

Informal Resolution and/or the investigation and Live Hearing are conducted in a timely manner. It is the desire of Brenau University to reach resolution of the Formal Complaint as quickly as possible for all involved, yet it must follow the process, ensure all individuals are treated fairly, and thoroughly seek facts. Note that many factors influence the timeliness of the case moving forward. As such, all Parties and university employees or contracted third parties who play a role in the matter are to respond promptly (generally within no more than 3 business days) to all communications regarding the Formal Complaint. This includes communications and requests from the Title IX Office, Informal Resolution Mediators, and Investigators.

Brenau University reserves the right to utilize internal or external individuals as it determines appropriate and necessary in order to facilitate or fulfill any of the various Title IX roles and processes. These roles include but are not limited to Investigators, Informal Resolution Mediators, Hearing Panel Members, and Appeal Officers.

Prohibited Conduct

Title IX prohibits all conduct on the basis of sex that satisfies one or more of the following:

- 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);
- Unwelcome conduct (sex-based harassment / harassment / hostile environment) 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;
- Sexual assault, as defined in 20 U.S.C. 1092(f)(6)(A)(v), which includes fondling, incest, and statutory rape;
- Dating Violence as defined in 34 U.S.C. 12291(a)(10);
- Domestic Violence as defined in 34 U.S.C. 12291(a)(8); and
- Stalking as defined in 34 U.S.C. 12291(a)(30).

For more information, see the "Definitions" section.

Starting the Process: Reporting

In order for the Title IX process to begin, the University must have actual knowledge. Actual knowledge means a Formal Complaint of sexual discrimination or sex-based harassment, signed by a Complainant or the Title IX Coordinator, is submitted to the university's Title IX Coordinator or Title IX Deputy Coordinator. Should a report be made to a non-confidential employee or contractor working on behalf of the university, that person is responsible for immediately notifying the Title IX Office.

At the time a report is made, a Complainant or other reporter does not have to request any particular course of action, nor does the individual need to know how to label what happened. For the Complainant, choosing to file a Formal Complaint, and deciding how to proceed afterward, can be a process that unfolds over time. The university provides support that can assist each individual in making important, informed 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 Brenau University community.

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the recipient 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.

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 when 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 Title IX Coordinator or his / her designee, in collaboration with the dean of students.

Intimidation/Retaliation

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 Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. 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.

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. Brenau University's Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedures. These policies are published in:

- Student Handbook section "False Statements, Reports, and Allegations and Fraudulent Behavior"; and
- Standards of Excellence, Policy 2-04, Section C "Employee Conduct."

For more information, refer to documents referenced above. The Student Handbook is available on the intranet; the Faculty & Staff Guidelines are available on ADP under "Resources."

Initial Assessment

In response to all reports of prohibited conduct, the university makes 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 for either or both parties 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. Should emergency removal be enforced, the Party removed is eligible to appeal through Brenau's grievance process. If the Complainant is under age 18, the circumstances are evaluated in order to determine whether law enforcement, parent, legal guardian, or other emergency contact will be made.

Dismissal of a Formal Complaint

Mandatory Dismissal

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, Director of Human Resources, or other university

offices as is appropriate; this will be disclosed to the Party.

Discretionary Dismissal

The university reserves the right to issue a discretionary dismissal for the Formal Complaint or any allegations therein, if, at any time during the investigation or Live Hearing:

- when a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- if the Respondent is no longer enrolled in, employed by, or otherwise engaged with the university; or
- if specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon dismissal of the Formal Complaint either required or permitted, the University promptly sends written notice of the dismissal and reasons for the dismissal simultaneously to each Party. If the Title IX Coordinator dismisses the Formal Complaint or any allegations therein, both Complainant and Respondent have the right to appeal that decision.

Appealing Dismissal of a Formal Complaint

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. The decision of the Appeals Officer is final. Appeals, with any supporting documents, should be electronically to the Title IX Coordinator, who will give it to the Appeals Officer and, upon the Appeals Officer's review, communicate the outcome with the appealing Party.

If the dismissal occurs after a Notice of Allegations has been sent to the Respondent, the Respondent is also notified that the dismissal may be appealed.

Next Steps in the Resolution Process

The university will facilitate the resolution of all Formal Complaints in a fair and impartial manner. The Complainant, the Respondent, and all individuals involved will be treated with dignity and respect. For complaints handled through the formal process, including investigation and live hearing, all investigations and proceedings are conducted presuming the Respondent is not responsible for the allegations. Complaints handled through the informal resolution process do not aim to determine responsibility.

Initial Intake Meeting: Process, Options & Rights

Possible Title IX incidents and allegations are reported to the Title IX Coordinator or Deputy Coordinator. Upon receipt of a report or Formal Complaint, the Title IX Coordinator or designee attempts to meet with the Complainant for an initial intake meeting (should this have not already occurred. Often it is during this meeting the Formal Complaint is signed).

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 the 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.

With the Complainant, the Title IX Coordinator reviews the resources available (see "Resources" section), explains to the Complainant the options to file a Formal Complaint (if the Complainant has not already done so) or not, and the options for Informal and / or Formal resolution procedures. Additionally, the Title IX

Coordinator explains that the Complainant has the right to Supportive Measures (see section “Supportive Measures”), an Advisor of his/her choice (see section “Advisors”), the right to review all information collected during the process and that informs the final Determination, and the right each Party has to Appeal the outcome at the conclusion of either the Informal or Formal Resolution process, or in the event of a Mandatory or Discretionary Dismissal.

The Complainant may receive supportive measures after reporting an incident and before filing a Formal Complaint. The Complainant is advised to refrain from retaliatory behavior, as are any parties acting on the behalf of the Respondent.

Upon receipt of the Formal Complaint, the Title IX Coordinator emails a copy of the Title IX Policy and a Notice of Allegations to the Respondent. The Notice identifies the alleged prohibited conduct and describes the behavior with enough detail that the Respondent should reasonably know to what incident or behavior the Notice applies. The Complainant also receives, via email, a copy of the Notice sent to the Respondent. In the Notice, the Title IX Coordinator indicates a time, date, location, and purpose of an initial intake meeting to which the Respondent is required to attend. At the initial intake meeting with the Respondent, the Title IX Coordinator reviews the resources available, options for Informal Resolution and / or Formal Resolution, the Respondent’s rights to Supportive Measures, the right to an Advisor of his / her choice, the right to review all information collected during the process and that informs the final Determination, and the right each Party has to Appeal the outcome at the conclusion of either the Informal or Formal Resolution process, or in the event of a Mandatory or Discretionary Dismissal.

In summary, Complainants and Respondents have equal right to:

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

Upon receipt of the Formal Complaint, the Title IX Coordinator or designee reviews the issue and works toward resolution in cooperation with the Parties involved through Informal Resolution or Formal Resolution.

Informal Resolution

At the written request of both the Complainant and the Respondent, and if the Informal Resolution pathway is acceptable to the university, the Title IX Coordinator or designee, assigns the matter to a trained Informal Resolution Mediator. Formal Complaints involving allegations that an employee sexually harassed a student are not appropriate for the Informal Resolution process.

Informal resolution may include, but is not limited to mediation, agreed no contact, or other mutually agreeable sanctions. The University must approve terms Parties agree upon. Once the Parties come to an agreement, a detailed resolution agreement is drafted by the Informal Resolution Mediator and submitted to the Title IX Coordinator. The agreement needs to provide as much detail as necessary to make clear expected actions and behaviors of both Parties moving forward in order to enforce the agreement. If the agreement is acceptable to the university, the Title IX Coordinator drafts a resolution agreement summarizing the terms to which the Parties agree while removing as much unnecessary contextual information as possible. The full resolution agreement and the summary resolution agreement are presented to and endorsed by the Complainant and Respondent. Each Party receives a fully endorsed copy of both agreements.

A copy of the summary resolution agreement becomes part of each Party's official University record. When a Party is a student, Student Conduct maintains a copy as part of that Party's permanent record. When a Party is an employee, Human Resources maintains a copy as part of that Party's permanent record. These records can be used later to enhance discipline in another matter related to Title IX or other conduct matters.

The Title IX Coordinator maintains a copy of the detailed resolution agreement, summary resolution agreement, and all additional information provided by the Informal Resolution Mediator.

As the Informal Resolution process does not discern responsibility, any resolution agreements on file in Student Conduct or Human Resources would not be disclosed as a disciplinary record should the Federal government or other organization perform a background check on the Respondent.

University record retention policies in place within the University office that maintains the records apply equally to resolution agreements. Either party may withdraw from the Informal Resolution process at any time up to two (2) business days following receipt of the signed Informal Resolution Agreement, and this can be done for any reason. Generally, when this occurs, the matter resumes or begins the Formal Resolution process.

The Title IX Coordinator has the discretion to cease the Informal Resolution process and start or resume the Formal Resolution process for reasons such as but not limited to halted progress toward reaching resolution via the Informal Process. This change will be made in writing, simultaneously, to both Parties via email from the Title IX Coordinator. The Informal Resolution Mediator will also receive a copy via email, though the reason may be redacted.

Formal Resolution

In the Formal Resolution process, the Title IX Coordinator or designee assigns the matter to two trained Investigators who collect facts and evidence through interviews with each of the Parties, Witnesses, and by accessing any other relevant evidence; this is compiled into a report that ultimately helps the Hearing Panel members make a determination of responsibility and sanctions, as applicable at the end of the process. At any point of the process, up to three (3) business days from the scheduled Live Hearing, the matter can be moved into Informal Resolution, should that be the desire of both Parties.

Investigation

The Investigators interview both Parties and relevant Witnesses, including fact and expert witnesses, and gather documentary evidence provided by the Parties and any identified Witnesses or other sources. This evidence includes 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.

During or after each interview, the Investigators prepare an Interview Report, which they share with the interviewee. The interviewee has 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 signs an acknowledgment that the interviewee has reviewed and agrees that the Interview Report is accurate. Acknowledgement via email is acceptable. 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. This written response must reflect any additions or changes the interviewee deems necessary to ensure the accuracy of the statement. If no response is received from the interviewee within the specified window of time, it is included in the Preliminary Title IX Investigation Report and the Final Title IX Investigation Report as appropriate.

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.

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 seeks responses to specific allegations or evidence. To the extent additional material, witnesses, or evidence are identified during rebuttal fact-gathering, the Investigator conducts additional interviews and gather additional evidence. Rebuttal fact-gathering may be repeated as necessary to ensure a complete gathering of evidence.

Preliminary Report

The Investigators prepare a Preliminary Report. The Preliminary Report is a written summary of the evidence gathered in the course of the Preliminary Investigation. The Investigators 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. Should the Investigators find it difficult to discern relevancy of any particular facts or evidence, the information is included in the spirit of transparency. Hearing Panel members ultimately decide on the relevancy of that information and evidence. 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.

The Investigators 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.

When the Investigators determine that the Preliminary Investigation is complete, the Investigators 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 conduct additional investigation consistent with the procedures outlined above, update the Preliminary Report, and resubmit it to the Title IX Coordinator.

This is an iterative process until the Coordinator agrees that the Preliminary Investigation is complete, at which time the Coordinator provides an electronic copy (or hard copy) of the Preliminary Report to the Parties and their respective Advisors, if any, for review. The Complainant, the Respondent, nor either Party's Advisor publicly share any portion of the Preliminary Report and each is encouraged to sign a Non-Disclosure Agreement prior to receiving the report. Generally, the Preliminary Report and evidence are shared with the Parties simultaneously. Should any individual unnecessarily delay the process by not submitting a signed NDA or other action, the Title IX Coordinator may release the information without the Party and / or Advisor signing and returning the NDA.

The Parties may (but are not required to) respond to the Preliminary Report; the Parties 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:

- The Parties may provide a written response to the Preliminary Report, or any portion of it, including each Interview Summary. The Investigators consider any written response provided by the Parties in preparing the Final Report.
- The Parties may submit a written request for additional investigation. Such requests may include, but are not limited to:
 - follow-up interview(s) with existing witnesses to clarify or provide additional information, including offering questions to the Investigator to pose to witnesses;
 - interviews with new witnesses; or
 - requesting consideration of new evidence.

If either (or both) Parties request additional investigation, the Investigators review the request(s) in consultation with the Title IX Coordinator. The Investigators 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 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 notifies the Parties in writing with an anticipated revised time frame. If neither of the Parties requests additional investigation, the Investigators prepare the Final Report.

Final Report

The Final Report has 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 the Final Report is complete, the Investigator submits the Final Report to the Title IX Coordinator. The Title IX Coordinator sends to each Party and their respective Advisor, if any, the Final Report in an electronic form. All parties are encouraged to sign a non-disclosure agreement related to the final report prior to receiving access to the files. Generally, the Final Report and evidence are shared with the Parties simultaneously. Should any individual unnecessarily delay the process by not submitting a signed NDA or other action, the Title IX Coordinator may release the information without the Party and / or Advisor signing and returning the NDA.

Preparing for the Live Hearing

No sooner than three (3) Business Days after sending the Final Report, the Title IX Coordinator meets individually with the Complainant and the Respondent.

If both Parties wish to resolve the case without a Live Hearing, the Title IX 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 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 his/her 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 it within 2 (two) Business Days, the Informal Resolution will be considered final and binding. No future complaint can be made on the same incident resolved through this process. See "Informal Resolution" for more information.

If either of the Parties do not wish to participate in the Informal Resolution process prior to an adjudication by the Hearing Panel, the Title IX Coordinator schedules a Live Hearing on the case not less than 10 (ten) Business Days from distribution of the Notice of Live Hearing to the Parties.

If the conduct alleged in the Formal Complaint would not constitute sexual discrimination or 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. See "Dismissal of a Formal Complaint" for more information.

Adjudication of a Complaint through Live Hearing

As explained in the "Informal Resolution" section, 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 (or resume) the Formal Resolution process. At the discretion of the Title IX Coordinator, information arising out of the Informal Resolution process may be provided to Investigators.

Every attempt is made to adjudicate Title IX Formal Complaints within a reasonable amount of time barring a legitimate reason. Both parties are fully informed of the hearing process prior to the proceedings during a meeting with and via communication from the Title IX Coordinator or designee. During that meeting, the Coordinator explains the live hearing process, important information such as the types of questions allowed and not allowed during cross examination, and other information meant to help the Party and his / her Advisor prepare for and feel as comfortable as possible going into the Live Hearing.

Each Party has the opportunity to submit names of Witnesses to present their testimony and participate in cross examination. Generally, this is limited to Witnesses who have already been interviewed, or the Title IX Coordinator may need to send the case back into the investigation stage. Parties must list all Witnesses who they would like to appear at the Live Hearing by the date designated by the Title IX Coordinator. The Coordinator makes every attempt to invite each listed Witness to the Live Hearing, but can not guarantee their attendance, as the Title IX Coordinator does not have subpoena power. No unexpected Witnesses should appear at the Live Hearing. Neither party is allowed to present Character Witnesses.

Live Hearing

A Hearing Panel is seated by the Title IX Coordinator or designee. Those on the Hearing Panel are trained to adjudicate matters arising out of alleged violations of this Policy. The Panel consists of the chair (non-voting) and three (3) additional employees or third parties. If the case involves a faculty member, at least one member of the Hearing Panel is a faculty member; the same goes in cases involving a staff member.

Hearings are recorded, and they must be live. The Respondent and / 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 three (3) business days prior to the hearing.

The Title IX Coordinator and/or Deputy Coordinator (or designee), Investigators, Hearing Panel members, Complainant's Advisor, and Respondent's Advisor must attend. Should the Complainant and / or Respondent not attend the Live Hearing, the Live Hearing continues and results in a Determination.

More information regarding the Live Hearing is provided to Parties in advance. Additionally, the Title IX Coordinator meets with the Hearing Panel at least once prior to the Live Hearing, provides them a Hearing Panel Manual, explains all details of the hearing, and answers any questions.

The Live Hearing is as follows:

- The chair of the Hearing Panel provides procedural directions.

- The Complainant and the Respondent have the right to make an opening statement and a closing statement (each generally up to five minutes in length).
- The Notice of Allegation and Final Report are aloud (unless both Parties agree reading the Final Report is unnecessary)
- Investigators answer the Hearing Panel's questions
- Parties and/or Witnesses present testimony, answer the Hearing Panel's questions, and are cross examined by the other Party's Advisor.

Determination

In determining whether an alleged incident constitutes a violation of this Policy, the Hearing Panel looks at the record as a whole and at the totality of the circumstances. The decision regarding the Respondent's responsibility for the allegation(s) is rendered based on a Preponderance of Evidence and by a majority vote.

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.

It is the responsibility of the Title IX Coordinator to enforce sanctions and implement remedies. Documentation regarding disciplinary sanctions for the Respondent are provided to the Office of Student Conduct (for students) and to the Office of Human Resources (for employees). All records pertinent to the Formal Complaint Resolution are maintained by the Title IX Office in compliance with university record retention policies. This includes any documentation regarding appeals.

Formal Resolution Appeals

Either the Complainant or the Respondent may appeal the decision of the Hearing Panel within 5 (five) Business Days of the receipt of the Determination Letter. 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. The Determination of responsibility becomes final on the date when opportunity for appeal expires, as indicated in the Determination Notice.

Grounds for appeal are limited to:

1. 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;
2. Procedural irregularity that affected the outcome of the matter; or
3. The Title IX Coordinator, Investigator(s), and / or Hearing Panel member(s) had a conflict of interest or bias (for or against the Parties generally or against 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 are reviewed by an Appeals Officer. The Title IX Coordinator receives the written materials and appoints a trained Appeals Officer, typically the assistant vice president for Risk Management & Operations.

The Appeals Officer has 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, artifacts, or information 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 university obtains that Party's voluntary, written consent.

If the Appeals Officer determines that a ground for appeal is substantiated, the case is returned to the Title IX Coordinator. Otherwise, the decision of the Hearing Panel stands and no further level of appeal is available.

When a case is returned to the Coordinator, he/she may:

- Decide to drop the case (e.g., based on insufficient information to believe that a policy violation may have occurred);
- Send the case to the original Hearing Panel for reconsideration; or
- 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 Live Hearing, it is possible that a different Determination (i.e., the decision of responsibility and/or sanctions) may result.

Resources

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 affected by sexual misconduct should consider the following methods of university reporting and how those reports are handled.

Title IX Office

The Title IX Coordinator, assisted by a Deputy Coordinator, is responsible for coordinating Brenau University's compliance with overseeing the university response to allegations of sexual misconduct and is assisted by a Title IX Deputy Coordinator. Title IX Coordinator, when notified of conduct that reasonably may constitute sex discrimination under Title IX, must take the following actions to promptly and effectively end any sex discrimination in the institution's education program or activity, prevent its recurrence, and remedy its effects. Responsibilities include supporting each individual who plays a role in the process - the Parties as well as the Investigators, Hearing Panel, and all others. More specifically, the Title IX officers:

- treat the Complainant and Respondent equitably;
- offer and coordinate Supportive Measures and other resources, as appropriate, for the Complainant and / or for the Respondent;
- notify the Complainant or, if the Complainant is unknown, the individual who reported the conduct, of the grievance procedures for discrimination based on sex and sex-based harassment. Explain to the Complainant his / her rights, discuss options regarding filing a Formal Grievance, as well as options regarding the Informal and Formal Resolution processes, as appropriate;
- notify the Respondent, if a Formal Complaint is made, of the grievance procedures for discrimination based on sex and sex-based harassment. Explain to the Respondent his / her rights, discuss options

- regarding the Informal and Formal Resolution processes, as appropriate;
- initiate and facilitate the Informal Resolution process, if available, appropriate, and requested by all Parties in response to a Formal Complaint;
 - determine whether to initiate a Formal Complaint of sex discrimination in the absence of a Complainant or the withdrawal of any or all of the allegations in a Formal Complaint;
 - record documentation of actions taken to meet Brenau University's obligations;
 - provide the Clery Administrator, upon request, relevant information regarding reported crimes for the Annual Security Report (ASR);
 - create and implement professional development opportunities and education to help prevent discrimination and ensure equal access in collaboration with appropriate university offices.

Emily Zank

Title IX Coordinator & Associate
Vice President for Academic Affairs
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770-534-6191
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Javius Morrow

Title IX Deputy Coordinator,
Adjunct Coordinator & Compliance Specialist
202 Boulevard NE Office 114
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Supportive Measures

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

Upon receipt of a Formal Complaint, the Title IX Coordinator or designee 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.

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.

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.

Brenau University does not disclose information about any Supportive Measures to persons other than the Party to whom they apply, including informing the Respondent of Supportive Measures provided to the Complainant, and vice versa, unless necessary to provide the Supportive Measures or restore or preserve a Party's access to the education program or activity. The Title IX Coordinator or designee issues a letter, typically via University email, to the Party for whom Supportive Measures are determined and administered. It is the responsibility of the Party to communicate the Supportive Measures to those who need to know and

to do so in a timely manner. The Title IX Coordinator or designee will communicate the Supportive Measures to appropriate stakeholders upon written request of the Party receiving Supportive Measures.

If the Complainant or Respondent is a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, with the Office of Accessibility Services to provide Supportive Measures to students with disabilities to determine how to best implement Supportive Measures.

Supportive Measures are implemented at the discretion of the Title IX Coordinator, Deputy Coordinator, or designee. Supportive measures may include, but are not limited to the list below, regardless of whether the Complainant and / or 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:

- Imposition of campus "No-Contact Order"
- Rescheduling of exams and assignments
- Providing alternative course / work completion options
- Change in class / work schedule
- Relocation of on-campus housing / office
- Limit an individual or organization's access to certain facilities or activities pending resolution
- Emergency removal per the guidelines for students, and administrative leave per Human Resources policies for employees
- Campus escort services

Advisor of Choice

Both Respondent and Complainant have the right to have an Advisor of choice. This person, who may change at any time a Party desires, is not responsible for the outcome of the matter, but helps the party understand the process and think through decisions. In addition, the Advisor conducts cross examination at the live hearing on behalf of the Party (as applicable). None of the following individuals will discuss a Formal Complaint with any Advisor directly: the Title IX Coordinator, Deputy Coordinator, Informal Resolution Mediators, Investigators, nor any other university employee privy to information regarding the case will not discuss said case with any Advisor. The only exception to this is when the Preliminary Report and the Final Report, as well as all other exhibits, are ready for distribution, the Title IX Coordinator will request directly a signed non-disclosure agreement from the Advisor and subsequently share the reports and evidence with the Advisor (at the discretion of each Party; an Advisor is not required until the Live Hearing).

Should a Party desire, a list of university employees trained as Advisors is available from the Title IX Coordinator or Deputy Coordinator. It is the responsibility of the Party to contact the potential Advisor and request that he/she serve in this capacity. It is the responsibility of the Complainant and Respondent to communicate with his/her Advisor regarding allegations, times and dates of meetings, hearings, outcomes and any other information regarding the case. Should either Party's Advisor cause the process to be excessively delayed, the university reserves the right to request a different Advisor.

At the conclusion of the formal resolution process, a live hearing is scheduled. If either the Respondent or Complainant does not have an Advisor present at the live hearing, the university will provide an advisor of the university's choice at no fee or charge. The Advisor is the only person who may conduct cross examination on the Party's behalf during the live hearing.

Advisors:

- may attend any meeting or hearing regarding the case with the respective Complainant or

Respondent, if invited by the respective Complainant or Respondent.

- may not participate directly in any hearing or meeting involving the case with one exception; Advisors must ask cross-examination questions on behalf of the Party he/she is advising.
- 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.
- may be a member of the university community, but is not required to be.
- may be an attorney, but is not required to be.
- may not address the Investigators, Title IX personnel, or the Hearing Panel directly.
- must conduct themselves with decorum at all times during the process.

Emergency Assistance

Call 911

Campus Safety & Security

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

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

Norcross Instructional Site
Scott Redmon, Site Director
(770) 446-0112
sredmon@brenau.edu

Confidential Health & Wellbeing Resources

The only Brenau University staff members who are able to keep the alleged Title IX prohibited conduct confidential include:

Employees of the Brenau University Center for Counseling & Psychological Services

North Atlanta Clinic
Lucinda Grapenthin, Director
470-228-8942
lgrapenthin@brenau.edu

Gainesville Clinic
J. Marshall Bruner, Director
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
Owens Student Center
102 Prior Street; Office 110
acorsojohnson@brenau.edu
770-297-5903

A confidential report is required by state law to notify child protective services and / or local law enforcement of suspected abuse of a minor under the age of 18 years of age.

External Support Resources

- Rape Response Crisis Line: (770) 503-7273 (Gainesville-based; Toll Free: 800-721-1999)
- National Sexual Assault Hotline: 800-656-HOPE [4673].
- National Domestic Violence Hotline: (800) 799-7233
- National Human Trafficking Hotline: (888) 373-7888

Promoting Healthy & Respectful Relationships

Sexual discrimination, including sex-based harassment, and violence harms individuals and disrupts the safety and well-being of the entire university community. Preventing these behaviors fosters an environment grounded in dignity, equity, and mutual respect. Every member of the Brenau University community has the opportunity to contribute toward a culture of consent and accountability. Promoting

healthy and respectful relationships begins with everyday actions that support awareness, empathy, and responsibility. More specifically, the following actions can be taken by anyone in order to further prevent sexual discrimination and a safe campus climate by:

- Educating yourself and others about consent, healthy communication, boundaries, and respectful relationships.
- Challenging harmful attitudes and behaviors—including stereotypes, or comments—that excuse or normalize sexual violence, harassment, or discrimination.
- Supporting others by listening without judgment and helping those who disclose these concerns access support and resources.
- Speaking up when you witness concerning behavior, and reporting incidents when necessary.

Prevention is a shared responsibility. Through awareness and action, all members of the community can help maintain an environment in which everyone feels safe, supported, and empowered.

Responding to Instances of Potential Sex-based Discrimination

If you recognize a risky situation, you may be able to safely intervene and prevent harm. Small actions such as the “5 Ds” can make a big difference:

1. Direct - Take immediate action (verbal or physical) if you feel safe to do so: “Are you ok? Do you want to leave?” or “That’s not ok. Please stop.”
2. Distract - Create a distraction and interrupt the situation without direct confrontation: ask for directions, spill a drink.
3. Delegate - Get help from someone else (professor, RA, campus security): “Can you go check on them?”
4. Delay - Check in on the person after the incident: “I saw what happened - do you need help?”
5. Document - Record what you see, but only if it’s safe, and with the goal of supporting the person harmed—not sharing publicly without consent.

Educational Resources:

- love is respect (loveisrespect.org) - offers educational information, support, and advocacy for those with questions or concerns about romantic relationships. More specifically, this site offers education regarding boundaries, consent, warning signs of abuse, and more. This a project of the National Domestic Violence Hotline, funded through a grant from a division of the U.S. Department of Health and Human Services.
- National Sexual Violence Resource Center (<https://www.nsvrc.org/>) - seeks to address and prevent sexual violence. Its website offers an extensive, free digital library of resources on bystander intervention, prevention practices, victim resources, and more.

Pregnancy and Parenting

The University is committed to supporting pregnant and parenting students and employees through equitable access to educational programs, activities, and employment. In accordance with Title IX of the Education Amendments of 1972, Brenau University prohibits sex discrimination, including discrimination related to pregnancy or parental status, including but not limited to childbirth, termination of pregnancy, or recovery therefrom.

A pregnant or parenting student or employee must be allowed to:

- continue accessing and participating in academic programs and activities;
- have excused absences and extended deadlines;
- take a leave of absence; be reinstated to the same academic / employment status upon return;
- access all university programs and activities, including extra- and co-curricular activities, and
- Protections against harassment or discrimination based on pregnancy or parenting status.

Potential academic adjustments for those with medical needs related to pregnancy and / or parenting include but are not limited to temporary permission for alternate completion options (IE zoom / remote attendance), revision in schedule, or modified deadlines. Adjustments such as larger desks or access to elevators can also be requested. For each situation, the adjustments are based on that person's specific needs and what options are available that will not fundamentally alter the academic program.

The Title IX Coordinator or Deputy Coordinator can help coordinate academic adjustments for the student in collaboration with appropriate university offices and individuals, including faculty and advisors. The Title IX Office can also assist employees with adjustments in collaboration with Human Resources. Note: no adjustments may or will be made that fundamentally alter the academic program.

Several lactation spaces are available for use. The Title IX Office can assist in securing a space for such purposes should one not be reasonably available near the student or employee's needs. Designated lactation spaces provide sufficient privacy (room lockable from the inside), offer at least one electrical outlet, a chair, and are in reasonable proximity to a sink; they are never located in restrooms.

Definitions

For the purpose of the Title IX Sexual Misconduct Policy, the University has adopted the following definitions:

- **Advisor** - any person of the Respondent or the Complainant's choosing to support him or her through the Title IX process. This person may be an attorney but does not have to be. The Party may choose a different Advisor at any time. A Confidential Employee cannot be appointed by Brenau University to be an Advisor for the Complainant or Respondent; however, a Confidential Employee can choose to be an Advisor if so requested by either the Complainant or Respondent.
- **Allegation** - a statement by a Complainant alleging an act of discrimination, harassment, or related misconduct.
- **Appeals Officer** - an individual who has been trained and given authority to review and make decisions on appeals of Formal Complaint or other grievance outcomes at the university.
- **Bias** - refers to a predisposition or preconceived opinion that prevents impartial judgment, which may be based on personal beliefs, experiences, or relationships.
- **Business Day** - refers to a day when Brenau University is open for business. This is generally Monday through Friday, from 8:30 a.m. until 5:00 p.m., and excludes weekends, holidays, and designated closures including but not limited to weather delays.
- **Character Witness** - a Witness who who testifies or provides information about another person's general reputation, personality, and moral character, rather than about specific facts of a case.
- **Coercion** - improper use of pressure to compel another individual to initiate or continue sexual activity against that individual's will. Consent cannot be obtained through coercion. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include, but are not limited to:
 - Threatening to harm oneself if the other Party does not engage in the sexual activity; or
 - When someone indicates, verbally or physically, that they do not want to engage in a particular

sexual activity, that they want to stop a particular activity, or that they do not want to go past a certain point of sexual interaction, continued activity or pressure to continue beyond that point can be coercive.

Brenau University evaluates the following in determining whether coercion was used:

- The frequency of the application of pressure,
- The intensity of the pressure,
- The degree of isolation of the person being pressured, and
- The duration of the pressure.

- **Complainant** - the person filing a Formal Complaint alleging he / she has been subjected to discrimination, harassment, or related misconduct
- **Confidential Employee / Resource** - an employee or division of Brenau University whose communications are privileged or confidential under Federal or State law. The employee's confidential status, for purposes of this part, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.

Note: for Clery Act compliance, Confidential Employees have a duty to report incidents of sexual misconduct to the director of Campus Safety & Security for the Annual Security Report. However, Confidential Employees are not obligated to report the details of the incidents including the names of potential Complainants and / or Respondents except as required by their license and professional ethics.

- **Confidentiality** - information shared by an individual with designated campus or community professionals will not be revealed to any other individual without the expressed permission of the individual. An individual who seeks confidential assistance may do so by speaking with professionals who have a legally-protected confidentiality.
- **Conflict of Interest** - occurs when a personal, professional, or financial interest could compromise or appear to compromise an individual's ability to make objective and unbiased decisions in their institutional role.
- **Consent** - agreement to an activity is knowingly and freely given and communicated, through words or actions, to create a mutual understanding regarding the conduction of sexual activity. Consent is not valid when it involves:
 - Physical force, threats, or intimidation;
 - Minors under the age of consent;
 - Persons whose mental disabilities prohibit sound judgment;
 - Persons physically or mentally incapacitated, either voluntarily or involuntarily, as a result of alcohol or other drug consumption; and
 - Individuals who are unconscious, unaware, or otherwise physically incapacitated.
 - Silence cannot be interpreted as consent. Lack of consent may also be communicated through the use of non-verbal expressions or actions indicating resistance. Consent may be withdrawn at any time; consent may be offered at any time. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.
- **Dating violence** - 34 USC 12291(a)(10) The term "dating violence" means violence committed by a person:

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- 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.
- **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.
- **Exculpatory evidence** - evidence that shows or tends to show a person's lack of involvement in an act, or evidence that can establish innocence.
- **Fondling** - see "sexual assault"
- **Force** - the use or threat of physical violence to require an individual to participate in an unwanted activity.
- **Formal Complaint** – a written request to Brenau University formally requesting for Brenau University to investigate and resolve alleged discrimination under Title IX. Formal Complaints must be signed by a Complainant or the Title IX Coordinator.
- **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.
- **Hearing Panel** – Decisionmakers who review the Final Report and all exhibits, confirms evidence is relevant and credible, and ultimately determines responsibility and any relevant sanctions and / or remedies through a Live Hearing.
- **Incapacitation** - a physical or mental state in which 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. Examples of incapacitation include, but are not limited to, individuals who: are asleep or unconscious; are unaware sexual activity is occurring; cannot understand the nature of the activity or communicate due to a mental or physical condition; or are under the influence of alcohol, drugs or other medication. Consumption of alcohol or other drugs alone is insufficient to establish incapacitation.

The impact of alcohol and drugs varies from person to person, and evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs impacts an individual's: decision-making ability; awareness of consequences; ability to make informed judgments; or capacity to appreciate the nature and the quality of the act.

It shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

- The Complainant was asleep or unconscious;
- The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity;
- The Complainant was unable to communicate due to a mental or physical condition.

Whether the Respondent reasonably knew or should have known the Complainant was incapacitated is evaluated using an objective reasonable person standard. The fact the Respondent was actually unaware of the Complainant's incapacity is irrelevant to this analysis. In particular, consent could not occur when:

- The Respondent failed to appreciate the Complainant's incapacitation or;
- The Respondent failed to take reasonable steps to determine the Complainant's incapacitation or;
- The Respondent's own incapacitation (from alcohol or drugs) caused the Respondent to misjudge the Complainant's incapacity.

It is the responsibility of each Party to be aware of the intoxication level of the other Party before engaging in sexual activity. In general, sexual activity while under the influence of alcohol or other drugs poses a risk to all Parties. If there is any doubt as to the level or extent of the other individual's intoxication, it is safest to forgo or cease any sexual contact or activity. Being intoxicated by drugs or alcohol is no defense to any violation of this Policy and does not diminish one's responsibility to obtain consent.

- **Incest** - see "sexual assault"
- **Inculpatory evidence** - evidence that shows or tends to show a person's involvement in an act, or evidence that can establish that the individual is responsible.
- **Informal Resolution Mediator** - an individual either internal or external to the University who has been trained and given authority to facilitate between the Complainant and Respondent mutually agreed upon conditions to resolve a matter than might reasonably constitute sex discrimination under Title IX using the Informal Resolution process. The conditions must also be acceptable to the University as determined by the Title IX Coordinator or designee.
- **Investigator** - someone assigned to gather evidence relevant to the matter to both determine if sexual discrimination, including harassment, allegations meet Title IX standards and to provide this information to the Hearing Panel to inform their determination of responsibility. In order to serve in this role, the individual must be free of conflict of interest or bias, and must have completed annual training.
- **Party** - a Complainant or Respondent.
- **Pregnancy and related conditions** - pregnancy, childbirth, termination of pregnancy, or lactation; medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
- **Preponderance of the evidence** - a finding that it is more likely than not that a violation occurred.
- **Privacy** - information related to a report of Prohibited Conduct will only be shared with a limited circle of individuals who "need to know" in order to assist in the assessment, investigation, or resolution of the

report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process to the extent permitted by law.

Brenau University is committed to protecting the privacy of all individuals involved in the investigation and resolution of reports and Formal Complaints under this Policy. Brenau University also is committed to assisting students, employees, and third parties in making informed choices. With respect to any report or Complaint under this Policy, Brenau University makes reasonable efforts to protect the privacy of participants, in accordance with applicable state and federal law, while balancing the need to gather information to take steps to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects.

- **Program or activity** - all of the operations of Brenau University.
- **Reasonable Person** - a reasonable person under similar circumstances and with similar identities to the Complainant.
- **Remedies** - measures provided, as appropriate, to a Complainant or any other person the university identifies as having had their equal access to Brenau University's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to Brenau University's education program or activity after the university determines sex discrimination occurred.
- **Respondent** - the person alleged to have participated in sexual misconduct as defined in Prohibited Conduct.
- **Sanctions** - consequences imposed on a Respondent following a Determination of responsibility under Title IX that the Respondent violated Brenau University's prohibition on sex discrimination.
- **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.
- **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.
- **Quid pro quo** - situation where an individual in a position of power demands something in exchange for sexual favors.
- **Stalking** - 34 USC 12291(a)(30) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.
- **Student** - a person who has gained admission to the University.
- **Remedies** - measures provided, as appropriate, to a Complainant or any other person Brenau University identifies as having had their equal access to Brenau University's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the education program or activity after the university determines that sex discrimination occurred.
- **Report** - notice of sex discrimination (including sexual harassment) made by any person, at any time, and by any means (in person, phone, mail or email) that results in the Title IX Coordinator or designee receiving the person's verbal or written report. Reports are not limited to the university's campus community and may come from others, such as on-campus visitors.
- **Respondent** - a person who is alleged to have violated Brenau University's prohibition on sex discrimination.
- **Retaliation** - intimidation, threats, coercion, or discrimination against any person by Brenau University, a student, or an employee or other person authorized by Brenau University to provide aid, benefit, or service under Brenau University's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing, including in an Informal Resolution process, the Formal Resolution process, and in any other actions taken by Brenau University. Nothing in this definition or this part precludes Brenau University from requiring an employee or other person authorized by Brenau University to provide aid, benefit, or service under Brenau University's education program or activity to participate as a witness in, or otherwise assist with, an investigation, proceeding, or hearing.
- **Stalking** - see "sexual assault"
- **Statutory Rape** - see "sexual assault"
- **Supportive Measures** - individualized measures offered as appropriate to the Complainant and / or the Respondent, as reasonably available, without unreasonable burden on either Party, not for punitive or disciplinary reasons, and without fee or charge. Supportive Measures are designed to restore and / or maintain the Parties' access to Brenau University's educational program and activities.
- **Third-Party** - someone not directly involved as a Complainant or Respondent, but who may be impacted by or have relevant information about the matter. This can include individuals who report incidents on behalf of others, or those who observe or become aware of the alleged Prohibited Conduct.