

COMPLAINT GRIEVANCE PROCESS AND PROCEDURES FOR INSTANCES OF SEXUAL HARASSMENT I

I. Introduction and General Procedures

Bowie State University (“University”) is committed to providing a safe, non-discriminatory environment for all of its community members including students, staff, faculty, and third- party guests. These procedures outline the process the University will follow to resolve complaints of Sexual Harassment I as defined in the University’s Sexual Harassment and Other Sexual Misconduct Policy.

The Title IX Coordinator oversees compliance with Title IX of the Education Amendments Act of 1972, the University’s Sexual Harassment and Other Sexual Misconduct Policy, the University’s Complaint Grievance Process and Procedures for Instances of Sexual Harassment I (“Sexual Harassment I Grievance Process”) and the University’s Complaint Grievance Process and Procedures for Instances of Other Sexual Misconduct (“Other Sexual Misconduct Grievance Process”). In accordance with all applicable state and federal laws and University policies, the University will address all complaints promptly, fairly and impartially.

This document outlines the process for the University’s administrative grievance process for instances of sexual harassment I as defined by the University’s Sexual Harassment and Other Sexual Misconduct policy. It is neither a criminal nor a legal process. As such, the University does not use the same standards of evidence that are required for legal proceedings. Parties have the right to file a criminal report with the local law enforcement agency to pursue criminal charges. The University will assist any party who is interested in filing criminal charges with locating and contacting the correct law enforcement agency. Parties may also have options to file a civil action in court.

The University strives for consistency in following the procedures set forth in this document, yet recognizes that the unique circumstances of any particular case may require some flexibility. Thus, the University reserves the right to adapt these procedures to meet the unique circumstances of each case, while preserving transparency and fairness for all Parties and maintaining the integrity of the Grievance Process.

II. Participant in the process/Defined Terms

- A. Complainant:** an individual who is reported to have experienced sexual harassment I.
- B. Respondent:** an individual alleged to be the perpetrator of conduct that could constitute sexual harassment I.
- C. Reporting Party:** any person who reports alleged sexual harassment I or a violation of the Sexual Harassment and Other Sexual Misconduct policy. A reporting party may or may not be the Complainant.
- D. Parties:** a term that refers to the Complainant and the Respondent collectively.
- E. Witness:** a person who has direct or indirect knowledge related to an alleged incident of sexual harassment I.
- F. Advisor:** an individual chosen by the Complainant or Respondent to provide support throughout the Resolution Process. The advisor may attend all hearings, meetings, and interviews; have private consultations with the student during hearings, meetings, and interviews, except during questioning of the student at a hearing and; assist the student with exercising any rights during the disciplinary proceedings. The advisor may be anyone of the Party's choice, including and in addition to an attorney. In any case, advisors and attorneys are prohibited from speaking on behalf of the student during any hearing, meeting, interview, or appeal proceeding except to conduct cross-examination during the hearing.
- G. Title IX Coordinator:** an employee of the University who is responsible for ensuring the University's compliance with federal Title IX guidelines. The Title IX Coordinator is also responsible for ensuring compliance with the University's Sexual Harassment and Other Sexual Misconduct policy and investigating allegations of violations of the Sexual Harassment and Other Sexual Misconduct policy
- H. Hearing Officer(s):** the individual or individuals presiding over a Hearing.
- I. Supportive Measures:** are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Parties before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.
- J. Formal Complaint:** is a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment I against a Respondent and requesting that the institution investigate the allegation.
- K. Actual Knowledge:** means notice of Sexual Harassment I or allegations of Sexual Harassment I to the Title IX Coordinator or to any University official who has authority to institute corrective measures on behalf of Bowie State University.

III. General Sexual Harassment I Complaint Grievance Process Considerations

A. Participation in the Process

The University encourages all Parties to participate in the Sexual Harassment I Grievance Process. In order for the University to fully investigate a complaint and/or enable the Respondent(s) to respond to the allegations in a meaningful way, the University may require disclosure of the Reporting Party's participation and/or identity. The Respondent has the right to know the identity of the Complainant, if different from the Reporting Party. If a Complainant chooses not to participate, the University will be limited in the actions it can take to resolve the complaint. In most cases, it will not be possible for the University to take disciplinary actions without the participation of the Complainant.

When individuals report allegations of Sexual Harassment I to the University and do not consent to the disclosure of their names and/or do not disclose the identity of the alleged Respondent(s) or identifiable information about the alleged Respondent(s), the University's ability to respond may be limited. In cases where a Complainant requests anonymity or does not wish to proceed with an investigation, the University will attempt to respect those requests. In certain cases, the Title IX Coordinator may determine that the University must proceed with the Sexual Harassment I Grievance Process to protect the safety or well-being of the broader University community.

B. Privacy and Sharing Information

The University considers complaints and all evidence obtained during the investigation of a complaint to be private matters between the Parties involved. The University will protect the privacy of all parties to the best of its ability but cannot guarantee full confidentiality. The University is obligated by law to share all relevant evidence gathered related to a complaint with the Parties. The University will share information related to complaints and investigations with individuals who are not a party to a complaint only when that person has a legitimate need to know.

The University reserves the right to disclose information regarding the case in accordance with FERPA and other applicable laws.

C. Retaliation

It is a violation of the University's Sexual Harassment and Other Sexual Misconduct policy to retaliate against any individual making a complaint of Sexual Harassment I, and/or for participating in the investigation of an allegation of Sexual Harassment I. Any person committing retaliation is subject to disciplinary action independent of any sanction or Supportive Measure imposed because of the underlying Sexual Harassment I. Promptly report retaliation to the Title IX Coordinator.

D. Case Resolution Timeline

The University seeks to address complaints of Sexual Harassment I promptly. Usually, investigations conclude within sixty (60) business days after the University has receipt of a Formal Complaint. The Title IX Coordinator may extend this time when necessary and for good cause. The hearing proceedings will usually conclude within twenty (20) business days after conclusion of the investigation. The Hearing Officer may extend this time when necessary and for good cause. The University will notify Parties if the investigation and proceedings require more than the 80-day timeframe.

E. Conflicts of Interest

In instances of Sexual Harassment I, the Title IX Coordinator may also serve as an investigator. As an investigator, the Title IX Coordinator is a neutral, fact-finder who investigates complaints in a fair and impartial manner. Parties may raise potential conflicts of interest or perceived bias in writing, within two (2) business days following notice of an investigation. The Director of Equity Compliance will determine whether a conflict of interest exists. If the Director of Equity Compliance determines that a conflict of interest does exist, the Office of Equity Compliance will appoint an individual other than the Title IX Coordinator to serve as the investigator.

Additionally, the University requires that all individuals involved in the Sexual Harassment I Grievance Process including all decision-makers, hearing officers, appeal officers, and any person designated to facilitate an informal resolution, serve free from any bias or conflicts. Parties may raise potential conflicts of interest or perceived bias to the Title IX Coordinator, in writing, within two (2) business days following notice of a hearing, appeal, or informal resolution meeting. The Title IX Coordinator will determine whether a conflict of interest exists. If the Title IX Coordinator determines that a conflict of interest does exist, the Title IX Coordinator will appoint an individual other than the one with the conflict of interest to serve in their role.

F. Standard of Evidence

The University will use a preponderance of evidence standard to resolve complaints of Sexual Harassment I. This is the standard used to resolve other Student Code of Conduct violations. The preponderance of evidence standard requires that it is more likely than not that the Respondent violated the University policy prohibiting Sexual Harassment or Other Sexual Misconduct. It is important to understand that the University does not make a determination on whether or not the Respondent is responsible for violating the law. The University's findings are in regards to violations of University policy only.

G. Communications between the University and the Parties

The primary communication method used to inform the Parties of the investigation and Sexual Harassment I Grievance Process is their Bowie State University email

address. It is the responsibility of the Parties to check their Bowie State University email, with the exception of the use of an alternative email address provided for a non-University affiliate, contract employee, etc. that may be provided to the Office of Equity Compliance during the intake process. The University can proceed with its investigation without the response and/or participation of the Parties and their witnesses.

IV. Parties' Rights

A. Complainant's Rights

- Right to be treated with dignity, respect, and sensitivity by university officials throughout the complaint process
- Right to the presence of no more than two (2) people, including an advisor of the Complainant's choice – which can be an attorney, throughout the Sexual Harassment I Grievance Process
- Right to a fair and impartial investigation
- Right to prompt and equitable disciplinary resolutions
- Right to be heard
- Right to participate in disciplinary process, which includes the right to present testimony, questions to be posed to the other party, and other evidence. It also includes the right to access all evidence obtained during the investigation by the University.
- Right to review all evidence, inculpatory and exculpatory, for at least ten (10) calendar days and provide a written response to the investigator challenging any piece of evidence.
- Right to review the investigative report for at least ten (10) calendar days before a hearing
- Limited right to appeal any findings of responsibility as outlined by the appeal process in this document

B. Respondent's Rights

- Right to be treated with dignity, respect, and sensitivity by university officials throughout the Grievance process
- Right to the presence of no more than two (2) people, including an advisor of the Respondent's choice, which can be an attorney, throughout the Grievance Process

- Right to a presumption of innocence until determined responsible at end of Sexual Harassment I Grievance process
- Right to be advised of the alleged charges
- Right to a fair and impartial investigation
- Right to prompt and equitable disciplinary resolution process
- Right to be heard
- Right to participate in disciplinary process, which includes the right to present testimony, questions to be posed to the other party, and other evidence. It also includes the right to access evidence obtained during the investigation by the University.
- Right to review all evidence, inculpatory and exculpatory, for at least ten (10) calendar days and provide a written response to the investigator challenging any piece of evidence.
- Right to review the investigative report for at least ten (10) calendar days before a hearing.
- Limited right to appeal any findings of responsibility as outlined by the appeal process in this document

V. Reporting Sexual Harassment I

A. Time Limitations for Reporting Sexual Harassment I

The University does not have a time limit for reporting Sexual Harassment I or invoking the Sexual Harassment I Grievance Process. However, prompt reporting enhances the University's ability to investigate and gather relevant physical evidence, including obtaining witness testimony and taking necessary action.

B. Reporting Sexual Harassment I

The Complainant, a witness, or anyone with knowledge of an alleged violation of the University's Sexual Harassment and Other Misconduct policy may report a violation to the Title IX Coordinator at TitleIXCoordinator@bowiestate.edu. An individual may also report an alleged violation in person, over the phone, or by postal mail. For more information about reporting violations, including contact information and reporting considerations, please review the University's Sexual Harassment and Other Sexual Misconduct policy.

VI. Intake/Initial Interview

The Equity Intake Coordinator or designee will perform initial reviews of Sexual Harassment and Other Sexual Misconduct complaints. If the Equity Intake Coordinator or designee determines that the allegations in the complaint fall within the Sexual Harassment and Other Sexual Misconduct Policy, the Equity Coordinator or designee will forward the information to the Title IX Coordinator.

Once the Title IX Coordinator receives the complaint, the Title IX Coordinator will contact the Complainant via their Bowie State University email address to explain the process for filing a Formal Complaint, discuss availability of Supportive Measures with or without filing a Formal Complaint, and explain the appropriate Grievance Process based on the initial complaint.

The Title IX Coordinator will also inform the Complainant of their right to report to law enforcement, about on and off campus resources, inform the Complainant of their right to have an advisor throughout the Grievance Process, and obtain the Complainant's willingness to participate in the Grievance Process. If the Complainant indicates that they would like further assistance with the complaint (i.e.: full investigation, supportive measures, etc.), the Title IX Coordinator will schedule an initial interview with the Complainant.

At the initial interview, the Title IX coordinator will assess the nature of the allegations and discuss the Complainant's right to file a Formal Complaint, the Grievance Process, and obtain the Complainant's willingness to participate in the Grievance Process. The Title IX Coordinator will also inform the Complainant of their right to access Supportive Measures with or without filing a Formal Complaint. If the Complainant indicates that they would like to take advantage of Supportive Measures, the Title IX Coordinator will engage in a collaborative discussion with the Complainant to determine which Supportive Measures best aid the Complainant.

The Title IX Coordinator will also inform the Complainant of their right to contact law enforcement, notify the complaint of their other rights under the Grievance Process, provide information about on and off campus resources, and explain retaliation. The Title IX Coordinator may also review any evidence the Complainant may have and discuss any potential witnesses.

VII. Supportive Measures

At any time after the University has Actual Knowledge of alleged Sexual Harassment I, the Title IX Coordinator may institute supportive measures for the Complainant, Respondent, and/or the wider University Community to ensure the safety of all

Parties. The Title IX Coordinator may establish supportive measures regardless of whether or not the Complainant decides to participate in the Sexual Harassment I Grievance Process or make a report to law enforcement. The University implements supportive measures on a case-by-case basis, based on individual needs of the Parties. Supportive measures may range from mutual no-contact orders to changing of class schedule. All supportive measures provided to a party will remain confidential to the extent that maintaining confidentiality will not impair the ability to provide the supportive measures.

Either party may request supportive measures from the Title IX Coordinator.

VIII. Formal Complaint

The University will not proceed with the Sexual Harassment I Grievance Process unless the Complainant files a formal complaint. In certain instances, such as those involving dangerous weapons, alleged repeat offenders, or safety concerns for the greater university community, the Title IX Coordinator may file a formal complaint without the consent of the Complainant.

Absent a formal complaint, the University will not impose any sanctions against the Respondent and cannot engage in either a formal or an informal resolution of the complaint.

IX. Dismissal of Formal Complaints

A. Mandatory Dismissal- if the conduct alleged in the Formal Complaint would not constitute Sexual Harassment I (even if proven), did not occur in the institution's Educational Program or Activity, or did not occur against a person in the United States; then the Title IX Coordinator or their designee will dismiss the Formal Complaint with regard to Sexual Harassment I under Title IX. However, if the complaint would constitute Other Sexual Misconduct, the Title IX Coordinator may reinstate the Formal Complaint appropriately and the Complaint Grievance Process and Procedures for Instances of Other Sexual Misconduct will govern the reinstated complaint.

B. Permissive Dismissal- The institution may dismiss a Formal Complaint or any allegation 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 at or employed by Bowie State University
- Specific circumstances prevent Bowie State University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

C. Upon dismissal, the Title IX Coordinator shall send written notice of the dismissal and the reason(s) therefore simultaneously to the Parties. The Parties may appeal the Title IX Coordinator's decision to dismiss a formal complaint in writing to the Title IX Coordinator. The Title IX Coordinator will forward the written appeal to the Director of the Office of Equity Compliance to review the decision. If the Director of Equity Compliance determines that the Title IX Coordinator dismissed the formal complaint in error, the Director of Equity Compliance will direct the Title IX Coordinator to reinstate the formal complaint.

X. Notice to the Parties

If the Complainant files a formal complaint, the Title IX Coordinator shall send notice via email to the Complainant and Respondent concurrently within two (2) business days of receiving the Formal Complaint. The notice shall include:

- The nature of the allegations;
- The identities of the parties involved in the incident and the date and location of the alleged incident;
- Potential violations of the Universities Sexual Harassment and Other Sexual Misconduct Policy;
- A statement indicating that the Respondent is presumed not responsible for the alleged conduct until a determination on responsibility is made at the end of the grievance process;
- A statement informing the Parties that if, during the course of the investigation, the University decides to investigate other potential violations not included in the original notice, the University will issue a new notice for the new allegations;
- Information about the sexual harassment | grievance process, including information about informal resolution options;
- The Parties' rights and responsibilities under the Sexual Harassment | Grievance Process, including each party's right to have an advisor of choice assist them throughout the grievance process and their right to inspect and review all relevant evidence and;

- A range of potential sanctions and remedies associated with the alleged misconduct.

The Parties shall receive notice at least three (3) calendar days in advance of any scheduled interview, but may schedule sooner if the Title IX Coordinator has earlier availability.

During the first meeting with the Respondent, the Title IX Coordinator will reiterate the information provided during the initial notice. Additionally, the Title IX Coordinator will discuss the Sexual Harassment I Grievance Process, provide information about on and off campus resources, inform the Respondent of their rights during the Sexual Harassment I Grievance Process, inform the Respondent of their right to have an advisor throughout the Sexual Harassment I Grievance Process, discuss supportive measures and explain retaliation.

The Title IX Coordinator will also review any evidence the Respondent may have and discuss any potential witnesses.

XI. Informal Resolution

After the filing of a Formal Complaint and where appropriate, allegations of Sexual Harassment I may be resolved using an informal resolution process. An informal resolution process does not result in findings related to responsibility or sanctions for the responding party.

Informal resolution is voluntary and available to the Parties only when:

1. The Complainant requests an informal resolution
2. All Parties to the complaint agree to the informal resolution
3. The allegations of sexual harassment I include neither sexual assault nor sexual coercion and do not include allegations that an employee sexually harassed a student and;
4. There is no other reason why informal resolution would not be appropriate under the circumstances of the complaint.

The Title IX Coordinator or a designee will participate in all informal resolution processes and parties can choose to stop the informal process and begin the formal resolution process at any time. If the Parties agree to the recommended informal resolution, the case will conclude and no further Sexual Harassment I Grievance Process will ensue. If the Parties do not agree to the recommended informal resolution, the complaint will proceed to a formal resolution.

Informal Resolution may include, but is not limited to:

- Permanent no-contact order
- Apology letter
- Additional training related to sexual harassment and sexual misconduct
- Mediation

XII. Formal Resolution

A. Investigation of a Formal Complaint

The Title IX Coordinator/investigator or a designee will conduct a prompt, fair, and impartial investigation into the allegations of Sexual Harassment I. All parties have the right to participate and will be treated with dignity and respect. All parties will receive notification at least three (3) calendar days in advance of all meetings and interviews the party is required or invited to attend. The University will interview witnesses, as appropriate, and gather documents and/or material evidence for analysis. Parties will have equal opportunity to share evidence, have their evidence considered, and to submit additional evidence after their interview.

Ultimately, it is the investigator's role to collect and analyze all evidence, including evidence not submitted by either the Complainant or Respondent but uncovered during the investigation by the investigator. The burden of proof always remains on the University.

At the conclusion of the investigation, the Title IX Coordinator/investigator or designee will review and analyze all collected evidence and prepare a written investigative report. The Title IX Coordinator will share the draft report and all relevant evidence with each party and their advisor. The parties and their advisors shall have ten (10) calendar days to review and respond, in writing, to the draft report and the evidence collected. The Title IX Coordinator will consider the parties' responses before finalizing the investigative report. The Title IX Coordinator will share with each party the finalized investigative report at least ten (10) calendar days prior to the hearing.

B. Restrictions on Consideration of Certain Evidence

1. Prior Sexual History

In most cases, a Party's prior sexual history is not relevant and not a

consideration of the investigator, the decision-maker, or the hearing board during a sanction hearing.

A Complainant's sexual history is allowable as evidence only: 1. To prove that someone other than the Respondent committed the alleged conduct; or 2. If the questions and evidence concern specific instances of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent.

A Respondent's prior sexual history is allowable only as evidence to: 1. Prove the source of injury; 2. Prove prior sexual misconduct; 3. Prove an ulterior motive and; 4. Impeach the Respondent only after the Respondent has placed their own sexual history at issue.

2. Mental Health History

Typically, a Party's mental health history is not relevant and not a consideration of the investigator, the decision-maker, or the hearing board during a sanction hearing. Mental health history may only be considered if the Party whose mental health history is at issue gives consent to use their mental health history. Unless the student consents, an adjudicating official or decision-making body is prohibited from considering evidence about a student's history of mental health counseling, treatment, or diagnosis.

3. Privileged Information

The University shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The institution 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 institution obtains that party's voluntary, written consent to do so.

XIII. Live Hearing

All Formal Complaints that are neither dismissed nor resolved using an informal resolution process must go to a live hearing. Parties may request that they not be in the same room and the hearing be conducted electronically with the ability for all parties to see and hear each other.

Each party, through their advisor, shall be allowed to cross-exam all other parties and their witnesses. Only relevant cross-exam and other questions may be asked of a party and before a party may answer a question, the hearing officer(s) must first make a determination on relevance. Each party and their advisor are required to submit a list of questions to the Chief Hearing Officer at least seventy-two (72) hours before the hearing so that the hearing officer(s) can make a determination on relevance. This will help reduce the time used during the hearing to make relevance determinations. Each party and their advisor must comply with the University's rules on order and decorum.

The University will record each hearing and make the recording available to the parties for inspection and review.

XIV. Determination Regarding Responsibility

After the conclusion of the hearing, the Hearing Officer(s) will review all evidence submitted and the statements given at the hearing to make a determination regarding responsibility. The Hearing Officer(s) shall issue a written determination within five (5) business days of the hearing regarding responsibility, to each party simultaneously that includes:

- A.** Identification of the allegations potentially violating the University policy on Sexual Harassment and Other Sexual Misconduct;
- B.** A description of the procedural steps taken from 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.** Finding of fact supporting the determination;
- D.** Conclusions regarding the application of the institution's policy to the facts;
- E.** A statement of, and rationale for, the result as to each allegations, including a determination regarding responsibility, any sanctions the institution imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the Educational Program or Activity will be provided to the Complainant; and
- F.** Procedures and permissible bases for parties to appeal.

The Hearing Officer(s) will also send the written report to the Title IX Coordinator.

XV. Appeals

All parties have the option to request an appeal to challenge a determination regarding responsibility within seventy-two (72) hours of receiving the written determination from the Hearing Officer(s). Appeal requests must be submitted in writing to the Title IX Coordinator. The Title IX Coordinator will inform all other parties to a complaint of the appeal request, and allow all other parties seventy-two (72) hours to respond to the request for appeal. The Title IX Coordinator, after receiving responses from all parties or at the close of the seventy-two (72) hour period, will forward all information to the Appeal Hearing Officer(s).

Appeals may be requested on the following 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 hearing officer(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.

Appeal determinations are made on the record and do not include a second hearing. The Appeal Hearing Officer(s) will issue a written determination on the appeal to all parties and their advisors simultaneously. Once the Appeal Hearing Officer(s) issues a determination, the finding becomes final.

The Appeal Hearing Officer will also send the written determination to the Title IX Coordinator.