

Sexual Harassment, Sexual Assault, Sexual Misconduct, Relationship (Dating) Violence and Stalking Policy¹

Nondiscrimination Statement

Title IX of the Education Amendments of 1972 and other laws² prohibit discrimination on the basis of sex in employment and education programs and activities. Title IX protects all persons from sex discrimination, including sexual harassment and sexual violence. A school must respond when: (1) the school has actual knowledge of sexual harassment; (2) that occurred within the school's education program or activity; (3) against a person in the United States. Bethune-Cookman University (B-CU) prohibits discrimination based on sex in employment and education programs and activities. This policy applies to all students, employees, and volunteers and to conduct occurring in locations, events, or circumstances over which B-CU exercises substantial control over both (1) the respondent, and (2) the context in which the sexual harassment occurs, including on school grounds, any building owned or controlled by a student organization officially recognized by B-CU; and through technology resources provided by or used at B-CU or impacting a student or employee at a location owned, leased or controlled by B-CU or a recognized student organization.

B-CU will process all sex discrimination complaints it receives, including complaints of sexual harassment and sexual violence, to determine whether the conduct alleged in the complaint, if proved, would constitute sexual harassment as defined in applicable regulations.³ This includes complaints of sexual assault or harassment made by students and employees, and against students, employees, and volunteers. B-CU reserves the right to address potential disciplinary infractions that fall outside of the Title IX's scope under its student, employee (*staff handbook under revision*) and faculty codes of conduct and handbooks <https://www.cookman.edu/facultyStaff/FacultyResources/FH2019.pdf> <https://faculty.cookman.edu/currentstudents/studdev/dos/docx/StudentHandbook2019-2020.pdf>

B-CU will take appropriate action should it receive a formal complaint and has actual knowledge that any contractor, vendor, partner, or other affiliate has engaged in sex-based misconduct, up to and including termination of the business relationship.

A. Title IX Coordinators

Complaints of sexual assault, sexual harassment and other conduct prohibited under this policy and inquiries concerning the application of Title IX and its regulations should be directed to the B-CU Title IX Coordinator or Deputy Coordinators listed below:

Title IX Coordinator for Faculty/Staff/Students

Arletha McSwain, Ph.D.

HR Senior Training Specialist –Educational Technology

640 State Street

Daytona Beach, FL 32114

Email: mcswaina@cookman.edu

Phone Number: 386-481-2094

¹ Effective Date: August 14, 2020.

² Title IX of the Education Amendments of 1972, as amended, and its implementing regulations, 34 C.F.R. part 106 (“Title IX”); the Violence Against Women Reauthorization Act of 2013 (20 U.S.C. 1092(f)) (VAWA), also known as the Campus Sexual Violence Elimination Act (Campus SaVE Act); Title VII of the Civil Rights Act of 1964, as amended; and regulations published May 19, 2020, in [85 FR 30574](#) and [34 C.F.R. §§ 106.44-106.46; 106.51; 106.30](#).

³ Published at 34 C.F.R. § 106.30.

Deputy Title IX Coordinator for Athletics

Sandra Booker, Senior Associate Director of Athletics & Senior Woman Administrator
Center for Civic Engagement
740 W. International Speedway Blvd.
Daytona Beach, FL 32114
Email: bookers@cookman.edu

Deputy Title IX Coordinator for Students

Earnest Fingers, Ph.D.
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740 W. International Speedway Blvd.
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The Title IX Coordinator’s and Deputy Coordinators’ responsibilities include receipt and review of complaints, investigating or overseeing the investigation of complaints of alleged sexual misconduct or harassment; ensuring that consistent standards and practices apply to all investigations; being available to meet with students and employees who believe a violation of this policy has occurred; and assisting campus security or law enforcement as needed. Students and employees may also contact the U.S. Department of Education, Office for Civil Rights at: (800) 421-3481 or ocr@ed.gov.

B. Policy Definitions

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to B-CU’s Title IX Coordinator or any B-CU official who has authority to institute corrective measures on behalf of B-CU.⁴ There can be no imputation of knowledge based solely on vicarious liability or constructive notice, and the “actual knowledge” requirement is not satisfied when the only B-CU official with actual knowledge is the respondent.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. A complainant must be enrolled at or employed by B-CU when the formal complaint is filed.

Education program or activity includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that B-CU investigate the allegation of sexual harassment. 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 B-CU. A formal complaint may be filed with the Title IX Coordinator in person, by mail, by e-mail using the contact information for the Title IX Coordinator listed in this policy and other publications, or through an online portal provided for this purpose by B-CU that (1) contains the complainant’s physical or digital signature, or (2) otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

⁴ “Any B-CU official who has authority to institute corrective measures on behalf of B-CU” is defined as the Title IX Coordinator, the Deputy Coordinators, and the Executive Director of Human Resources, Vice President Enrollment Management or the President.

Incapacitated means a complainant is temporarily incapable of appraising or controlling his/her conduct due to the influence of a narcotic, anesthetic, alcohol, or other substance, including substances administered without consent, or due to any other act committed upon the victim without consent.⁵

Rape⁶ is a form of sexual violence that may or may not involve force or a threat of force, coercion, violence, or immediate bodily injury, threats of future retaliation, or duress. Rape means nonconsensual sexual intercourse or sexual penetration, which, in addition to intercourse, means nonconsensual oral or anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body. Any sexual penetration is sufficient to constitute rape. Sexual acts are considered non-consensual when they involve a person who is physically incapacitated,⁷ physically helpless,⁸ incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or due to a mental or physical disability is incapable of giving consent. This includes **acquaintance rape**, a form of sexual violence committed by an individual known to the victim. This includes a person the victim may have just met, such as at a party, been introduced to through a friend, or met on a social networking website.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. A respondent must be enrolled at or employed by B-CU when the formal complaint is filed.

Sex discrimination means an adverse action taken against an individual because of sex, including sexual harassment, sexual violence, domestic violence, dating violence, and stalking. Both men and women can file complaints of sex discrimination.

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) **“Quid pro quo,”** meaning an employee of B-CU conditioning provision of a B-CU aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- (2) **Unwelcome conduct** determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to B-CU's education program or activity; and/or one or more of the following:
 - (3) (a) **“Sexual assault,”**⁹ meaning any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent, including

Forcible Rape—(Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity;

Forcible Sodomy—Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity;

⁵ Persons who are drugged, incapacitated, or under the age of 16 are unable to give consent.

⁶ Rape is a form of sexual battery, defined under Florida law by § 794.011, Fla. Stat.

⁷ “Physically incapacitated” means bodily impaired or handicapped and substantially limited in ability to resist or flee. § 794.011, Fla. Stat.

⁸ “Physically helpless” means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act. § 794.011, Fla. Stat.

⁹ Meaning any offense classified as a forcible or nonforcible sex offense under the uniform crime reporting (UCR) system of the Federal Bureau of Investigation. 20 U.S.C. 1092(f) (6) (A) (v).

Sexual Assault With An Object—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity;

Forcible Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will or not forcibly or against the person’s will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity; and

- (3) (b) Unlawful, nonforcible sexual intercourse, including
- Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and
- Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent.
- (b) **“Dating violence,”**¹⁰ meaning 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:
- i. The length of the relationship.
- ii. The type of relationship.
- iii. The frequency of interaction between the persons involved in the relationship.
- “Dating violence” does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.
- (c) **“Domestic violence,”**¹¹ meaning 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; and/or
- (d) **“Stalking”**¹² includes electronic and cyberstalking and means 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.
- (e) **“Cyberstalking”** means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

Sexual harassment includes unwelcome verbal, nonverbal or physical conduct including but not limited to unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, written, or physical conduct of a sexual nature, such as sexual violence, sexual advances, and indecent exposure.

Sex Offense: Any sexual act directed against another person, without the consent of the complainant, including instances where the complainant is incapable of giving consent.

¹⁰ 34 U.S.C. 12291(a) (10).

¹¹ 34 U.S.C. 12291(a) (8).

¹² 34 U.S.C. 12291(a) (30).

Sexual Violence is a form of sexual harassment and means physical sexual acts, such as unwelcome sexual touching, sexual assault, sexual battery, rape, domestic violence, dating violence, and stalking (if based on sex), taken against an individual against his or her will and without consent or against an individual who is incapable of giving consent due to the use of drugs or alcohol, being a minor, or an intellectual or other disability. Sexual violence includes acts of physical force, violence, threats, and intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through drugs, alcohol, or other substance, or taking advantage of another person's incapacitation, including voluntary drug or alcohol intoxication. Both men and women can be victims of sexual violence.

Sexual Battery is a form of sexual violence and means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.¹³

Supportive measures means non-disciplinary, non-punitive, individualized services offered as appropriate, reasonably available, and without charge to the complainant or respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Consent means intelligent, knowing, and voluntary consent and does not include coerced submission.¹⁴ "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender. Once consent is withdrawn or revoked, the sexual activity must stop immediately.

- Consent must be *voluntary* and given without coercion, force, threats, or intimidation.
- Consent can be *withdrawn or revoked*. Consent to one form of sexual activity (or consent to sexual activity on one occasion does not constitute consent to other forms of sexual activity, other sexual acts, or sexual activity on another occasion. Consent cannot be given by a person who is *incapacitated*. A person cannot give consent if s/he is unconscious or coming in and out of consciousness. Examples of incapacitation include unconsciousness, sleep and blackouts. Whether an *intoxicated* person (due to using alcohol or other drugs) is *incapacitated* depends on the extent to which the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments is impaired.
- Being intoxicated by drugs or alcohol does not diminish a person's responsibility to obtain consent from the other party before engaging in sexual activity. Factors to be considered when determining culpability include whether the person knew, or whether a reasonable person in the accused's position should have known, that the victim could not give, did not give, or revoked, consent; was incapacitated; or was otherwise incapable of giving consent.

C. Prohibited Conduct

¹³ § 794.011, Fla. Stat.

¹⁴ § 794.011, Fla. Stat.

Any conduct by an employee, student, or volunteer that denies or limits the ability of a student or employee to participate in or receive the benefits, services, or opportunities of employment or any B-CU program or activity based on sex is prohibited. This includes any circumstance where:

1. An employment or educational decision or benefit is conditioned on submission to unwelcome sexual advances or conduct;
2. Submission to, or rejection of, unwelcome sexual conduct is used as a basis for denying employment or an opportunity to participate in or benefit from a B-CU program or activity;
3. Conduct has the purpose or effect of unreasonably interfering with, denying or limiting a student's ability to participate in or benefit from any school program or activity or a term, condition or benefit of employment
4. Conduct alters the educational environment to the degree that it adversely affects the student's ability to participate in or benefit from any school program whether or not that student is the target of the harassment;
5. An instructor, administrator, volunteer, or other person in a position of authority engages in sex discrimination or sexual harassment of a student or employee; and/or
6. A student or a group of students engages in sexual harassment of another student or students.

The following are examples of behaviors that are prohibited under this policy. This is not intended to be an exhaustive list:

7. Unwelcome sexual flirtations, advances or propositions;
8. Derogatory, vulgar or graphic written or oral statements regarding one's sexuality;
9. Unwanted touching of an individual's body;
10. Attempted or actual physical assault;
11. Any nonconsensual sexual act, including but not limited to, rape, sexual assault, sexual battery and sexual coercion;
12. Unwelcome sexual comments, innuendoes, suggestions or jokes;
13. Display of sexually suggestive pictures or objects;
14. Domestic violence, dating violence, sexual violence, and stalking, including electronic and cyberstalking;
15. Sending text messages, e-mails, or other electronic communications with nude or sexually suggestive photos, videos, or other images, including revenge porn or distribution of nude or sexually explicit images; and
16. Sending nude or sexually suggestive images over the Internet.

This policy specifically includes electronic communications, including but not limited to phone calls, text messages, e-mail, and social media communications such as Instagram, Snapchat, Twitter, and Facebook.

D. Reporting sexual misconduct and filing a complaint

Where to report or file a complaint. Sexual assault, sexual harassment and other behavior prohibited by this policy should be reported to:

Dr. Arletha McSwain, Title IX Coordinator, HR Senior Training Specialist-Education Technology, at 386-481-2094 mcswaina@cookman.edu

Sandra Booker, Deputy Title IX Coordinator, Associate Director of Athletics & Senior Woman Administrator, at 386-481- 2212 or bookers@cookman.edu

Dr. Earnest Fingers, Deputy Title IX Coordinator, Students at 386-481-2483 fingerse@cookman.edu

Reporting sexual harassment. Any person may report sexual harassment (whether or not the person reporting is the person alleged to be the victim of sexual harassment) by using the contact information listed for the Title IX Coordinator, and such a report may be made at any time (including during non-business hours) by using the above-listed telephone numbers or email addresses, or by mail to the listed office address. Third party (including “bystander”) reporting, and anonymous reporting (by the complainant or by a third party) triggers response obligations.¹⁵

Complaint process. Upon receipt of a complaint, the Title IX Coordinator must contact the complainant to discuss supportive measures (with or without the filing of a formal complaint), consider the complainant’s wishes with respect to supportive measures, and explain to the complainant the process for filing a formal complaint. The Title IX Coordinator must also determine whether the allegations, if true, would constitute a violation of Title IX. If the conduct alleged does not meet the definition of Title IX sexual harassment, B-CU has discretion to pursue disciplinary action under another provision of its faculty, staff or student code of conduct.¹⁶

Any B-CU official who has authority to institute corrective measures on behalf of B-CU receiving a report of sexual harassment is responsible for reporting it to the Title IX Coordinator.¹⁷ Failure to comply with this policy shall be grounds for disciplinary action, up to and including termination.

What to expect. Upon (a) the Title IX Coordinator’s or Deputy Coordinators’ receipt of a complaint, or (b) notice of alleged conduct implicating this policy from a B-CU official who has authority to institute corrective measures on behalf of B-CU,¹⁸ the Title IX Coordinator, will meet with the complainant, provide a copy of this policy, and explain:

1. The importance of seeking immediate medical attention for sexual assaults;
2. The importance of preserving evidence;
3. The availability of supportive measures even if no formal complaint is filed;
4. The availability of supportive measures for the complainant and respondent before or after the filing of a formal complaint;
5. The obligation to keep supportive measures confidential unless confidentiality impairs B-CU’s ability to provide them;

¹⁵ 34 C.F.R. § 106.8(a).

¹⁶ 34 C.F.R. § 06.45(b) (3) (i).

¹⁷ Whether an individual is an “official with authority” is a legal determination that depends on the specific facts relating to a recipient's administrative structure and the roles and duties held by officials in the recipient's operations. 85 Fed. Reg. 30039. B-CU officials who have authority to institute corrective measures on behalf of B-CU consist of the Title IX Coordinator, the Deputy Title IX Coordinators, the Director of Human Resources, and the University President.

¹⁸ See footnote 15, above.

6. The right to report a crime to campus security or local law enforcement;
7. The right to *not* report a crime to law enforcement or file criminal charges;
8. The right to simultaneously file both a criminal complaint with campus security or local law enforcement and a formal institutional Title IX complaint;
9. The right to assistance from B-CU officials with filing a criminal complaint if assistance is requested;
10. If a formal complaint is filed, initial review by the Title IX Coordinator or a designee to determine whether, if true, the allegations would constitute a violation of Title IX;
11. Options for informal and formal resolution if a complaint proceeds beyond the initial review process;
12. Available health care, victim advocacy, mental health, and legal assistance resources and counseling services available both on and off campus, including the campus health center, the student services center, which can be found here <https://www.cookman.edu/currentstudents/studdev/healthWellness/index.html> and sexual assault resource centers, and pastoral counselors, which can be found here <https://www.cookman.edu/currentstudents/studdev/religiouslife/index.html>
13. Even if a complainant asks B-CU not to take any action, the University may be obligated to investigate the complaint; and
14. Prohibitions against retaliation

Complaints signed by the Title IX Coordinator.¹⁹ The only B-CU official authorized to initiate the grievance process against a respondent is the Title IX Coordinator (by signing a formal complaint). The Title IX Coordinator may, under some circumstances, initiate a grievance process when a complainant does not wish to participate. Such a conclusion can only be reached by the specially trained Title IX Coordinator, and only when specific circumstances justify that action. The Title IX Coordinator will only initiate a grievance process against the complainant's wishes if doing so is not clearly unreasonable in light of the known circumstances. The reasons for the decision must be documented.

Temporary removal of the respondent on an emergency basis. B-CU is authorized to remove a respondent from its education programs or activities on an emergency basis, with or without a grievance process being pending. In this event, the respondent must be given post-removal notice and an opportunity to challenge the removal.

Confidentiality. B-CU will make reasonable efforts to preserve complainants' and respondents' privacy and will only disclose information regarding complaints under this policy on a need to know basis, primarily to persons who are responsible for investigation, evaluation and reporting requirements.

B-CU cannot require the complaining or responding student to maintain confidentiality.

E. B-CU's Grievance Process

B-CU's grievance process consists of: (1) an investigation; (2) a live hearing; (3) an appeal; and (4) imposition of sanctions and remedies. The grievance process may not require, allow, rely upon, or use questions or evidence that constitute or seek disclosure of information protected by a legally recognized privilege, including 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 B-CU obtains that party's voluntary, written consent.

¹⁹ 85 Fed. Reg. 30045-30046.

If a party is not an “eligible student,” as defined in 34 C.F.R. § 99.3, the recipient must obtain the voluntary, written consent of a “parent” as defined in 34 C.F.R. § 99.3.

1. Investigation

A formal complaint must be filed before an investigation begins. A formal complaint is:

- (a) A written document filed by a complainant alleging sexual harassment against a respondent and requesting that B-CU investigate an allegation of sexual harassment, or
- (b) A complaint signed by the Title IX Coordinator.

Formal complaints will be investigated by the Title IX Coordinator or a designee. At its discretion, B-CU can utilize external personnel to serve as an investigator. Other University officials may assist in gathering facts during the investigation and information from B-CU campus security or local law enforcement officials may be considered. Individualized support services must be offered to both the complainant and respondent involved in an alleged incident of sexual misconduct prior to an investigation or while an investigation is pending. Both parties must be given the same opportunity to present relevant evidence and witnesses, including expert and character witnesses. Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

At the time a student or employee files a formal complaint, the student or employee must be employed by B-CU or currently enrolled in or attempting to participate in a B-CU education program or activity. In order for the Title IX Coordinator to sign a complaint, the complainant and respondent must be employed by or enrolled at B-CU.

If a respondent is no longer enrolled at or employed by B-CU, or specific circumstances prevent B-CU from gathering evidence sufficient to investigate the complaint or its allegations, the Title IX Coordinator can dismiss the formal complaint or any allegations therein.

Notice of allegations. Upon receipt of a formal complaint, the Title IX Coordinator must provide the following notice to the parties who are known:

- (a) Written notice of the grievance process;
- (b) Written notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. “Sufficient details” include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;
- (c) A statement that the respondent is presumed not responsible for the alleged conduct;
- (d) A statement that a determination regarding responsibility is made at the conclusion of the grievance process;
- (e) Written notice that the parties may have an advisor of their choice, who may be an attorney;
- (f) A statement that the parties may inspect and review evidence; and
- (g) Any provision in the code of conduct or institutional handbooks that prohibit knowingly making false statements or knowingly submitting false information during a University investigation (the grievance process).
- (h) If, during an investigation, B-CU decides to investigate allegations about the complainant or respondent that are not included in the notice described by (a)-(g), above, B-CU must provide notice of the additional allegations to the parties whose identities are known.

Investigation of a formal complaint. When investigating a formal complaint and throughout the grievance process, the Title IX Coordinator or designee, including an external investigator, must:

- (a) Ensure that the burden of proof and the burden of gathering evidence rest on B-CU;
- (b) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- (c) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
- (d) Provide the parties the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding;²⁰
- (e) Provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- (f) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which B-CU does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- (g) Prior to completion of the investigative report, the Title IX Coordinator must send to each party and the party's advisor the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- (h) The Title IX Coordinator must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- (i) Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to a hearing regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for review and a written response;
- (j) The investigator may exclude any third party (including legal counsel, the complainant and respondent) from witness interviews; and
- (k) Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

Dismissal of a formal complaint. A formal complaint may be dismissed by the Title IX Coordinator:

- (a) If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in 34 C.F.R. § 106.30 even if proved, did not occur in B-CU's education program or activity, or did not occur against a person in the United States, B-CU must dismiss the formal complaint under Title IX. Such a dismissal does not preclude action under another provision of B-CU's code of conduct, personnel or faculty handbooks.

²⁰ B-CU establishes the following restrictions regarding the extent to which the advisor may participate in hearing proceedings, which apply equally to both parties: the advisor is limited to advising a party and cross-examination of witnesses.

- (b) B-CU may dismiss a 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 B-CU; or specific circumstances prevents B-CU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- (c) Upon a dismissal required or permitted by this section, B-CU must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Consolidation of formal complaints. B-CU has discretion to consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

Cooperation. All faculty, staff, volunteers, and students are required to cooperate in the investigation process. Refusal to cooperate will result in disciplinary action based on failure to cooperate in an official B-CU investigation for employees and volunteers, and disciplinary action potentially leading to dismissal.

Evidentiary/fact relevance determinations. The Title IX Coordinator/Investigator has discretion to determine whether a proffered witness or documentary information would be relevant or helpful to the investigation.

Relevant Information and Directly Related Evidence for Investigation. Prior to the hearing, B-CU will provide the parties an equal opportunity to inspect and review “any evidence...directly related” to the allegations, including inculpatory and exculpatory evidence, and regardless of whether B-CU intends to rely on the evidence, and regardless in making a determination of responsibility.

The Title IX Coordinator or investigator may collect and consider the following types of information:

- Statements by the complainant and respondent about the alleged incident(s);
- Statements by witnesses to the alleged incident(s);
- Evidence about the credibility of the alleged victim and the alleged harasser;
- Evidence that the alleged harasser has been found to have harassed other victims;
- Evidence that the alleged victim has made false allegations against other individuals;
- Evidence as to the alleged victim's reaction or behavior after the alleged harassment;
- Evidence as to whether the alleged victim filed a complaint or took other action to protest the conduct soon after the incident occurred; and
- Other evidence of the harassment (*e.g.*, reporting conduct to parents, counselors or friends, or medical records)
- The fact of a current or previous consensual dating or sexual relationship between the parties will not imply consent or preclude a finding of sexual violence.
- Medical treatment records and other privileged information will only be considered or disclosed with the written consent of the complainant or respondent.

During the investigation, the complainant and respondent are entitled to an advisor of his or her choice. An advisor can be:

- A parent
- A friend
- A trusted faculty or staff member
- A counselor
- An attorney

An advisor cannot be:

- A witness; or
- Someone who may influence a party's account or statement of events.

Pending criminal matters. The internal investigation will proceed whether a related criminal matter is pending or not. If there is an ongoing criminal investigation, B-CU will *not* wait for the conclusion of the criminal investigation or criminal proceeding to begin its own Title IX investigation. However, if requested by law enforcement, following notice to both parties, B-CU may temporarily delay the fact-finding portion of a Title IX investigation while the police or other law enforcement officials are gathering evidence.

Time Frame for Investigation and Completion of Report. There is no fixed time frame under which B-CU must complete a sexual misconduct investigation, hearing or informal resolution. The investigation must be completed within a "reasonable time" taking into account the facts and circumstances of the complaint, the number and location of witnesses, and the institution's schedule, including exams, closures for institutional breaks, or other reasons.

Hearing referral. When the complaint involves students, the investigator's final report will be submitted to Vice President for Enrollment Management for review and determination as to proceeding with a hearing before a Title IX-trained hearing panel or Title IX-trained decision maker. Whether to utilize a hearing panel or individual decision maker at the hearing will be decided at the discretion of B-CU. When the complaint involves employees, the investigator's final report will be submitted to the Title IX Coordinator for review and determination as to proceeding with a live hearing, provided that s/he was not the investigator of the complaint. If the Title IX Coordinator was the investigator for the complaint, the Executive Director for Human Resources will review and determine whether to proceed with a live hearing before a Title IX-trained hearing panel or individual, Title IX-trained decision maker.

2. Live Hearings

The grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.

In addition:

- (a) During the hearing, there must be an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.
- (b) At the request of either party, B-CU will provide for a virtual live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

- (c) An advisor must be allowed to attend disciplinary hearings in an advisory capacity and to cross-examine witnesses.
- (d) If a party does not have an advisor for the live hearing, B-CU will provide one at no charge to conduct cross-examination on behalf of that party. An advisor may be, but is not required to be, an attorney.
- (e) Only relevant cross-examination and other questions may be asked of a party or witness.
- (f) The decision maker at the hearing will determine whether each question asked during cross examination is “relevant” and whether it violates rape shield law protections *before* it is answered.
- (g) The decision-maker must provide on-the-spot explanation for any decision to disallow a question.
- (h) The decision maker will be barred from considering any statements of any party or witness who refuses to sit for cross-examination in reaching a determination of responsibility.
- (i) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- (j) The fact of a current or previous consensual dating or sexual relationship between the parties does not itself imply consent or preclude a finding of sexual violence.
- (k) If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- (l) Live hearings may be conducted with all parties physically present in the same geographic location or, at B-CU's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- (m) B-CU must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

Evidentiary Standard. A "preponderance of the evidence" standard will be used.

Attendance at hearings. Only the advisor can attend the hearing with a party, unless someone else is required to attend by law. During the hearing, the Title IX panel or the hearing officer may be advised by legal counsel or a representative from Human Resources or Student Affairs.

The Panel shall have no authority to compel the attendance of witnesses.

Determinations

A panel or individual hearing officer who is not the Title IX Coordinator must determine whether it is more likely than not that a violation of policy occurred and issue a written decision stating whether the allegations

were substantiated, and if so, recommended disciplinary sanctions and remedial measures. For each violation charged, the decision must include specific findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of B-CU's Title IX policy. For each violation charged, there must be a written determination by the decision maker(s) that includes:

- (A) The allegations potentially constituting sexual harassment;
- (B) The procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- (C) Findings of fact supporting the determination;
- (D) Conclusions regarding the application of B-CU's code of conduct, personnel and faculty handbooks to the facts;
- (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to B-CU's education program or activity will be provided by the recipient to the complainant; and
- (F) Procedures and bases for appeal.

The hearing decision concerning responsibility will be provided to both parties simultaneously, along with any restrictions or sanctions. The determination regarding responsibility becomes final either on the date that the recipient provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

If the complaint is against a faculty member or other employee, the hearing decision will be submitted to a Title IX panel or individual Title IX hearing officer, who will make a decision concerning restrictions or sanctions.

3. Appeals

All appeals will be on the record. Parties have the same opportunity to appeal based on any of three grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Any party may file an appeal within five (5) calendar days of receipt of the decision. Appeals filed after the deadline will not be considered. The institutional designee will issue a decision in writing no later than thirty (30) days after the appeal has been submitted. Issuance of a decision may be temporarily delayed or limited extensions of time frames allowed for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The maximum period for deciding an appeal will be sixty (60) days. As to all appeals, B-CU will:

- (a) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

- (b) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- (c) Ensure that the decision-maker(s) for the appeal not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent;
- (d) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- (e) Issue a written decision describing the result of the appeal and the rationale for the result; and
- (f) Provide the written decision simultaneously to both parties.

4. Remedies and possible sanctions

Remedies may include the same individualized services used as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent. The range of possible disciplinary sanctions B-CU may implement following a determination of responsibility are the sanctions for disciplinary misconduct set forth for faculty, staff, and students in B-CU’s codes of conduct and handbooks for faculty, staff and students. This ranges from probation up to and including termination for faculty and staff, and suspension or expulsion for students.

Individualized services must be offered as appropriate to either or both the complainant and respondent involved in an alleged incident of sexual misconduct. If a violation of this policy is proven by a preponderance of the evidence (*i.e.*, that it is more likely than not that sexual harassment occurred), immediate action, including protective measures, will be implemented to end the harassment and prevent its reoccurrence. For students, once a student is found responsible for a sexual misconduct violation, before a sanction is imposed, B-CU should consider: (1) how best to enforce its Code of Conduct; (2) the impact of separating a student from his or her education; and (3) whether the proposed sanction is a proportionate response to the violation. In all instances, the Title IX Coordinator will follow up and communicate with the complainant at the conclusion of the investigation.

Any sanction imposed on the respondent of sexual assault or harassment that relates directly to the complainant, such as a "no contact" order, transfer to different classes or housing, or a suspension will be disclosed to the complainant. The complainant and respondent will not be notified of the individual remedies offered or provided other than no-contact orders. In cases of alleged sexual violence, the result of the hearing and any sanction imposed with disclosed to both parties regardless of whether the hearing concludes an assault was committed.

F. Training

Any individual serving as a Title IX Coordinator, investigator, decision-maker, and persons designated by B-CU to facilitate the informal resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must receive training on the following:

1. The definition of sexual harassment in 34 C.F.R. §106.30;
2. The scope of the recipient's education programs and activities;
3. How to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes;
4. The presumption that the respondent is not responsible for the alleged conduct; and
5. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Decision-makers must also receive training on:

6. Any technology to be used at a live hearing; and
7. Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

All training provided by the Title IX Coordinator must be gender neutral and free of any sex bias or sex stereotyping. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

G. Informal Resolution

B-CU offers informal resolution processes such as mediation as alternatives to a full investigation and adjudication of the formal complaint. Informal resolution requires that both parties give voluntary, written consent. Informal resolution cannot be used for complaints against employees alleging sexual harassment of students. In addition:

- (a) B-CU will not require the parties to participate in an informal resolution process and will not offer an informal resolution process unless a formal complaint is filed.
- (b) At any time prior to reaching a determination regarding responsibility B-CU may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that —
 - (i) The parties receive written notice disclosing the allegations, and the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations;
 - (ii) Either party has the right to withdraw from informal resolution and resume a grievance process at any time before agreeing to a resolution;
 - (iii) The parties will not be required to work out problems directly with one another and will instead be facilitated by a mediator provided by B-CU.
 - (iv) Informal resolution processes can be used to resolve sexual misconduct cases if both parties agree.
- (c) The parties are free to negotiate the terms of the agreement such as confidentiality and sanctions, and once entered into, the informal resolution agreement becomes binding according to its terms.
- (d) Individuals mediating or facilitating informal resolution must be free from conflicts of interest, bias, and trained to serve impartially.
- (e) Parties must be advised in writing and fully aware of the consequences of choosing informal resolution, including the records that will be maintained, that could or could not be shared, and the possibility of confidentiality requirements as a condition of entering into a final agreement.

The informal resolution process will be resolved within a reasonable period of time and may be temporarily delayed or limited extensions of time frames allowed for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

H. Non-retaliation

Retaliation against a student, employee, or other individual who reports or complains about sex discrimination to an appropriate school official or participates in a report, investigation or proceeding involving a claim or allegation under this policy because he or she made a complaint, testified, or participated in an investigation or proceedings is prohibited.

J. Dissemination of policy

This policy must be distributed to:

1. Students
2. Administrators, faculty, other employees, and volunteers
3. Applicants for admission
4. Application for employment

This policy must be available:

1. On the University website
2. In hard copy at multiple campus locations
3. In both printed and electronic publications, including student, staff, and faculty handbooks, codes of conduct, and catalogs

K. Record keeping

For each response, B-CU must maintain all records of Title IX proceedings for seven (7) years. This includes records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

In each instance, B-CU must document:

- (a) the basis for its conclusion that its response was not deliberately indifferent, and
- (b) document that it has taken measures designed to restore or preserve equal access to B-CU's education program or activity.
- (c) If a complainant is not provided with supportive measures, B-CU must document the reasons why its response was not clearly unreasonable in light of the known circumstances.
- (d) The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.

References:

[Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#), Final Rule, 34 C.F.R. Part 106

[Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance](#), 85 Fed. Reg. 30026

The [Violence Against Women Reauthorization Act of 2013](#), (VAWA), also known as the Campus Sexual Violence Elimination Act (Campus SaVE Act)

[Title IX of the Education Amendments of 1972](#), as amended

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended [Title IX Legal Manual](#), U.S. Department of Justice Civil Rights Division

[Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties](#), U.S. Department