



## Ohio Administrative Code

### Rule 3341-2-41 Title IX sexual harassment policy and procedures.

Effective: September 2, 2021

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#### (A) Policy statement and purpose

Bowling Green state university (BGSU) prohibits sexual harassment and the crimes of domestic violence, dating violence, sexual assault and stalking (as defined by the Clery Act) and reaffirms its commitment to build a welcoming, safe and diverse environment. Toward that end, BGSU issues this statement of policy to inform the campus community of our programs to address sexual harassment, domestic violence, dating violence, sexual assault and stalking as well as the procedures for institutional disciplinary action in cases of alleged sexual harassment, dating violence, domestic violence, sexual assault, or stalking, when it is reported to a university official.

BGSU is committed to providing an environment where all members of the university community may pursue their employment or studies free from discrimination. All members of the university community have a responsibility to create and maintain an environment free from discrimination and harassment.

BGSU does not discriminate on the basis of sex in any of its education, employment, or service activities. BGSU prohibits sexual harassment, sexual assault, domestic violence, dating violence, stalking, retaliation, and violation of mutual restrictions on contact between the parties (collectively, "prohibited conduct.")

BGSU has adopted this policy to express its commitment to: prevent prohibited conduct and address its effects should it occur; restore or preserve equal access to the university's education programs and activities; support individuals who report incidents of possible prohibited conduct and those affected by it; and provide a fair and impartial process for all parties when an incident is reported.

This policy establishes procedures and standards by which reported incidents of prohibited conduct will be received, investigated, evaluated and, when warranted, the manner in which sanctions will be imposed. It describes how BGSU will proceed, once possible prohibited conduct has been reported,



consistent with our duties under state and federal laws, including, but not limited to, Title IX, the Clery Act, the Violence Against Women Act (VAWA), and related regulations.

(B) Policy scope

(1) This policy applies to BGSU students and employees in a BGSU education program or activity. This policy also designates "mandatory reporters" and specifies the duties applicable to those faculty, staff, and volunteers.

(2) BGSU has jurisdiction under this policy whenever the prohibited conduct occurs on campus or in any building owned or controlled by a registered student organization.

(3) BGSU also has jurisdiction when prohibited conduct occurs off campus (including online or electronic conduct) in the United States if it occurs in connection with a BGSU education program or activity, including BGSU-sponsored research or internship programs or any other location, event, or circumstance in which BGSU exercised substantial control over both the respondent and the context in which the prohibited conduct occurred.

(4) Registered student organizations (RSOs) are registered with the office of student engagement in the division of student affairs. The university has jurisdiction over RSOs and it may address prohibited conduct committed in relation to RSO activities through the code of student conduct and this policy. Reports of prohibited conduct involving RSOs will be provided to the title IX coordinator, who will confirm that the university takes appropriate action to restore or preserve equal access to the university's education program or activity.

(C) Definitions

Advisor: a person chosen by a party to accompany the party to some or all meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if applicable. Advisor also includes a person appointed by the university to conduct cross-examination for the party at the hearing

Business day: Monday through Friday, excluding Saturday, Sunday, recognized university holidays,



and approved university breaks

Complainant: a person who is alleged to be the victim of conduct prohibited by this policy.

Confidential resource: professionals who are required by law to protect confidentiality or assigned as a confidential resource by BGSU.

Decision maker (single) or hearing board: those who have decision-making and sanctioning authority within the university's formal grievance process.

Education program or activity: locations, events, or circumstances where the university exercises substantial control over both the respondent and the context in which the alleged sex discrimination, sexual harassment or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the university.

Finding: a conclusion that the conduct did or did not occur as alleged (as in a "finding of fact").

Formal complaint: a document filed by a complainant or signed by the title IX coordinator alleging a title IX policy violation by a respondent and requesting that the university investigate the allegation(s).

Investigator: the person(s) charged by the university with gathering facts about an alleged violation of this policy, objectively reviewing evidence, synthesizing the evidence, and compiling the information into an investigation report.

Mandated reporter: a university employee who is obligated by this policy to share knowledge, notice, and/or reports/allegations of sexual harassment and/or retaliation with the Title IX coordinator.

Parties: the complainant(s) and respondent(s), collectively.

Preponderance of the evidence: the standard of proof used for alleged violation(s) of this policy. Preponderance of the evidence means that, based on all the reliable, relevant evidence and reasonable inferences from that evidence, the respondent is more likely than not in violation of this



policy.

Remedies: post-finding actions directed to the complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the university's educational program.

Respondent: the person who has been reported to have engaged in conduct that could constitute sexual harassment or retaliation under this policy or its procedures.

Sanction: a consequence imposed by the university on a respondent who is found to have violated this policy. For employees, the term sanction as used in this policy means discipline or corrective action.

Title IX coordinator: is the official designated by the university to ensure compliance with title IX and the university's title IX program. References to the coordinator throughout this policy may also encompass a designee(s) of the coordinator for specific tasks.

(D) Sources of assistance

(1) BGSU wants every student or employee who may have experienced harm to have access to resources to get help and assistance. BGSU and the community offer a number of resources that can provide support and guidance in response to any incident of harm.

(2) These resources are available to every BGSU student or employee who may have experienced harmful conduct, regardless of whether they intend to report the conduct to university officials or law enforcement.

Resources	Phone number
BGSU police department	911 or 419-372-2346
The center for violence prevention education	419-372-7227
Counseling center (confidential)	419-372-2081
The cocoon (confidential)	419-373-1730 ask for a campus victim advocate when you call
Falcon health center (confidential)	419-372-2271



Unison (confidential)	419-502-HOPE (4673)
Office of the dean of students	419-372-2843
Psychological services center (confidential)	419-372-2540
Title IX office	419-372-8476
Wellness connection	419-372-WELL (9355)
Wood county hospital	419-354-8900

(3) For additional information on BGSU and community resources, including emergency and ongoing assistance; health, mental health, and advocacy services; options for reporting prohibited conduct; and available support with academics, housing, transportation, pregnancy, and employment, see the BGSU title IX website. In addition, anyone may contact the title IX coordinator, located in Hayes 207 or at 419-372-8476 to discuss available BGSU and community resources and assistance.

Firelands	Phone number
Bayshore counseling services Sandusky office	419-626-9156 (request intake office)
Erie county deputy (for Firelands campus)	419-372-0709 or 911
Firelands counseling and recovery services (confidential)	800-342-1177 (ext. 5177)
Office of the dean (Firelands)	419-372-0623

#### (4) Confidential and non-confidential resources

BGSU recognizes that there is an important difference between making a complaint to the university, a community resource, seeking confidential assistance, and making a complaint to law enforcement. Many campus and community resources are not confidential. This paragraph outlines the confidential and non-confidential resources available to individuals who have experienced harmful conduct.

##### (a) Confidential resources

Confidential resources are professionals who are required by law to protect confidentiality or assigned as a confidential resource by BGSU. A confidential resource must not reveal information disclosed in confidence unless they are given permission by the person who disclosed it, or there is



an imminent threat of harm, or suspected abuse of a person under the age of eighteen, or as otherwise required or permitted by law or court order.

Confidential resources available to BGSU students include the BGSU counseling center, The cocoon, psychological services center, and the Falcon health center (for Firelands campus this includes Firelands counseling and recovery services). Clergy and mental and medical health care providers are also confidential resources.

(b) Non-confidential resources

BGSU employees who are not confidential resources will seek to respect the privacy of all individuals. Reported information about prohibited conduct will be shared only with BGSU employees who need to know the information to assess, investigate, and resolve the report.

(E) Supportive measures

(1) Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to BGSUs education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or BGSUs educational environment. BGSU provides supportive measures after the office of the dean of students or title IX office receives notice of prohibited conduct but before any outcome has been decided. These measures typically are kept in place until the matter is resolved but may be extended when warranted.

(2) 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.

(3) The title IX coordinator or designee is responsible for coordinating the effective implementation of supportive measures. A complainant or respondent may meet with the title IX coordinator to



discuss the adequacy or need for supportive measures.

(4) BGSU will 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 BGSU to provide the supportive measures.

(5) Implementation of supportive measures does not mean or suggest that BGSU has made any decision about the merits of the report.

(F) Emergency removal

BGSU may remove a respondent from any BGSU education program or activity on an emergency basis, provided that BGSU first undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.

This paragraph does not limit BGSU's ability to suspend a respondent under section 3345.22 of the Revised Code or other applicable law.

(G) Administrative leave

BGSU may place a non-student employee respondent on administrative leave during the pendency of the university resolution procedure described in this policy and any subsequent processes.

(H) Reporting options and mandatory reporting

(1) BGSU strongly encourages prompt reporting of conduct that may violate this policy. Anyone may make a report, including a student, employee, visitor, or other third party. A person may choose to make a report to the university, to law enforcement, or to both. BGSU will make support and resources available to a person making a report no matter which option they choose.

(2) Amnesty to students when reporting prohibited conduct



BGSU will not pursue a code of student conduct violation against any participant in an investigation under this policy, whose potential violation of BGSU policy on drug or alcohol use was identified during the investigation, provided that the drug or alcohol use did not (and does not) endanger the health or safety of another person. BGSU may, however, initiate an assessment, hold an educational discussion, or pursue other non-disciplinary options to address the drug or alcohol use.

(3) Reporting to law enforcement or the university (other than confidential reporting options) means that, as appropriate, the report will be shared with others.

(a) Reporting of law enforcement

BGSU encourages anyone who experiences prohibited conduct to make a report to BGSU police department. Prompt reporting enables law enforcement to collect and preserve evidence.

A person who wishes to pursue criminal action in addition to, or instead of, making a report to BGSU may contact law enforcement directly by calling:

(i) 911 (for emergencies);

(ii) BGSU police department: (419) 372-2346 (non emergencies);

(iii) Bowling Green city police division: (419) 352-2571(non-emergencies);

(iv) Wood county sheriffs office: (419) 354-9001 (non-emergencies);

(v) Ohio state highway patrol: (419) 352-2481 (non-emergencies);

(vi) Erie county sheriffs department: (419) 625-7591 (non-emergencies at Firelands campus).

Upon request, BGSU staff will assist in making a report to law enforcement. For conduct occurring in the residence halls, the office of residence life can assist in making a report to the BGSU police department. For reports of off-campus prohibited conduct, the BGSU police department can assist in





identifying which law enforcement agency should receive the report.

(b) Reporting to the university

An individual may make a report directly to the title IX coordinator in 207 Hayes Hall by email to [titleix@bgsu.edu](mailto:titleix@bgsu.edu), by regular mail, by telephone at (419) 372-7751, or in person at the office of title IX. An online report form may be found on the BGSU website by visiting the title IX or the equity and compliance web pages.

Designated BGSU staff, including the office of the dean of students, the office of residence life, the office of accessibility services, the office of multicultural affairs, the center for violence prevention and education, for Firelands, the associate dean of students, and the BGSU police department, will help individuals with reporting.

(4) Anonymous reports

A person may report prohibited conduct to BGSU without disclosing one's name using the online reporting form found on the BGSU website. Although the report may be filed anonymously, the date and time of the incident must be included.

Depending on the circumstances, such as the unavailability of witnesses and the university's relationship to the respondent, BGSU's ability to investigate and remedy an anonymous report may be limited. BGSU will, however, take action as it deems appropriate and in the best interests of the overall university community, to the extent allowed by the available information.

(5) Reporting by BGSU employees and others

(a) Mandatory reporters

A "mandatory reporter" must immediately report any information about suspected prohibited conduct to the title IX coordinator. A mandatory reporter who fails to make a timely report may be subject to appropriate discipline. Each of the following is considered a "mandatory reporter":



- (i) Members of the board of trustees;
- (ii) Executive officers (including associate or assistant vice presidents and vice provosts);
- (iii) Cabinet members;
- (iv) Deans, directors, and department chairs (including those serving in assistant or associate roles);
- (v) Academic program coordinators;
- (vi) Supervisors of administrative and classified staff;
- (vii) BGSU faculty full-time and part-time, graduate teaching instructors and graduate teaching assistants, and any other person providing instruction at BGSU (such as flight instructors);
- (viii) All staff in the office of student success and life design;
- (ix) Any BGSU employee or volunteer who serves as an advisor to a registered student organization (fraternity or sorority life);
- (x) All tier one volunteers (as defined in the volunteers at BGSU procedures);
- (xi) All individuals, including student-employees (such as resident advisors and community assistants), who work for the office of residence life;
- (xii) All staff and graduate students working in the division of diversity and belonging;
- (xiii) All staff and graduate students working in the office of the dean of students;
- (xiv) All staff and graduate students working in the office of student engagement;
- (xv) All individuals including student-employees (such as orientation leaders) who work for the office of parent, family, and new student connections;



(xvi) All staff, graduate students, and tier one volunteers who work for intercollegiate athletics (including assistant coaches and other volunteers within athletics);

(xvii) All campus security authorities, as designated by BGSU under the Clery Act, who are not otherwise specified (as listed by title in the annual security and fire safety report);

(xviii) Any individual serving on an acting or interim basis in any position described in this policy; and, university faculty, staff or volunteers providing oversight to BGSU students while on domestic or international travel in connection with any BGSU sponsored teaching, research or service activity.

(b) Training

All who fall under the category of "mandatory reporter" must attend and complete in-person or online trainings as defined by the university.

(c) All other employees

Employees who are not mandatory reporters are not required to report information about suspected prohibited conduct to the title IX coordinator. It is difficult, however, to address prohibited conduct that has not been reported. Accordingly, employees who are not mandatory reporters (or confidential resources) are encouraged to ask the person who gave them the information for permission to share it with the title IX coordinator.

(6) Exceptions

Vendors who are not BGSU employees, students who are not working in one of the offices identified in paragraph 5(a) of this rule, employees who are not supervisors and do not fall into any of the other categories such as advisor. Additional exceptions include:

(a) Professionals who are required by law to protect confidentiality (confidential resources); and

(b) Vendor employees.



(7) Questions about "mandatory reporter" status should be directed to the office of general counsel at (419) 372-0464.

(I) Prohibited conduct

Prohibited conduct includes the following acts: sexual harassment, sexual assault, stalking, dating violence, domestic violence, retaliation, and violation of mutual restrictions on contact between the parties. This policy applies to prohibited conduct regardless of the sex, sexual orientation, and/or gender identity or gender expression of the complainant or respondent.

Suspected incidents of child abuse (including incidents of suspected child sex abuse) must be reported to childrens services by calling the child abuse hotline at 419-354-9669 or 1-866-860-4136. Contact the BGSU police department with any questions about matriculated students under the age of eighteen.

Each act of prohibited conduct is specifically defined in this paragraph, along with the related subjects of consent and incapacitation:

(1) Sexual harassment

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

- (a) A BGSU employee conditioning the provision of an aid, benefit, or service of BGSU on an individuals participation in unwelcome sexual conduct;
- (b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to any BGSU education program or activity; or
- (c) Is "sexual assault," "dating violence," "domestic violence," or "stalking" as defined in this policy and applicable federal law.



(2) Sexual assault

Sexual assault includes the following:

- (a) Rape: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- (b) Fondling: the touching of the private parts of another person for the purpose of sexual gratification, without the consent of the victim.
- (c) Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- (d) Statutory rape: sexual intercourse with a person who is under the statutory age of consent.

(3) Stalking

The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the persons safety or the safety of others; or suffer substantial emotional distress.

For the purpose of this definition:

- (a) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device (including cyberstalking), or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a persons property.
- (b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- (c) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.



Cyberstalking is a form of stalking that includes harassment via social media, email, text, or other forms of electronic communication.

(4) Dating violence

The term "dating violence" means violence committed by a person:

- (a) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (b) Where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; the frequency of interaction between the persons involved in the relationship.

(5) Domestic violence

The term "domestic violence" means a felony or misdemeanor crime of violence committed:

- (a) By a current or former spouse or intimate partner of the victim;
- (b) By a person with whom the victim shares a child in common;
- (c) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- (d) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- (e) By any other person against an adult or youth victim who is protected from that persons acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

(6) Retaliation



No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or 34 CFR part 106, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or 34 CFR part 106, constitutes retaliation. The exercise of rights protected under the first amendment does not constitute retaliation.

BGSU will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute (20 U.S.C. 1232g), FERPA regulations (34 CFR part 99), as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Retaliation is prohibited conduct. A formal complaint alleging retaliation may be filed according to this policy.

(7) Violation of mutual restrictions on contact between the parties

Failure to comply with mutual restrictions on contact between the parties is a separate and independent violation of this policy.

(8) Consent

(a) Consent is a clear and unambiguous agreement to engage in a particular activity. The person who initiates a sexual activity is responsible for obtaining consent for that activity.



(b) Consent must be expressed outwardly through mutually understandable words or actions. The person who initiates a sexual activity may not infer consent from silence, passivity, or a lack of resistance.

(c) A person who is incapacitated may not give consent.

(d) Consent must be voluntarily given. It cannot be obtained through coercion or force.

(i) Coercion is conduct that would reasonably place a person in fear, and that is used to compel that person to engage in sexual activity. Examples of coercive conduct include intimidation and express or implied threats of immediate or future harm to the person or others. Harm may be a physical, emotional, reputational, financial, or other injury to that person or another.

(ii) Force is the use of physical action, strength or violence to compel a person to participate in sexual activity.

(e) Consent must not be inferred from an existing or previous dating or sexual relationship. Even within an existing relationship, the parties must consent to engage in any sexual activity each time it occurs.

(f) Consent to one sexual activity is not consent to another sexual activity, nor is it consent to the same sexual activity at another time.

(g) A person may withdraw consent at any time. If consent is withdrawn, the sexual activity must stop immediately.

(h) To determine under this policy whether consent was sought and given, BGSU will evaluate what the respondent knew, or reasonably should have known, when all the relevant circumstances are considered.

(9) Incapacitation





An incapacitated person lacks the ability to make an informed, rational judgment about engaging in sexual activity.

Under this policy, a person who initiates a sexual activity with another person, and who actually knows or reasonably should have known that the person was incapacitated, has not obtained consent.

A person is incapacitated if, at the time consent is sought and regardless of the cause of incapacitation, they are physically or mentally helpless, asleep, unconscious, or unaware that sexual activity is taking place.

A person may become incapacitated due to a temporary or permanent physical or mental health condition or due to the consumption of drugs or alcohol.

When drugs or alcohol are involved, incapacitation is a state beyond drunkenness or intoxication. A person using drugs or drinking is not necessarily incapacitated: rather, their level of impairment must be significant enough to render that person unable to give consent.

The effect of drugs or alcohol varies from person to person, but any of the following signs indicate that a person may be incapacitated: slurred or incomprehensible speech, stumbling or unsteady walking, falling, episodes of unconsciousness (as distinct from a subsequent failure of memory), vomiting, or incontinence.

#### (J) Impartiality and training requirements

The title IX coordinator and deputy coordinators, decision-makers, investigators, and any person designated by a recipient to facilitate an informal resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or any individual complainant or respondent.

The title IX coordinator and deputy coordinators, decision-makers, investigators, and any person designated to facilitate an informal resolution process must receive training on: the definitions of sexual harassment and prohibited conduct in this policy and in 34 CFR 106.30; the scope of BGSUs education programs and activities; how to conduct an investigation and resolution process including



hearings, appeals, and informal resolution processes, as applicable; and on how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The materials used to train the title IX coordinator and deputy coordinators, decision-makers, investigators, and any person designated by a recipient to facilitate an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment and prohibited conduct.

All decision-makers, including anyone who will serve as the chair of a hearing board, must receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainants sexual predisposition or prior sexual behavior are not relevant.

All investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

#### (K) Intake process and formal complaint

Promptly after learning of a report of prohibited conduct, the title IX coordinator or designee will contact the complainant confidentially to discuss the availability of supportive measures with or without the filing of a formal complaint. The title IX coordinator will consider the complainants wishes with respect to supportive measures and will implement supportive measures in accordance with paragraph (E) of this rule.

The title IX coordinator or designee will also explain to the complainant the process for filing a formal complaint. If the conduct reported to the title IX coordinator or designee does not appear to be prohibited conduct within the scope of this policy, any information gathered during the intake process may be reported to the office of the dean of students or other appropriate authority and the complainant may be referred there without affecting the complainants right to choose to file a formal complaint.

A formal complaint is a document filed by a complainant alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. The formal



complaint must state that, at the time of its filing, the complainant is participating in or attempting to participate in a BGSU education program or activity.

The document may be a paper or electronic submission that contains the complainants physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint. A complainant may file a formal complaint with the title IX coordinator in person, by mail, by e-mail to <http://www.bgsu.edu/titleix>, or through the BGSU online reporting form found on the BGSU website, or by visiting the title IX or the equity and compliance web pages.

A complainant may also choose not to file a formal complaint. If so, BGSU will provide supportive measures but not investigate unless the title IX coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

The title IX coordinator (after consulting with the chief diversity and belonging officer or designee) may determine that, despite a complainants request, a formal complaint is required to ensure the complainants health and safety or that of the university community. If the title IX coordinator makes and documents that determination, the title IX coordinator may then sign and file a formal complaint. Signing and filing a formal complaint does not make the title IX coordinator a complainant or a party during the resolution process: the title IX coordinator must continue to comply with requirements for Title IX personnel to be free from a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

#### (L) Formal university resolution processes after a formal complaint

BGSU uses two processes to resolve formal complaints of prohibited conduct under this policy. Formal resolution is by an investigation that will result in a hearing (unless the formal complaint is dismissed) and possible sanctions and may involve an appeal. Informal resolution (discussed in paragraph (L) of this rule) is by mediated or restorative methods and may be offered by the university or requested by the complainant or respondent at any time after the formal complaint is filed, unless the formal complaint alleges prohibited conduct by an employee against a student.

The formal resolution process involves notice of allegations, investigation, a preliminary report and



final report, a live hearing and written determination, and possible sanctions and appeal. Each of these steps is described as follows:

(1) Notice of allegations

After receiving a formal complaint, the title IX coordinator will provide written notice to all known parties. The notice will include the following:

- (a) Information about the formal resolution process, the informal resolution process, and where to find this policy.
- (b) Information about the allegations, including identities of the parties involved in the incident, if known; the conduct allegedly constituting prohibited conduct; and the date and location of the alleged incident, if known; this information must be provided in sufficient time to allow the respondent to prepare a response before any initial interview.
- (c) A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the formal resolution process.
- (d) A statement that each party may have an advisor of their choice, who may be, but is not required to be, an attorney.
- (e) A statement that each party and their advisor may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint.
- (f) A statement advising the parties of any provision in this policy, the code of student conduct, or any other university policy, that prohibits knowingly making false statements or knowingly submitting false information during the formal resolution process.

(2) Revised notice

During the course of the investigation, the university may decide to investigate allegations about the complainant or respondent that were not included in the notice originally provided. If that occurs,



BGSU will provide notice of the additional allegations to the parties whose identities are known.

### (3) Investigation

An investigation must give the complainant and respondent a full, equal, and fair opportunity to be heard and to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The investigation will be thorough and impartial.

The title IX coordinator will assign one or more investigators to each investigation. In many cases, an investigator will be a title IX deputy coordinator, but may also be a member of the office of the dean of students, a member of equity and compliance, the title IX coordinator (when appropriate), any trained staff member, or an external investigator to be selected and assigned in consultation with the chief diversity and belonging officer, the university's president, and the office of general counsel (if applicable).

The investigator typically will separately interview the complainant, the respondent, and available witnesses; record the interviews; give the parties an equal opportunity to submit or identify relevant information; and gather relevant information. That information may include documents, images, written or electronic communications or data, and medical records (with the person's consent). BGSU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

Before any interview or other meeting, the investigator will give written notice to the party whose participation is invited or expected. That notice will state the date, time, location, participants, and purpose of the interviews or other meetings, and will be given with sufficient time for the party to prepare to participate.

The investigator will provide the complainant and respondent with a preliminary investigation report that will include a summary of their statement, witness statements, and all evidence collected and give them an opportunity to comment.

Although the complainant or respondent may provide materials to the investigator, it is the university's duty to gather relevant information that is reasonably available.



(a) The role of the investigator

Each person serving as an investigator must be impartial and have no conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. There will be a primary investigator who will serve as the lead investigator. This person may be assisted by one or more secondary investigators.

A complainant or respondent who is concerned that the designated investigator cannot conduct a fair and unbiased review may report those concerns to the title IX coordinator. The title IX coordinator will assess the circumstances and decide whether to designate a different investigator.

The investigators role is to gather facts, not to function as an advocate for a complainant or respondent. But upon request, an investigator may identify campus support resources for the complainant and respondent and refer them to the office of the dean of students to coordinate services.

(b) Presumption of good faith reporting

BGSU presumes that a report of prohibited conduct is made in good faith. A finding that the conduct does not violate this policy, or that there is not enough evidence to conclude that an incident occurred as reported, does not mean that a report was made in bad faith.

(c) Presumption of non-responsibility and standard of proof

Each investigation and hearing is a neutral, fact-gathering process in which the respondent is presumed not to be responsible. This presumption is overcome only if, after a hearing as provided in this policy, the appropriate decision maker finds that the respondent violated this Policy by a preponderance of the evidence.

For purposes of this policy, a preponderance of the evidence means that, based on all the reliable, relevant evidence and reasonable inferences from that evidence, the respondent is more likely than not in violation of this policy. This standard is to be used for all formal complaints of sexual



harassment (including where employees and faculty are respondents).

(d) Participation is voluntary

The complainant, respondent, and witnesses may choose whether or not to participate in the investigation. Even if a complainant or respondent declines to participate, however, the investigator may continue to investigate the reported conduct and, to the extent consistent with due process, issue findings based on the evidence that is available.

(e) Expectation of truthful information

BGSU expects the complainant, respondent, witnesses, and all others to provide truthful information in any proceeding under this policy. Knowingly providing a materially false statement or other information may result in disciplinary action under the code of student conduct or other applicable policy.

(f) Acceptance of responsibility

The respondent may decide to accept responsibility for the prohibited conduct at any time. If so, then with the voluntary agreement of the complainant, the title IX coordinator will determine the next steps in order to reach a final determination.

(g) Advisors

The complainant and respondent may each have one advisor of their choice throughout the formal resolution process. The advisor may be, but is not required to be, an attorney. The university will not be responsible for professional fees of any advisor.

The role of the advisor is narrow in scope: the advisor may attend any interview or meeting connected with the formal resolution process to provide support and guidance, but the advisor may not actively participate in interview or meetings and may not serve as a proxy for the parties. The advisor may attend the hearing and may directly ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. An advisor may not be a



witness or have any other role in the process except as stated in this policy.

An investigative interview or meeting or hearing will not be postponed to accommodate the schedule of a party's chosen advisor and may proceed without the party's advisor. If a party's chosen advisor is not present at the hearing, BGSU will choose an advisor for that party (without fee or charge) to conduct cross-examination on behalf of that party.

(h) Relevant information

The investigator is responsible for gathering relevant information to the extent reasonably possible. That information may include documents, images, written or electronic communications or data, and medical records (with the person's consent).

The complainant and respondent, however, will be asked to identify witnesses and provide other relevant information as soon as possible to aid prompt investigation and resolution.

The investigator will review all information identified or provided by the parties. For purposes of the preliminary and final reports, the investigator will determine the relevance and probative value of all information developed or received during the investigation. The investigator will provide all relevant information to the parties for their review and comment (as described in this policy).

The university cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent to do so for the formal resolution process. In those instances, the investigator will summarize relevant information from those records in the preliminary report. Each party will be allowed to review the preliminary report and the relevant portions of the records.

When specialized expertise is needed, the investigator may seek authorization from the title IX coordinator to consult experts who have no connection to the reported incident.





(i) The respondents prior or subsequent conduct

A respondents prior or subsequent conduct will not be used to prove that the respondent had the character to engage in the alleged conduct.

Prior or subsequent conduct may be considered for other purposes, such as determining preparation or plan, intent, knowledge, or the respondents motive for taking an action. To that extent, evidence of a pattern of substantially similar prohibited conduct by the respondent (regardless of any other finding of a policy violation) may be deemed relevant to the matter under investigation.

If the investigator determines that a respondents prior or subsequent conduct is relevant, both persons will be informed in writing.

(j) Prior sexual contact between the complainant and the respondent

Prior sexual contact between a complainant and a respondent is generally not relevant. It will be considered only in limited circumstances.

For example, if the question is whether consent was given through mutually understandable actions, information about prior sexual contact may assist the investigator and decision-makers to better understand the manner and nature of the parties sexual communication. To that extent, the information may be relevant in determining whether consent was sought and given during the incident under investigation.

If the investigator determines that the parties prior sexual contact is relevant, both persons will be informed in writing.

(k) Witnesses

Witnesses are persons who observed the acts in question or have information relevant to the incident. A witness may not participate solely to speak about an individuals character unless relevant.

The investigator will give each identified witness the opportunity to discuss the investigation process



and participate in an interview. After the interview, the investigator will provide each witness a summary of their statement from the preliminary investigation report for their review and comment.

The investigator will provide a written summary of each witness interview to the complainant and the respondent for their review and comment. The summary will identify the witness by name and by their relationship to each other person and the university.

The investigator will provide this information in or with the preliminary investigation report.

(l) Coordination with law enforcement

If the university learns of a concurrent criminal investigation, the title IX coordinator or designee will inform the criminal investigator that a university investigation is in progress; inquire into the status of the criminal investigation and determine whether law enforcement officials will make any evidence available to the university.

Upon request, BGSU may agree to defer part or all of its investigation until law enforcement evidence gathering is complete.

To the extent consistent with the law enforcement request, the investigator will communicate with the parties about resources and support, procedural options and anticipated timing, and any interim measures deemed necessary for the safety and well-being of the affected individuals.

Because the standards for a criminal proceeding differ from the standards for a violation of this policy, BGSU will not base its decisions solely on law enforcement reports or actions. BGSU will take immediate and appropriate action in response to a report of prohibited conduct, even if a law enforcement action is pending. If BGSU finds that prohibited conduct has occurred, it will take appropriate action, even if a law enforcement action is pending or dismissed.

(m) Time for completion of investigation

The period from the start of an investigation, which begins with the investigators notice to the respondent, to a final investigation report (as described in this policy) typically should not exceed



sixty to ninety business days.

In some situations, however, this target may not be achievable. For example, additional time may be needed to ensure the integrity and completeness of the investigation (particularly in complex cases involving multiple witnesses or large volumes of information); the absence of a party or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or for other well-supported reasons.

If the investigator determines that the ninety-day period must be exceeded, both parties will be informed in writing.

(n) Preliminary report

After interviewing the complainant and the respondent, completing witness interviews, and gathering relevant information, the investigator will prepare a preliminary report.

Usually, the preliminary report will include the complainants statement, the respondents statement, and a statement from each available witness, and a copy of the other relevant information obtained during the investigation and/or a written summary of it. The preliminary report will not contain any findings.

The investigator will provide the preliminary report to the complainant the respondent, and their respective advisors (if any) for review and comment. In addition, the investigator will provide the parties and their advisors any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence which the university does not intend to rely on 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 the final investigation report.

The preliminary report and evidence will be provided electronically or in a hard copy. Each party will have ten business days from the date the preliminary report is shared to submit a written response, which the investigator will consider before completing the final investigation report.



If a party identifies new relevant information, the investigator will address any relevant issues identified and pursue additional investigative steps as needed. The investigator will include those matters in a revised preliminary report and give the parties two business days to review and comment on it before writing the final report.

(o) Final investigation report; dismissal or further proceedings

After all review and comment periods have ended, the investigator will write a final investigation report. The final investigation report will fairly summarize the relevant evidence and include the investigators findings and a summary of the investigators rationale for those findings.

If the final investigation report determines that the conduct alleged in the formal complaint would not constitute prohibited conduct even if proved, did not occur in a BGSU education program or activity, or did not occur against a person in the United States, then the university will dismiss the formal complaint with regard to that conduct for purposes of this policy.

The title IX coordinator may dismiss the formal complaint, or any allegations in the formal complaint, if at any time during the investigation or hearing any of the following occur: the complainant notifies the title IX coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in it; the respondent ceases to be enrolled at or employed by the university; or specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.

A dismissal under this policy will not preclude action under another applicable university policy or code of conduct. For example, if the alleged conduct by a student would constitute a violation of the code of student conduct, the matter will be referred to the office of the dean of students. If the alleged conduct by a university employee could violate any other university policies, the matter will be referred to the equity and compliance officer or other appropriate authority.

If the formal complaint or any allegations are being dismissed under this policy, but are being referred to another department for assessment, the written notice will simultaneously be sent to the parties advising them of this action and the reasons for it. This notice will also be provided to the appropriate department to institute their assessment process regarding the complaint or allegations.



If the formal complaint or any allegations are dismissed under this policy and are not being referred to another department for review, the title IX coordinator will promptly and simultaneously send written notice to the parties advising them of the dismissal and the reasons for it.

If the formal complaint is not dismissed, the investigator will submit the final investigation report to the title IX coordinator for review and approval with copies to the office of general counsel for review. The final investigation report will then move forward for adjudication and be included with other relevant materials for the hearing.

The title IX coordinator will simultaneously provide a copy of the final investigation report to the complainant and respondent and their respective advisors (if any) at least ten business days before the scheduled hearing for their review and written response. The notice will include a scheduled meeting with each party to provide information about next steps, which may include information on an informal resolution process and will include information on the hearing process. Information about appeals will be provided at designated points in the process.

#### (4) Live hearing

After the respondent has reviewed the final investigation report, the respondent may request referral to an informal resolution process. This will be subject to the complainant's voluntary agreement, unless the respondent is an employee and the complainant is a student. (Under 34 CFR 106.45, informal resolution cannot be used to resolve an allegation that an employee sexually harassed a student).

In the absence of an informal resolution or a respondent accepting responsibility, a live hearing will be conducted to determine responsibility.

If both parties are students, the parties will have the opportunity to select that the hearing be conducted before a single decision-maker or a three-member board. Both parties must agree to have a hearing before a single decision-maker; if the parties do not agree, the hearing will be conducted before a three-member board. When the case is scheduled before a hearing board, the university will assign an individual to serve as the single decision-maker or the board chair. The board chair will



only vote in the event of a tie.

If one or both of the parties is an employee, the live hearing will be conducted before a single decision-maker.

(a) Prehearing procedure

The university may 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.

If a decision-maker or board member has direct, firsthand knowledge of the case, is personally acquainted with the complainant or respondent, has any other conflict or for other good cause as determined by the board chair or by the title IX coordinator in matters involving a single decision-maker, that individual will be recused and be replaced.

The board chair shall maintain records related to the selection of the hearing board in accordance with applicable university records retention schedules.

The board chair or single decision-maker will set a hearing date, which cannot occur sooner than ten business days after the final investigation report was sent to each party and advisor. At least five business days before the hearing date, the dean of students office or office of title IX will give written notice to the complainant and the respondent and their respective advisors (if any).

The written notice will specify the hearing date and list the name(s) and job title(s) of the single decision-maker or board members. It will also specify a date by which the complainant and respondent must each submit a list of witnesses, provide copies of any documents the party intends to present (including any written impact or mitigation statements), identify any advisor who will attend the hearing, and submit a written explanation seeking to disqualify the single decision-maker or any member of the board for bias or conflict of interest.

If the university chooses to have legal counsel present the case to the hearing decision-maker or



board, the written notice will include that information. If so, the respondent may also present their case through legal counsel.

At least three business days before the hearing, the single decision-maker or board chair will make a list of all witnesses and copies of all documents available to the complainant and the respondent.

(b) Hearing procedure

The hearing will be live and audio-recorded. The live hearing may be conducted with all parties physically present in the same geographic location or, at the university'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. The recording is university property and shall be an education record of a student complainant and a student respondent. The university will make the recording available to the parties for inspection and review upon request.

The university expects that the complainant and the respondent will each be present and available for the entire live hearing. The complainant and respondent need not be present in the same room. At the request of either party, the university will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the single decision-maker or hearing board and parties to simultaneously see and hear the party or the witness answering questions.

The single decision-maker or board chair will exercise control over the proceedings. The single decision-maker or board chair is also permitted to ask questions.

Formal rules of evidence will not apply.

The single decision-maker or hearing board may only consider relevant evidence. Prior conduct history of any party or witness may be considered if relevant.

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.

During the hearing, each party may refer to any relevant evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint (including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source), including for purposes of cross-examination.

The single decision-maker or board chair will determine whether evidence is relevant.

The members of the hearing board or single decision-maker and the investigator may ask questions directly to each witness. Each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. This cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. If a party does not have an advisor present at the live hearing, the university will provide an advisor of the university's choice to conduct cross-examination on behalf of that party.

The single decision-maker or board chair may disallow any question that seeks information that is not relevant. Before a complainant, respondent, or witness answers a cross-examination or other question, the single decision-maker or board chair must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Each witness (other than the complainant and the respondent) will be excluded from the hearing while another witness speaks before the hearing panel.

No witness may be compelled to answer a question. In general, if a party or witness does not submit to cross-examination at the live hearing, the single decision-maker or hearing board must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The only exception to this rule is if the party admitted to engaging in the prohibited conduct. The respondent may choose to speak on their own behalf or remain silent. The single decision-maker or hearing board 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.

The single decision-maker or hearing board will 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 investigator will be the first person to present evidence to the single decision-maker or hearing board.

The second person who may present evidence to the single decision-maker or hearing board is the complainant.

The third person who may present evidence to the single decision-maker or hearing board is the respondent.

After the investigator, the complainant, and the respondent have each had the opportunity to present evidence to the single decision-maker or hearing board, the single decision-maker or board will allow each of them to ask concluding questions of each other (directly or through an advisor as applicable). Finally, the single decision-maker or board will ask concluding questions of the investigator, the complainant, and the respondent.

The hearing will end after the concluding questions. The single decision-maker or hearing board will consider the prohibited conduct presented in the final investigation report. While presuming that the respondent is not responsible, the hearing board or single decision-maker will deliberate on the evidence presented at the hearing. The hearing board or single decision-maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and will not base its credibility determinations on a persons status as a complainant, respondent, or witness.

Written impact or mitigation statements, if any, will be requested during hearing preparation but not considered until after a responsibility determination is made.

If a majority of the hearing board or single decision-maker agrees that a preponderance of the evidence compels the conclusion that respondent engaged in an act of prohibited conduct, it will find



the respondent to be responsible.

(5) Hearing outcome and sanctions for students

Student respondent outcome:

If the single decision-maker or the hearing board finds a student respondent to be responsible for prohibited conduct, the single decision-maker or the hearing board will review any written impact or mitigation statements and deliberate and determine sanctions. The purposes of sanctioning are to end prohibited conduct (or other offenses); restore or preserve equal access to the university's education program or activity; and promote the goals and objectives of this policy in a manner that supports the university's educational mission and its duty under title IX. Sanctions may also be designed to promote safety, deter similar behavior, and promote university values.

Once the single decision-maker or the hearing board has made a finding as to each instance of prohibited conduct (or other offense) under consideration, and determined sanctions for a student respondent, it will set forth its outcome together with an explanation of the majority's reasoning in a written determination and will submit it to the office of the dean of students within five business days of the conclusion of the hearing.

The written determination will include the following:

- (a) Identification of the allegations potentially constituting prohibited conduct;
- (b) A description of 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 this policy to the facts and a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;



(e) Any disciplinary sanctions the single decision-maker or hearing board imposes on the student respondent, and whether remedies designed to restore or preserve equal access to a BGSU education program or activity will be provided by the recipient to the complainant; and

(f) The procedures and permissible bases for the complainant and respondent to appeal.

The office of the dean of students will simultaneously provide a copy of the single decision-maker or hearing boards written determination to the complainant and respondent.

As noted in this paragraph, if the respondent is a student employee of the university, one of the sanctions imposed by the single decision-maker or hearing board may be a prohibition or limitation of university employment.

(6) Potential sanctions for student respondents

Potential sanctions include one or more of the following:

(a) Expulsion: termination of student status for an indefinite period;

(b) Suspension: full separation from the university for a specified period or until certain conditions are met;

(c) Disciplinary probation: A designated period during which the student is not in good standing with the university. Disciplinary probation may restrict student privileges and set specific behavioral expectations;

(d) No contact directive: restriction from entering specific campus areas and/or from all forms of contact with designated persons;

(e) Removal, suspension or transfer from designated university courses or activities for a specified period;

(f) Reasonable restitution to pay for or replace lost or damaged property;



- (g) Educational program attendance: enrollment in and completion of one or more of the following: a class, workshop, training, or program that could appropriately help the respondent or the university community;
- (h) Educational project: completion of a project designed to help the respondent understand why certain behavior was inappropriate and to prevent its recurrence;
- (i) Employment restriction: the prohibition of or limitation on university employment;
- (j) Transcript hold: placing a hold on transcripts, meaning that BGSU may prevent a student from registering, receiving a transcript, or both, until the student has complied with all other sanctions;
- (k) Transcript notation and/or notice to other institutions (only in cases of suspension and expulsion): A notation of non-academic disciplinary action may be made on a transcript and/or BGSU may notify other institutions of non-academic disciplinary action;
- (l) University housing change: placement in another room or housing unit or removal from university housing, which may be temporary or permanent depending on all the circumstances;
- (m) Withholding or revoking a degree: BGSU may withhold conferring a degree or revoke a conferred degree due to a finding of responsibility of prohibited conduct when the student would have been suspended or expelled for the finding had the conduct process been completed prior to the awarding of the degree.

As noted in paragraph (L)(6)(i) of this rule, if the respondent is a student employee of the university, one of the sanctions imposed by the single decision-maker or hearing board may be a prohibition or limitation of university employment.

#### (7) Employee respondent outcome

If the single decision-maker finds an employee respondent to be responsible for prohibited conduct, the single decision-maker will review any written impact or mitigation statements and deliberate and



determine sanctions. The purposes of sanctioning are to end prohibited conduct (or other offenses); restore or preserve equal access to the university's education program or activity; and promote the goals and objectives of this policy in a manner that supports the university's educational mission and its duty under title IX. Sanctions may also be designed to promote safety, deter similar behavior, and promote university values.

Once the single decision-maker has made a finding as to each instance of prohibited conduct (or other offense) under consideration, and determined sanctions for an employee respondent, it will set forth its outcome together with an explanation of the decision-maker's reasoning in a written determination and will submit it to the office of title IX within five business days of the conclusion of the hearing.

The single decision-maker will also provide a copy of the written determination to the employee's supervisor and the office of human resources (for classified and administrative staff employees) or the office of the provost (for faculty). Any further proceedings will take place in accordance with university policies and procedures and any applicable collective bargaining agreement and any disciplinary sanction will be imposed by the appropriate decisional authority.

The written determination will include all of the elements as outlined in paragraphs (L)(5)(a) to (L)(5)(f) of this rule.

(8) Potential sanctions for employee respondents

Potential sanctions include one or more of the following:

- (a) Warning - verbal or written
- (b) Performance improvement plan
- (c) Enhanced supervision, observation, or review
- (d) Required training or education



- (e) Probation
- (f) Denial of pay increase/pay grade
- (g) Loss of job responsibilities
- (h) Demotion
- (i) Transfer or reassignment
- (j) Delay of progress toward tenure
- (k) Restriction of stipends or professional development resources
- (l) Suspension with pay
- (m) Suspension without pay
- (n) Termination
- (o) Other actions as deemed appropriate
- (9) Appeals
  - (a) Basis for an appeal

The complainant and respondent each may appeal from a determination regarding responsibility and from the dismissal of a formal complaint or any allegations in it, on the following bases:

- (i) Procedural irregularity that affected the outcome of the matter.
- (ii) 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.



(iii) The title IX coordinator, investigator(s), single decision-maker or a member or members of the hearing board had a conflict of interest.

(iv) Bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(b) Procedure on appeal

(i) Appeal of a dismissal

Either party may appeal the dismissal of the formal complaint or any of its allegations, by providing a written notice of appeal to the chief diversity and belonging officer within five business days of the date the written notice of the dismissal is provided.

A notice of appeal shall consist of a plain, concise, and complete written statement outlining the basis for appeal and all relevant information supporting the appeal. The chief diversity and belonging officer may impose page limits for all appeal statements.

The chief diversity and belonging officer will simultaneously provide the notice of appeal to the other party, who will have three business days to respond to that officer in writing. All appeal documents from each party will be considered together in the appeal. If an appeal contains new evidence that was not available at the time of the hearing, the new evidence will be provided to the other party along with notice of appeal.

(ii) Procedures for appeal of a dismissal decided by the chief diversity and belonging officer

The chief diversity and belonging officer will conduct the review of the appeal of a dismissal.

The scope of the review will be limited to the grounds for appeal that the appealing party identified in their appeal statement.

The chief diversity and belonging officer will consider only the following documents: the title IX



coordinators written notice to the parties advising them of the dismissal and the reasons for it and the parties written appeal submissions.

The chief diversity and belonging officer may freely consult with the office of the dean of students, the office of general counsel, and other university administrators in deciding the appeal of the finding or the sanction.

The chief diversity and belonging officer may affirm the dismissal or reject it and send the matter back for further action. The decision of the chief diversity and belonging officer will be written and will describe the result of the appeal and the rationale for the result. The decision is final and unreviewable.

(iii) Appeal of the hearing determination

When a hearing determination has been made against a student respondent, both parties may appeal the single decision-maker or the hearing boards written determination by providing written notice to the office of the dean of students within five business days of the date the single decision-maker's or hearing boards written determination is provided to the parties.

When a hearing determination has been made against an administrative or classified employee, both parties may appeal the single decision-makers written determination by providing written notice to the chief human resources officer within five business days of the date the single decision-makers written determination is provided to the parties.

When a hearing determination has been made against a faculty employee, both parties may appeal the single decision-makers written determination by providing written notice to the provost (or designee) within five business days of the date the single decision-makers written determination is provided to the parties.

A notice of appeal shall consist of a plain, concise, and complete written statement outlining the basis for appeal and all relevant information supporting the appeal.

For purposes of this policy, the dean of students, the chief human resources officer, and the provost





or designee are each an appellate officer and may impose page limits for all appeal statements.

The appellate officer will simultaneously provide notice of appeal to the other party, who will have three business days to respond to that office in writing. All appeal documents from each party will be considered together in the appeal. If an appeal contains new evidence that was not available at the time of the hearing, the new evidence will be provided to the other party along with notice of appeal.

(iv) Procedures for an appeal of the hearing determination

The appellate officer will conduct the review of the appeal of the hearing boards or single decision-maker's written determination.

The scope of the review will be limited to the grounds for appeal that the appealing party identified in their appeal statement. The appeal is not a rehearing.

The appellate officer will consider only the following documents: the hearing boards or single decision-maker's written determination, the recording of the hearing, the parties written appeal submissions, the sanctioning determination, and any impact or mitigation statements.

The appellate officer may freely consult with the title IX coordinator, the office of general counsel, and other university administrators in deciding the appeal of the finding or the sanction.

In deciding each issue on appeal, the appellate officer may do any of the following:

- (a) Affirm the decision that was appealed;
- (b) Reject the decision that was appealed and send the matter back to the hearing board or the single decision-maker for further action; or
- (c) Modify the sanction

In an appeal of a notice of sanctions, if the sanctions are clearly inappropriate or disproportionate, the appellate officer will impose appropriate sanctions and provide a written explanation of the



reasons for the action.

The appellate officer will seek to complete the review within ten business days after receiving all the appeal documents.

The decision of the appellate officer will be written and will describe the result of the appeal and the rationale for the result. The decision is final and unreviewable.

The appellate officer will simultaneously provide the decision to the parties.

#### (M) Informal resolution

Informal resolution is structured interaction between or among the parties affected by reported prohibited conduct. It is entirely voluntary. No party is required to participate in an informal resolution, it may not be offered unless a formal complaint is filed, and it cannot be used to resolve allegations that an employee sexually harassed a student or if a determination regarding responsibility has been made. Subject to the those conditions, an informal resolution process, such as mediation, can afford the parties an opportunity to reach their own agreed resolution without a full investigation and adjudication.

The goal of every form of informal resolution is to restore or preserve equal access to the university's education program or activity in a way that meets the expressed preference of the complainant while serving the safety and welfare of the campus community.

#### (1) Informal resolution notice

If either party expresses an interest in an informal resolution, the title IX coordinator will first consult the other party. If the other party is willing to attempt alternative resolution, the title IX coordinator will provide a written notice to the parties including the following:

- (a) The allegations;
- (b) 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;

(c) A statement advising the parties that, at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the formal resolution process with regard to the formal complaint;

(d) Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and

(e) A signature line for each party's voluntary, written consent to the informal resolution process.

Because informal resolution is not appropriate in all situations, the title IX coordinator has discretion to determine when a case is appropriate for informal resolution. The title IX coordinator will keep records of all matters referred to informal resolution and review them to assess pattern or systemic behavior.

## (2) Principles common to all forms of informal resolution

Because informal resolution is always voluntary, either the complainant or the respondent can ask the title IX coordinator to end it and refer the matter to the formal resolution process at any time.

BGSU will not compel a complainant or a respondent to engage in any form of informal resolution or to directly confront each other.

Upon request, any participating individual may be accompanied by an advisor.

Information given during informal resolution will be treated as private and confidential to the extent permitted by law. It will not result in any subsequent disciplinary action by the university unless required by law.

## (3) Restorative justice principles

Informal resolution may include restorative justice principles that are designed to allow the



respondent to accept responsibility for their misconduct and acknowledge harm to the complainant and/or the university community. A restorative justice form of informal resolution may only be used with the express consent of both parties, following a determination by the title IX coordinator that the matter is appropriate for that approach.

The circle of people affected by an act alleged to be prohibited conduct includes not only the complainant and the respondent but their friends and other members of the university community (who may also be witnesses), their families, and others.

It may be beneficial for the complainant and other affected persons to meet with a respondent who is willing to acknowledge the substance of the underlying events and who recognizes that harm was reported. Furthermore, structured interactions among the affected persons can facilitate long-term healing and reduce recidivism.

#### (4) When informal resolution options may be used

Before any form of informal resolution may be used, the title IX coordinator must have reviewed the matter and confirmed that it is appropriate for an informal resolution process. Informal resolution cannot be used to resolve an allegation that an employee sexually harassed a student. As part of the review, the title IX coordinator will ensure that the parties' agreement to use informal resolution were each made without pressure or compulsion from others and that the parties were advised that they may withdraw from the process at any time. The time for completion of informal resolution may vary, but in all cases, BGSU will initiate action within thirty business days of the request.

#### (5) Agreement reached by informal resolution

If the parties voluntarily reach consensus as to the terms of an agreement through an informal resolution process, the agreement will be documented in writing and submitted to the title IX coordinator for review and approval.

The title IX coordinator will review the written agreement to ensure consistency with the university's obligations under title IX.



If the title IX coordinator approves the agreement, the university will require the respondent to comply with it. Failure to comply may be submitted as a violation of the code of student conduct.

If no agreement is reached, the matter will be referred to the title IX coordinator for return to the formal resolution process.

(N) Remedies for the university community

Whether or not the university undertakes an investigation or any formal disciplinary action, the title IX coordinator may initiate specific remedial steps, such as:

- (1) Having a university entity provide training to its staff or members;
- (2) Continuing previously-established protective or supportive measures;
- (3) Identifying whether there is a need for any additional or ongoing measures, supports, or remedies; and
- (4) Revising university policies or practices.

(O) Records retention

BGSU will adopt a records retention schedule to retain the following records for a period of seven years:

- (1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript of a hearing, any disciplinary sanctions imposed on the respondent;
- (2) Any remedies provided to the complainant designed to restore or preserve equal access to any BGSU education program or activity;
- (3) Any appeal and the result therefrom;



(4) Any informal resolution and the result therefrom;

(5) All materials used to train title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, which shall also be posted on a BGSU website; and

(6) Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, BGSU must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to each BGSU education program or activity. If BGSU does not provide a complainant with supportive measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit BGSU in the future from providing additional explanations or detailing additional measures taken.

(P) Policy review

This policy is maintained and administered by the office of title IX. The policy will be reviewed each year and updated as needed. The annual policy review will include an evaluation of any changes in legal requirements, existing university resources, and the cases resolved during the preceding year.

(Q) Annual report

The title IX coordinator will issue an annual report to the university community. The report will provide an overview of actions taken by the university in response to reports of prohibited conduct by students. All confidential details will be removed to comply with FERPA and respect the privacy of the parties involved. The report will be designed to inform the community of response efforts and engage it in education and prevention initiatives.

Equity impact statement: the policy has been assessed for adverse differential impact on members of one or more protected groups.