

COMPLAINT RESOLUTION PROCESS AND PROCEDURES FOR INSTANCES OF OTHER SEXUAL MISCONDUCT

I. Introduction and General Procedures

A. Introduction

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 Misconduct as defined in the University’s Sexual Misconduct Policy.

The Title IX Coordinator oversees compliance with Title IX of the Education Amendments Act of 1972, the University’s Sexual Misconduct Policy and the University’s Complaint Resolution Process and Procedures for Instances of Sexual Misconduct (“Resolution 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 resolution process or instances of Other Sexual Misconduct. It is not a criminal or 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 Resolution Process.

II. Participant in the process/Defined Terms

- A. Complainant:** a person alleging sexual misconduct and/or a violation of the Sexual Harassment and Other Sexual Misconduct Policy.
- B. Respondent:** a person who is alleged to have engaged in sexual misconduct and/or violated the Sexual Harassment and Other Sexual Misconduct Policy
- C. Reporting Party:** any person who reports alleged sexual misconduct 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 the alleged incident of other sexual misconduct.
- 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.

- 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 sexual harassment and other sexual misconduct.
- H. Hearing Officer(s):** the individual or individuals presiding over a Sanctions Hearing.
- I. Interim Supportive and Protective Measures:** reasonably available steps the University may take to protect the Parties pending a University investigation and adjudication of Other Sexual Misconduct.

III. General Complaint Resolution Process Considerations

A. Participation in the Process

The University encourages all Parties to participate in the Resolution 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 other sexual misconduct 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 reporting party or complainant request 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 Resolution 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 will share Information related to complaints and investigations on a need-to-know basis.

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 Sexual Harassment and Other Sexual Misconduct policy to retaliate against any individual making a complaint of Other Sexual Misconduct and/or participating in the investigation of an allegation of Other Sexual Misconduct. Any person committing retaliation is subject to disciplinary action independent of any sanction or interim measure imposed because of the underlying other sexual misconduct allegation. Promptly report retaliation to the Title IX Coordinator.

D. Case Resolution Timeline

The University seeks to address complaints of Other Sexual Misconduct promptly. Usually, investigations conclude within sixty (60) calendar days after the University has receipt of the complaint or notice. The Title IX Coordinator may extend this time when necessary and for good cause. The University will notify Parties if the investigation and proceedings require more than the 60-day timeframe.

E. Conflicts of Interest

In instances of Other Sexual Misconduct, the Title IX Coordinator also serves as the 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 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.

F. Standard of Evidence

The University will use a preponderance of evidence standard to resolve complaints of Other Sexual Misconduct. 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 and 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 resolution 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

A Complainant in an Other Sexual Misconduct case has certain rights. These rights include:

- 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 Resolution 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 evidence obtained during the investigation by the University.
- Right to review and respond to written reports and findings
- Limited right to appeal 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 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 Resolution Process
- Right to a presumption of innocence until determined responsible at end of disciplinary 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 and respond to written reports and findings
- Limited right to appeal as outlined by the appeal process in this document

V. Reporting Other Sexual Misconduct

A. Time Limitations for Reporting Other Sexual Misconduct

The University does not have a time limit for reporting other sexual misconduct or invoking the Resolution Process. However, prompt reporting enhances the Universities ability to investigate and gather relevant physical evidence, including obtaining witness testimony and taking necessary action.

B. Reporting Other Sexual Misconduct

The Complainant, a witness, or anyone with knowledge of an alleged violation of the University’s Sexual Harassment and Other Sexual 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. 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 other sexual misconduct complaints. If the Equity Intake Coordinator or designee determines that the allegations in the complaint may violate the University’s Sexual Harassment or Other Sexual Misconduct Policy, the Equity Intake Coordinator or designee will contact to Complainant to schedule an intake meeting. During the intake meeting, the Equity Intake Coordinator or designee will ask a series of questions to obtain additional information about the allegations from the Complainant. The Equity Intake Coordinator or designee 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 Resolution Process, provide information about the resolution process and obtain the Complainant’s willingness to participate in the Resolution Process. If the Complainant indicates that they would like further assistance with the complaint (i.e.: full investigation,

protective measures, etc.), the Equity Intake Coordinator or designee will schedule an initial interview for the Complainant with the Title IX Coordinator.

At the initial interview, the Title IX coordinator will assess the nature of the other sexual misconduct allegations and discuss the complaint resolution process and the Complainant's willingness to participate in the process. 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 Resolution Process procedures, provide information about on and off campus resources, and discuss interim support and protective measures and explain retaliation. The Title IX Coordinator will also review any evidence the Complainant may have and discuss any potential witnesses.

The Title IX Coordinator may also contact the reporting party, if it is someone other than the Complainant, to obtain additional information.

VII. Interim Support and Protective Measures

At any time after the receipt of a report of alleged Other Sexual Misconduct, the Title IX Coordinator may institute interim supportive and protective 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 and protective measures regardless of whether or not the Complainant decides to participate in the Resolution process or make a report to law enforcement. The University implements supportive and protective measures on a case-by-case basis, based on individual needs of the Parties. Interim support and protective measures may include but are not limited to:

- A non-contact order between the Parties
- Changes in campus academic, work, or living arrangements
- Assistance is requesting academic accommodations or academic support
- Interim suspension
- Removal of privileges or suspension of activity

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

VIII. Notice to Respondent

If the Resolution Process proceeds to an investigation, the Title IX Coordinator will contact the Respondent. The Respondent(s) shall receive notice at least three (3) calendar days in advance of the scheduled interview, but may schedule sooner if the Title IX Coordinator has earlier availability. Notice to the Respondent shall include:

- The nature of the allegations;
- Potential violations of the Universities Sexual Harassment and Other Sexual Misconduct Policy;
- The Respondent's rights and responsibilities under the Resolution Process and;
- A range of potential sanctions associated with the alleged misconduct.

During the meeting, the Title IX Coordinator will reiterate the information provided during the initial notice. Additionally, the Title IX Coordinator will discuss the Resolution Process, provide information about on and off campus resources, inform the Respondent of their rights during the

Resolution Process, inform the Respondent of their right to have an advisor throughout the Resolution Process, discuss interim supportive and protective measures and explain retaliation.

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

IX. Informal Resolution

Where appropriate, allegations of sexual misconduct 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 other sexual misconduct include neither sexual assault nor sexual coercion.

The Title IX Coordinator or a designee will participate in all informal resolution processes and Parties can choose to stop the informal process for a formal resolution process at any time. If the Parties agree to the recommended informal resolution, the case will conclude and no further Resolution 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 Sexual Misconduct training
- Mediation

X. Formal Resolution

A. Investigation

The Title IX Coordinator or a designee will conduct a prompt, fair, and impartial investigation into the allegations of other sexual misconduct. All Parties have the right to participate and will be treated with dignity and respect. All Parties will receive notification at least three (3) days in advance of all hearings, meetings, and interviews the party is required or invited to attend. The University will interview witness, as appropriate, and documents and/or material evidence collected 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.

At the conclusion of the investigation, the Title IX Coordinator or designee will review and analyze all collected evidence and prepare a written investigative report. The Title IX Coordinator or designee will invite the Parties to the complaint to review the investigative report, at separate times, to ensure its accuracy. Once each party has reviewed the report, and the report receives a review for legal sufficiency, the Title IX Coordinator or designee will make a determination on responsibility. Each Party will learn of the outcome of the Title IX Coordinator's investigation in a written Outcome Letter.

Following the Notice of Outcome, the Parties will have three (3) days to request an appeal of the findings (see Section XII). Otherwise, if there has been a finding of a violation of the policy, the matter proceeds to the Student Conduct Board for a hearing on sanctions. The Title IX Coordinator does not issue sanctions.

B. 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 Party'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 a party after that party has placed their own sexual history at issue.

C. 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.

XI. Sanctions

A. Sanctions Hearing

Complaints of Sexual Misconduct involving student Respondents: If the Respondent is responsible for violating this Policy, the Student Conduct Board will conduct a Sanction Hearing in a prompt, fair, and impartial manner. The Student Conduct Board will be comprised of board members who have received annual training on the Sexual Harassment and Other Sexual Misconduct policy and hearing procedures.

Both Parties have the right to an advisor of their choice, including an attorney, during the hearing process. Additionally, both Parties have the following rights:

- to be treated with dignity and respect;
- to review all documentary evidence used during the hearing process;
- to present relevant witnesses;
- to pose through Student Conduct Board or in writing questions to all witnesses who are called to give testimony;
- to introduce new evidence not presented or taken into consideration during the investigative phase; and
- to request an appeal of the hearing board's determination of fact and/or sanction.

Both Parties will receive written notification of determinations of fact and sanction, if applicable, imposed by the Conduct Board and the procedure for filing a request for appeal. The University shall not publicly disclose the name of either Party, unless as required or allowed by law.

In determining the appropriate sanction(s), the Student Conduct Board will consider the following factors:

- The cause of the behavior
- The severity of the conduct
- The previous conduct history
- University Precedent, and,
- The welfare of the Complainant and the University Community

The staff of the Office of Equity Compliance does not determine sanctions for Parties.

XII. Appeals

A. Redetermination Appeal

All Parties have the option to request a Redetermination Appeal within three (3) days following receipt of the Outcome Letter to challenge the Title IX Coordinator's finding of fact and/or responsibility. The University Ombudsmen or a designee serves as the appeal officer. Parties retain all the rights offered throughout the Resolution Process during the Redetermination Appeal, including the right to have an advisor. As in all other processes, the advisor's role is for the personal support of the party, and do not have an active role in the process. Accordingly, the advisor may not submit a written statement or other evidence for consideration.

Grounds for Consideration:

The requesting party must submit a written statement ("appeal letter") to the Title IX Coordinator outlining what they are challenging, why the party believes the Title IX Coordinator made the wrong decision, and any evidence to support the requesting Party's appeal. The University will review its determination of findings on the following grounds:

- Newly acquired evidence that was not available during the initial investigation (which may include, but is not limited to, witnesses not previously known to the Parties, electronic communication, or other documents that were not in the Parties' possession during the initial investigation). Moreover, the evidence acquired and submitted during the Redetermination Appeal must substantially affect the findings or potential sanctions. A summary of the new evidence must be included in the request for appeal.
- A procedural or substantive error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).

The Title IX Coordinator will forward the requesting Party's appeal letter to the University Ombudsman or designee along with the Title IX Coordinator's final report and all evidence collected in the matter. The Title IX Coordinator will also forward the appeal letter to the opposing party in the matter to provide that party with the opportunity to respond to the appeal letter.

The University Ombudsmen or other designee will review all available evidence, the Title IX Coordinator's final report, the requesting Party's appeal letter, and, if applicable, the opposing Party's response letter. They will make a determination that will either confirm the Title IX Coordinator's findings, or vacate the Title IX Coordinator's findings. The University Ombudsmen or other designee will draft a report either confirming or vacating the Title IX Coordinator's findings and will send the report to the Parties within three (3) business days following receipt of all information. If the reviewer vacates the findings due to newly acquired evidence or deviation from established procedures, the matter returns to the Title IX Coordinator for further investigation. If the reviewer vacates the finding based on substantiated bias, the matter returns to the Director of the Office of Equity Compliance for further investigation.

If at the conclusion of the Redetermination Appeal the reviewer confirms a finding of violations, the Title IX Coordinator will forward the matter to the Student Conduct Board for a Sanction Hearing. Once the Title IX Coordinator forwards the matter to the Student Conduct Board, or upon the expiration of time to file for a Redetermination Appeal, the matter formally and officially closes in the Office of Equity Compliance.

B. Sanction Hearing Appeal

For discipline involving employees, please refer to the Bowie State University Faculty Handbook, Bowie State University Employee Handbook, or relevant Collective Bargaining Agreement for appeal timelines and procedures. For sanctions involving students, please refer to the University's Division of Student Affairs and Code of Conduct, Section VI.

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