



Bethany

A Small College of National Distinction

**POLICY MANUAL
VOLUME 2.3.2**

Title IX Sexual Harassment Policy

*Approved by the Bethany College Board of Trustees
October 8, 2021*

Policy dictates that the Officers of Bethany College are:

**President of the College
Provost and Dean of Faculty
Chief Financial Officer
Chief Advancement Officer**

Specific titles for the latter three may vary according to organizational structure. For the purpose of Bethany College policy documents for the 2021-2022 academic year, the Chief Academic Officer is the Provost and Dean of Faculty; the Chief Financial Officer is the Vice President for Finance; and, the Chief Advancement Officer is the Vice President for Institutional Advancement and Alumni Affairs. Titles for these three positions may change at the discretion of the President of the College.

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Title IX Sexual Harassment Policy

This Title IX Sexual Harassment Policy shall supersede all other Title IX Sex Discrimination Policies heretofore adopted by this College.

I. POLICY STATEMENT

Bethany College (“the College”) is committed to creating and maintaining a learning and work environment that is free from discrimination based on sex.

This Title IX Sexual Harassment Policy (the “Policy”) prohibits sex-based discrimination, including sex-based harassment, in all operations of the College. The Policy is intended to meet the College’s obligations under Title IX of the Education Amendments of 1972 (“Title IX”); the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (“Clery Act”), as amended by the Violence Against Women Reauthorization Act of 2013 (“VAWA”), with respect to its application to sex-based misconduct; and other applicable law and regulations.

The College is committed to the principles of academic freedom and freedom of expression and the Policy should be interpreted, and will be applied, consistent with both of these principles.

The Policy also prohibits retaliation against an individual: (1) who makes a report or files a Formal Complaint of Title IX Sexual Harassment; (2) about whom a report is made or against whom a Formal Complaint is filed; (3) who participates in the reporting, investigation, or adjudication of possible violations of this Policy; or (4) who engages in good faith opposition to what another individual reasonably believes to be Title IX Sexual Harassment under this Policy.

The College’s Title IX Coordinator is responsible for administering the Policy and related procedures.¹ Any inquiries about the Policy or procedures should be referred to the College’s Title IX Coordinator, Khali Blankenship, who may be contacted as follows:

Khali Blankenship Carpenter, Esq.
Student Life – Bethany House
31 E Campus Drive
Bethany, WV 26032-3002
Phone: 304.829.7064
Email: kblankenship@bethanywv.edu or titleix@bethanywv.edu

¹ All references in the Policy to the Title IX Coordinator should be understood to also include any individual acting as a designee of the Title IX Coordinator.

II. APPLICABILITY AND SCOPE

This Policy applies to all members of the College community. This includes, but is not limited to, full and part-time students; full and part-time employees, including faculty members, staff, student employees, and temporary and contract employees; and certain third parties, including applicants for admission and employment, visitors, employees of College contractors, and individuals who are participating in a College Education Program or Activity, but who are neither enrolled in an academic program/course at the College nor employed by the College (e.g. individuals participating in or attending a College Education Program or Activity by invitation or that is open to the public). The Policy applies regardless of the gender, gender identity, or sexual orientation of the parties.

This Policy prohibits Title IX Sexual Harassment committed against any member of the College community in the United States and within a College Education Program or Activity.

The College retains the discretion to determine that conduct that occurs outside of the United States or outside of a College Education Program or Activity, including online conduct that is not part of a College Education Program or Activity, is within the scope of this Policy. In making this determination, the College will consider the severity of the alleged conduct, the risk of ongoing harm, whether both parties are members of the College community, the impact on College programs or activities, and whether off-campus conduct is part of a series of actions that occurred both on and off campus.

Reported incidents of discrimination or other misconduct on the basis of sex that are not covered by this Policy may be governed by other College policies, including but not limited to:

- [Student Code of Conduct](#)
- Campus Community Policies
- [Faculty Personnel Policies](#)
- [Staff Personnel Policies](#)
- [Student Life Policies](#)

This Policy supersedes any conflicting information in any other College policy with respect to the definitions and procedures applicable to alleged Title IX Sexual Harassment. This Policy and the related procedures provide the exclusive remedy for alleged Title IX Sexual Harassment.

III. DEFINITIONS

A. Definitions of Conduct Prohibited by this Policy

Title IX Sexual Harassment: conduct on the basis of sex that satisfies one or more of the following –

- A College employee (including a faculty member) conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct. *Also known as quid pro quo sexual harassment.*
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a College Education Program or Activity.
- **Sexual Assault:** any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders or gender identities.

Sexual Assault includes the following:

- **Rape:** the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity;
- **Sodomy:** oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity;
- **Sexual Assault with an Object:** to use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening, or other bodily orifice, of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity;
- **Fondling:** the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her/their age or because of his/her/their temporary or permanent mental or physical incapacity;
- **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or

- **Statutory Rape:** sexual intercourse with a person who is under the statutory age of consent.
- **Domestic Violence:** a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the West Virginia, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of West Virginia.
- **Dating Violence:** an act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship is determined based on a consideration of the (1) length of the relationship, (2) type of relationship, and (3) frequency of interaction between the persons involved in the relationship.
- **Stalking:** a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his/her/their safety or the safety of others, or (2) suffer substantial emotional distress.
- **Retaliation:** an adverse action or other form of negative treatment, including but not limited to intimidation, threats, coercion, discrimination or harassment, carried out in response to a good-faith reporting of or opposition to Title IX Sexual Harassment; an individual's or group's participation, including testifying or assisting in the College's Title IX Procedures; an individual's or group's refusal to participate in the College's Title IX Procedures; or other form of good faith opposition to what an individual reasonably believes to be Title IX Sexual Harassment under this Policy.

Individuals are also protected from retaliation for making good faith requests for accommodations on the basis of religion or disability.

To be a Policy violation, the challenged actions or treatment must be sufficiently serious to discourage a reasonable person from further reporting, participation, or opposition.

Charging an individual with a Policy violation for making a materially false statement in bad faith in the course the College's Title IX process does not constitute Retaliation. The exercise of rights protected under the First Amendment also does not constitute Retaliation.

B. Additional Definitions

Official with Authority: an official of the College with the authority to institute corrective action on behalf of the College and notice to whom causes the College to

respond to Title IX Sexual Harassment. For a full list of College officials that meet this definition, see Appendix A attached to this Policy.

Complainant: an individual who is alleged to be the victim of Title IX Sexual Harassment.

Effective Consent: Effective consent is the basis of the analysis applied to unwelcome sexual contact. Lack of consent is the critical factor in any incident of sexual misconduct. Effective consent is informed, freely and actively given, and requires clear communication between all persons involved in the sexual encounter. Effective consent is active, not passive. Effective consent can be communicated verbally or by actions. But in whatever way consent is communicated, it must be mutually understandable.

1. Silence and consent: Silence, in and of itself, cannot be interpreted as consent. It is the responsibility of the initiator of sexual contact to make sure they understand fully what the person with whom they are involved wants and does not want sexually.
2. Transferability of consent: Effective consent to one form of sexual activity does not imply consent to other forms of sexual activity. Previous relationships or consent do not imply consent to future sexual acts.
3. Consent and force: Effective consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion.
4. Inability to consent: Effective consent cannot be given by minors, mentally disabled individuals, or persons incapacitated as a result of drugs or alcohol. If you have sexual activity with someone you know to be, or should know to be, mentally or physically incapacitated (by alcohol or other drug use, unconsciousness, or blackout), you are in violation of this policy. Incapacitation is a state where one cannot make a rational, reasonable decision because he/she/they lack(s) the ability to understand the “who,” “what,” “when,” “where,” “why,” or “how” of the sexual interaction.
5. Consent and drugs/alcohol: This policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of a so-called “date- rape” drug. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketomine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student for the purpose of inducing incapacity is a violation of this policy. Administering alcohol to another person for the purpose of inducing incapacity, even if the person is of legal drinking age, is also a violation of this policy. Use of alcohol or drugs will never function as a defense to a violation of this policy. The initiator of sexual activity is responsible for obtaining consent from his/her/their sexual partner(s), regardless of the initiator’s own incapacity.

Consensual Relationships: The potential for abuse or the appearance of abuse and the inherent differential in authority prompt the College to prohibit any faculty member or employee of the College from engaging in a romantic and/or sexual relationship or in romantic and/or sexual conduct with any student of any gender or identity currently enrolled at Bethany College.

Likewise, the potential for abuse or the appearance of abuse and the inherent differential in authority prompt the College to prohibit any member of the College community from engaging in a romantic and/or sexual relationship or in romantic and/or sexual conduct with any employee of any gender or gender identity who that person supervises or evaluates in any way.

It should be noted that exceptions to any of these prohibitions will be considered by the Vice President and Dean of Students on a limited, case-by-case basis. If you have questions about the applications or effect of this policy to an existing or potential relationship, it is your duty to consult with the Vice President and Dean and Students.

In keeping with this policy, if charges of sexual harassment are made, the existence of a consensual relationship in any of the contexts stated above shall not be a defense in any proceeding resulting from such charges.

Individuals who violate this provision are subject to the range of discipline listed in this policy.

This policy is in addition to existing College rules and regulations and does not alter or modify any existing policy.

College Education Program or Activity: all operations of the College, including (1) those locations, events, and circumstances where the College exercises substantial control and (2) any building owned or controlled by a student organization recognized by the College. Conduct that occurs on-campus occurs within the College's Education Program or Activity. Conduct that occurs off campus in locations or at events with no connection to the College is unlikely to occur in the College's Education Program or Activity.

Formal Complaint: a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that the College investigate the allegation of Title IX Sexual Harassment. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by email, or through the electronic reporting system on the College's website.

Report: formal notification to the Title IX Coordinator or an Official with Authority, either orally or in writing, of the belief that Title IX Sexual Harassment occurred.

Respondent: the person or office, program, department, or group against whom an allegation or complaint is made (e.g. the individual[s], organizational unit[s], or group[s] who has been reported to be the perpetrator of conduct that could constitute Title IX Sexual Harassment).

Responsible Employee: an individual designated by College policy who is required to report information regarding Title IX Sexual Harassment to the Title IX Coordinator.

Student: an individual who was selected for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at the College.

IV. REPORTING AND RESOURCE OPTIONS

A. Reporting Title IX Sexual Harassment to the College

The College encourages all individuals to report allegations of Title IX Sexual Harassment directly to the Title IX Coordinator or to an Official with Authority (see Appendix A for a complete list of Officials with Authority). Any person, regardless of whether they are the Complainant, may report Title IX Sexual Harassment to the Title IX Coordinator and/or the Deputy Title IX Coordinator.

Reporting an incident of Title IX Sexual Harassment to the Title IX Coordinator or an Official with Authority allows the College to provide Supportive Measures (as described below), but does not necessarily result in the initiation of a grievance procedure.

A report may be made in person, in writing, by telephone, by email, or through the electronic reporting system on the College's website.

To make a report, contact the Title IX Coordinator or the Deputy Title IX Coordinator at:

Khali Blankenship Carpenter, Esq.

Director of Student Conduct and Title IX Coordinator/504 Coordinator

Student Life – Bethany House

31 E Campus Drive

Bethany, WV 26032-3002

Phone: 304.829.7064

Email: KBlankenship@bethanywv.edu or titleix@bethanywv.edu

Kathy Burd

Director of Human Resources & Deputy Title IX Coordinator

Business Affairs – Cramblet Hall

31 E Campus Drive

Bethany College

Bethany, WV 26032

Phone: 304.829.7131

Email: KBurd@bethanywv.edu

A report can also be made anonymously by telephone, in writing, or electronically through the website reporting system. Depending on the level of information available about the incident or the individuals involved, the College's ability to respond to an anonymous report may be limited. The College will, however, take whatever steps it deems appropriate and in the best interests of the overall College community, consistent with the information available.

Only a report to the Title IX Coordinator or an Official with Authority will trigger the College's obligation to respond to an allegation of Title IX Sexual Harassment.

Any report involving a minor will be shared with law enforcement agencies and child protective services within 24 hours, as required by West Virginia Code § 49-2-803.

B. Required Reports by Responsible Employees

Responsible Employees are expected to be discreet, but are required by the College to promptly consult with Title IX Coordinator by telephone, email, or online reporting form to share known details of an incident of alleged Title IX Sexual Harassment.

The following have been designated by the College as Responsible Employees:

- Board of Trustees Members
- President
- Provost and Dean of Faculty
- Vice President for Enrollment Management and Marketing
- Vice President of Advancement and Alumni Relations
- Vice President for Finance
- Vice President and Dean of Students
- Director of Athletics
- Assistant Athletics Director
- Director of Student Conduct
- Director of Safety and Security
- Director of Enrollment
- Director of Student Affairs
- Director of Student Athlete Success
- Director of Advancement Services
- Coordinator of Student Activities and Volunteer Services
- Director of Government, Foundation, and Academic Grants
- All College Faculty
- All Athletic Department Coaches and Staff
- All Public Safety Staff
- All Student Life Staff
- All Resident Assistants
- All Admissions Staff

A Responsible Employee's receipt of information will not automatically trigger an obligation to respond to an allegation of Title IX Sexual Harassment. Only a report to the Title IX Coordinator or an Official with Authority will trigger the College's obligation to respond to an allegation of Title IX Sexual Harassment.

C. Emergency Resources and Law Enforcement

Emergency medical assistance and campus safety/law enforcement assistance are available 24/7 both on and off campus. Individuals are encouraged to contact law enforcement and seek medical treatment as soon as possible following an incident that may pose a threat to safety or physical well-being or following a potential criminal offense.

Law Enforcement Assistance: Members of the College community who believe their safety or the safety of others is threatened or who have experienced or witnessed Title IX Sexual Harassment that may be criminal in nature should immediately call the Department of Safety and Security at 7744 (if on campus), 304.830.3924 (if off campus), or call 911 to reach local law enforcement.

Emergency Medical Assistance: The College encourages individuals to seek assistance from a medical provider or crisis response service immediately after an incident that may require medical attention. This provides the opportunity to address physical well-being or health concerns, preserve any available evidence, and begin a timely investigative and remedial response.

Emotional care, counseling, and crisis response are available on and off campus:

On-campus phone numbers:

- Campus Safety and Security: 304.830.3924
- Student Life On Call (staffed around the clock when classes are in session): 304.830.3933
- Title IX Coordinator: 304.829.7064
- Deputy Title IX Coordinator: 304.829.7131
- Campus Health and Wellness Center: 304.829.7567

Off-campus phone numbers:

- Emergencies: 911 (from an on-campus phone, dial 9-911)

In the event that the incident was one of sexual violence, do everything possible to preserve evidence by making certain that the crime-scene is not disturbed. The decision to press charges does not have to be made at this time. However, following these procedures will help preserve this option for the future. If involved in an incident of sexual violence, please do not bathe, urinate, douche, brush teeth, or drink liquids. Clothes should not be changed. However, if clothes are changed, bring all the original clothing to the hospital in a paper bag, as plastic bags may damage the evidence.

When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination. Some area hospitals include, but are not limited to:

Wheeling Hospital – 16.5 miles from Bethany College
1 Medical Park
Wheeling, WV 26003
304.243.3000

Weirton Medical Center – 20.5 miles from Bethany College
601 Colliers Way
Weirton, WV 26062
304.797.6000

Washington Hospital – 22.5 miles from Bethany College
155 Wilson Avenue
Washington, PA 15301
724.225.7000

An advocate from the Sexual Assault Help Center, located in Wheeling, WV, can offer support at the hospital. However, this service must specifically be requested.

D. Confidential Resources

Confidential Resources are employees or offices who are available to provide individuals with assistance, support, and additional information.

Confidential Resources are prohibited from disclosing confidential information unless (1) given permission by the person who disclosed the information; (2) there is an imminent threat of harm to self or others; (3) the conduct involves suspected abuse of a minor under the age of 18; or (4) as otherwise required or permitted by law or court order. Confidential Resources may be required to report non-identifying information to the College's Department of Safety and Security for Clery Act crime reporting purposes.

The following College resources can provide counseling, information, and support in a confidential setting:

Strictly confidential on-campus phone numbers:

- Counseling Center: 304.829.7572
- College Chaplain: 304.829.7137
- Student Health: 304.829.7567

Strictly confidential off-campus phone numbers:

- Sexual Assault Help Center (Wheeling, WV): 304.234.8519
- National Sexual Assault Hotline: 1.800.656.HOPE (1.800.656.4673)

E. All Reports Treated with Discretion

All inquiries, complaints, and investigations are treated with discretion. Information is revealed only as law and policy permit or require. However, the identity of the complainant is usually revealed to the person(s) accused of such conduct and any witnesses with consent of the complainant. Publicizing information about alleged sex discrimination or retaliation is strictly prohibited and may be considered a violation of College policy. The Family Educational Rights and Privacy Act (“FERPA”) also protects student’s records by restricting the amount of people who have access to Title IX investigative materials and/or records.

V. TIMEFRAME FOR REPORTING

In order to maintain and support a community that is respectful and free from Title IX Sexual Harassment and to maximize the College’s ability to respond promptly and effectively, the College urges individuals to come forward with reports of Title IX Sexual Harassment as soon as possible. The sooner a report is made, the more effectively it can be investigated, e.g. while witnesses are still available, memories are fresh, and documentation may still be available. *There is, however, no time limitation for reporting Title IX Sexual Harassment.*

VI. AMNESTY

Sometimes students are reluctant to seek help after experiencing Title IX Sexual Harassment, or may be reluctant to help others who may have experienced Title IX Sexual Harassment, because they fear being held responsible by the College or law enforcement for drug use or underage alcohol consumption.

The College generally will not pursue disciplinary action against a student who makes a good faith report to the College, or who participates as a party or witness in the grievance process related to Title IX Sexual Harassment, for personal consumption of alcohol or other drugs (underage or illegal), or for COVID-19 related policy violations, that would otherwise be a violation of the Student Code of Conduct, provided the misconduct did not endanger the health or safety of others. In order to seek shelter under the College’s Title IX Amnesty Policy, the charges against the individual for Code of Conduct violations must not involve sex-based discrimination or sexual harassment, and the charges must arise out of the same facts or circumstances as a report or formal complaint of sexual harassment (also known as “collateral conduct”).

The College also has discretion to not apply the Title IX Amnesty Policy to situations where the College has implemented a zero-tolerance policy that always imposes the same punishment for such conduct, regardless of the circumstances.

In situations where the Amnesty Policy is granted, the College may, however, engage in an assessment or educational discussion or pursue other non-disciplinary options regarding alcohol or other drug use.

VII. PARTICIPANT PRIVACY AND CONFIDENTIALITY

The College recognizes that privacy is important. The College will attempt to protect parties' privacy to the extent reasonably possible. The Title IX Coordinator, investigators, advisors, facilitators of Informal Resolution, hearing officers, and any others participating in the process on behalf of the College shall keep the information obtained through the process private and, to the extent possible, confidential. All other participants in the process (including the Complainant, Respondent, non-College advisors, and witnesses) are encouraged to respect the privacy of the parties and the confidentiality of the proceedings and circumstances giving rise to the dispute and to discuss the matter only with those persons who have a genuine need to know.

While the College is committed to respecting the confidentiality of all parties involved in the process, it cannot guarantee complete confidentiality. Examples of situations in which confidentiality cannot be maintained include, but are not limited to, the following:

- When the College is required by law to disclose information (such as in response to a subpoena or court order).
- When disclosure of information is determined by the Title IX Coordinator to be necessary for conducting an effective investigation of the claim.
- When confidentiality concerns are outweighed by the College's interest in protecting the safety or rights of others.
- When a Formal Complaint is filed.

A. Anonymous Reporting

If you would like to report an incident or speak to someone about an incident and you desire that details of the incident be kept strictly confidential, you should speak with staff members of the Counseling Center, Student Health, the Campus Chaplain, or off-campus rape crisis resources, who will maintain confidentiality to the extent permitted by law. Campus counselors are available to help you free of charge, and can be seen on an emergency basis. In addition, you may speak on and off campus with clergy and chaplains, who will also keep reports made to them confidential to the extent permitted by law.

B. Limited Response for Anonymous Reporting

If a person wishes to make a complaint anonymously, the College's ability to respond will be limited. Additionally, if the victim does not wish to proceed, an investigation will not follow unless the Title IX Coordinator determines that the safety of the College community or legal compliance is jeopardized.

VIII. INTAKE PROCESS FOR REPORTS OF TITLE IX SEXUAL HARASSMENT

Once a report of Title IX Sexual Harassment is made to or received by the Title IX Coordinator or the Deputy Title IX Coordinator, the Title IX Coordinator shall review the report to determine appropriate next steps.

If the allegations reported, if true, would not constitute Title IX Sexual Harassment as defined in this Policy, the Title IX Coordinator will not proceed under this Policy and its Procedures. Instead, if the allegations reported, if true, would not constitute Title IX Sexual Harassment as defined in this Policy, the Title IX Coordinator may take one of the following actions: (1) address the report under the Student Code of Conduct, Campus Community Policies, Faculty Personnel Policies, Staff Personnel Policies, and/or Student Life Policies, as appropriate; (2) refer the matter to Human Resources, or other department, as appropriate, or (3) if the reported conduct would not constitute a violation of any College Policy, take no further action. The Title IX Coordinator will notify the Complainant of the action or referral.

After receiving a report of conduct that, if true, would constitute Title IX Sexual Harassment as defined in this Policy, the Title IX Coordinator will promptly contact the Complainant and:

- Discuss the availability of Supportive Measures;
- Explain that Supportive Measures are available with or without the filing of a Formal Complaint of Title IX Sexual Harassment;
- Inform the Complainant of the process for filing a Formal Complaint of Title IX Sexual Harassment; and
- Inform the Complainant that even if they decide not to file a Formal Complaint of Title IX Sexual Harassment, the Title IX Coordinator may do so by signing a Formal Complaint.

The Title IX Coordinator will also ensure that the Complainant receives a written explanation of available resources and options, including the following:

- Support and assistance available through College resources, including the Complainant's option to seek Supportive Measures regardless of whether they choose to participate in a College or law enforcement investigation;
- The Complainant's option to seek medical treatment and information on preserving potentially key forensic and other evidence;
- The process for filing a Formal Complaint of Title IX Sexual Harassment, if appropriate;
- The College's procedural options including Formal and Informal Resolution;
- The Complainant's right to an advisor of the Complainant's choosing;
- The College's prohibition of Retaliation against the Complainant, the Respondent, the witnesses, and any reporting parties, along with a statement that the College will take prompt action when Retaliation is reported (and how to report); and

- The opportunity to meet with the Title IX Coordinator in person to discuss the Complainant's resources, rights, and options.

IX. SUPPORTIVE MEASURES

Supportive Measures are non-disciplinary, non-punitive individualized services, accommodations, and other assistance that the College offers and may put in place, without fee or charge, after receiving notice of possible Title IX Sexual Harassment via a report to the Title IX Coordinator or an Official with Authority. Supportive Measures are designed to restore or preserve access to the College's Education Program and Activity, protect the safety of all parties and the College's educational environment, or deter Title IX Sexual Harassment, while not being punitive in nature or unreasonably burdening any party.

Supportive Measures are available regardless of whether the matter is reported to the College for the purpose of initiating any formal grievance proceeding and before, after, and regardless of whether a Formal Complaint is filed. A Complainant who requests Supportive Measures retains the right to file a Formal Complaint, either at the time the Supportive Measure is requested or at a later date. Any Complainant that requests Supportive Measures will be informed in writing of their right to simultaneously or subsequently file a Formal Complaint pursuant to this Policy.

The Title IX Coordinator will contact a Complainant after receiving notice of possible Title IX Sexual Harassment (1) to discuss the availability of Supportive Measures and (2) to explain that Supportive Measures are available with or without the filing of a Formal Complaint of Title IX Sexual Harassment. The Title IX Coordinator will consider the Complainant's wishes with respect to implementation of Supportive Measures.

Supportive Measures may also be requested by and made available to Respondents, witnesses, and other impacted members of the College community. The Title IX Coordinator will ultimately serve as the point of contact for any individual requesting Supportive Measures.

To determine the appropriate Supportive Measure(s) to be implemented, the Title IX Coordinator conducts an individualized assessment based on the unique facts and circumstances of a situation. Whether a possible Supportive Measure would unreasonably burden the other party is a fact-specific determination made by the College in its discretion that takes into account the nature of the education programs, activities, opportunities, and benefits in which an individual is participating.

Examples of Supportive Measures include, but are not limited to, the following:

- Academic support services and accommodations, including the ability to reschedule classes, exams, and assignments, transfer course sections, or withdraw from courses without penalty;
- Academic schedule modifications (typically to separate Complainant and Respondent);

- Work schedule or job assignment modifications (for College employment);
- Changes in work or housing location;
- An escort to ensure safe movement on campus;
- On-campus counseling services and/or assistance in connecting to community-based counseling services;
- Assistance in connecting to community-based medical services;
- Mutual no contact directives (to instruct individuals to stop all attempts at communication or other interaction with one another);
- Placing limitations on an individual's access to certain College facilities or activities;
- Work schedule or job assignment modifications, including suspending employment with or without pay consistent with any applicable written procedures (for College positions);
- Information about and/or assistance with obtaining personal protection orders;
- Leaves of absence;
- Increased monitoring and security of certain areas of the campus; or
- A combination of any of these measures.

The College will maintain Supportive Measures provided to the Complainant or Respondent as confidential to the extent that maintaining such confidentiality would not impair the College's ability to provide the Supportive Measures.

X. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

Emergency Removal of a Student-Respondent: Where there is an immediate threat to the physical health or safety of any students or other individuals arising from reported Title IX Sexual Harassment, the College can remove a Student-Respondent from the College's Education Program or Activity and issue any necessary related no-trespass orders. The College's Behavioral Intervention Team (BIT) will make the decision to remove a Student-Respondent from the College's Education Program or Activity based on an individualized assessment and risk analysis. If the BIT makes such a decision, the Student-Respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal.

Administrative Leave of an Employee/Faculty-Respondent: The College may place an Employee/Faculty-Respondent on administrative leave during the pendency of a Formal Complaint. An employee alleged to have committed Title IX Sexual Harassment will not be placed on administrative leave unless and until a Formal Complaint has been filed with the College. The Title IX Coordinator and/or the Deputy Title IX Coordinator, in his/her/their discretion and based on the circumstances, will determine whether any administrative leave imposed is to be imposed with or without pay or benefits.

Title IX Sexual Harassment Grievance Procedures

XI. FORMAL COMPLAINTS OF TITLE IX SEXUAL HARASSMENT

A. Filing a Formal Complaint

A Complainant has the option to file a Formal Complaint against a Respondent alleging Title IX Sexual Harassment and requesting that the College investigate those allegations. In order to file a Formal Complaint, the Complainant should contact the Title IX Coordinator and sign the College's [Formal Complaint form](#). This may be done online, in person, or by email by contacting the Title IX Coordinator.

When a Complainant does not wish to file a Formal Complaint on their own behalf, the Title IX Coordinator may, in their discretion, file a Formal Complaint by signing the Formal Complaint form. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not the Complainant or otherwise a party. While the Complainant may choose to not participate in the grievance process initiated by the Title IX Coordinator's signing of a Formal Complaint of Title IX Sexual Harassment, the Complainant will still be treated as a party entitled to inspect and review evidence and to receive all notices, including the notice of allegations, the notice of hearing, and the notice of outcome. At no time will the College coerce or retaliate against a Complainant in order to convince the Complainant to participate in the grievance process.

After a Formal Complaint is filed, the matter will proceed to either the Informal Resolution process or Formal Resolution process, as described below. A Formal Complaint must be filed before the College can commence an investigation or the Informal Resolution process under the Title IX Sexual Harassment Procedures.

B. Mandatory Dismissal of Formal Complaint for Title IX Purposes

When the Title IX Coordinator receives a Formal Complaint alleging conduct, which, if true, would meet the definition of Title IX Sexual Harassment, the Title IX Coordinator will evaluate the allegations in the Formal Complaint to determine whether the allegations satisfy the following conditions:

- The Title IX Sexual Harassment conduct is alleged to have been perpetrated against a person in the United States;
- The Title IX Sexual Harassment conduct is alleged to have taken place within the College's programs and activities; and
- At the time of the filing or signing of the Formal Complaint, the Complainant is participating in or attempting to participate in the College's programs or activities.

If the Title IX Coordinator determines that all of the above conditions are satisfied, the College will address the Formal Complaint of Title IX Sexual Harassment under these Procedures.

If the Title IX Coordinator determines that the allegations in the Formal Complaint do not meet the definition of Title IX Sexual Harassment or that not all of the conditions above are satisfied, the College will dismiss the Formal Complaint for Title IX purposes. However, if the College dismisses the Formal Complaint for Title IX purposes, it may, in its discretion, address the Formal Complaint under the Student Code of Conduct, Student Life Policies, Faculty Personnel Policies, or the Staff Personnel Policies, as appropriate.

Additionally, if the Title IX Coordinator investigates a matter as Title IX Sexual Harassment based on the allegations in the Formal Complaint, but, during the course of the investigation, the Title IX Coordinator determines that all of the above conditions are no longer satisfied, the College will dismiss the Formal Complaint for Title IX purposes and instead pursue the matter under the Student Code of Conduct, Student Life Policies, or the Staff Personnel Policies, as appropriate and applicable, or will dismiss the Formal Complaint in its entirety.

If the Title IX Coordinator determines that a Formal Complaint of Title IX Sexual Harassment will not be adjudicated under the Title IX Procedures, either at the outset after reviewing the Formal Complaint or during the course of the investigation, the parties will receive simultaneous written notice of the dismissal and the reasons for that dismissal.

Either party may appeal the decision to dismiss a Formal Complaint as explained below in Section XVI.

C. Discretionary Dismissal of Formal Complaint for Title IX Purposes

In addition to the reasons discussed above in Section XI(B) regarding mandatory dismissals, the College may, in its discretion, choose to dismiss a Formal Complaint or any allegations therein, if at any time during the investigation or hearing:

- A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- The Respondent is no longer enrolled or employed by the recipient; or
- Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

The College retains discretion on a case-by-case basis to determine if it will dismiss a Formal Complaint for Title IX purposes based on any of the above reasons. Just because one or all of the conditions above are satisfied, does not mean the College

will automatically dismiss the Formal Complaint for Title IX purposes as is the case with respect to the conditions listed in the “Mandatory Dismissal” section above. Instead, the College will determine if such a decision is appropriate under the circumstances.

If the College dismisses a Formal Complaint for Title IX purposes, it may in its discretion address the Formal Complaint under the Student Code of Conduct, Student Life Policies, Faculty Personnel Policies, or the Staff Personnel Policies, as appropriate.

The parties will receive simultaneous written notice of the dismissal and the reasons for the dismissal. Either party may appeal the decision to dismiss as explained below in Section XVI.

D. Consolidation of Formal Complaints

In their discretion, the Title IX Coordinator may consolidate multiple Formal Complaints for resolution under this Policy. Consolidation might involve a single Complainant or multiple Complainants, a single Respondent or multiple Respondents, and allegations of conduct that is temporally or logically connected (even where some of that alleged conduct is not Title IX Sexual Harassment or where the above conditions are not met with respect to some of the alleged conduct). If Formal Complaints involving multiple Complainants and/or multiple Respondents are consolidated, each party will have access to all of the information being considered; including as provided by all involved Complainants, all involved Respondents, and all involved witnesses. The decision to consolidate Formal Complaints is not subject to appeal.

E. Notice of Allegations

If a Complainant files, or the Title IX Coordinator signs, a Formal Complaint of Title IX Sexual Harassment within the scope of this Policy, the Title IX Coordinator will simultaneously send both parties a written Notice of Allegations that contains the following:

- Notice that the Informal and Formal Resolution processes comply with the requirements of Title IX;
- Notice of the allegations potentially constituting Title IX Sexual Harassment, providing sufficient detail for a response to be prepared before any initial interview, including (1) identities of the parties, if known; (2) the conduct allegedly constituting Title IX Sexual Harassment; and (3) the date and location of the alleged incident, if known;
- A statement that the Respondent is presumed not responsible for the alleged Title IX Sexual Harassment and a determination regarding responsibility is made at the conclusion of the grievance process;
- Notice that each party may have an advisor of their choice who may be, but is not required to be, an attorney and who may inspect and review evidence;

- Information regarding the availability of support and assistance through College resources and the opportunity to meet with the Title IX Coordinator in person to discuss resources, rights, and options;
- Notice of the College’s prohibition of Retaliation of the Complainant, the Respondent, and witnesses; that the College will take prompt action when Retaliation is reported; and how to report acts of Retaliation; and
- Notice that the Student Code of Conduct prohibits knowingly making false statements and knowingly submitting false information during the grievance process.

If, during the course of an investigation, the Title IX Coordinator decides to investigate additional allegations about the Complainant or Respondent relating to the same facts or circumstances but not included in the earlier written notice, the Title IX Coordinator will provide an amended Notice of Allegations to the parties.

XII. TIMELINES

Throughout these Procedures, the College designates timelines for different steps of the process. The Title IX Coordinator has authority to extend such timelines for good cause. Good cause may include, but is not limited to, considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disability. In the case of such an extension, the Title IX Coordinator will notify the affected parties of the extension, including the reason(s) for the extension.

Each party to a Title IX complaint may request a one-time delay or extension of five (5) business days. This request must be submitted to the Title IX Coordinator, and the party must provide a rationale for the requested delay. Generally, one request per party may be granted for the duration of the complaint process (regardless of whether the parties are engaged in a Formal or Informal Resolution process), only if the request is made in good faith. The Title IX Coordinator also reserves the right to deny any requests for a delay or extension that are unduly burdensome, unreasonable, or otherwise go against any College policy or community standard. All other parties will be notified about request to delay or extend a timeline as soon as reasonably practicable.

The phrase “business days” shall refer to those days ordinarily recognized by the College administrative calendar as workdays.

XIII. ADVISORS

Throughout the resolution process (whether informal or investigative), the Complainant and a Respondent may each have an advisor of their choice to provide support and guidance. An advisor may accompany the Complainant/Respondent to any meeting with the Title IX Coordinator, the investigator, or to a hearing.

Prior to the hearing, a party’s advisor has an exclusively non-speaking role, and may not otherwise present evidence, argue, or assert any right on behalf of the party. And, at the hearing, an advisor’s role is limited to quietly conferring with the

Complainant/Respondent through written correspondence or whisper. An advisor may not speak for the party they are supporting or addressing any other participant or the Hearing Officer except as necessary to conduct cross-examination as explained below. Advisors may conduct the cross-examination of all witnesses directly, orally, and in real time at the hearing. Neither party may conduct cross-examinations personally.

The College (including any official acting on behalf of the College such as the Hearing Officer) has the right at all times to determine what constitutes appropriate behavior on the part of an advisor. For example, the College will not tolerate an advisor questioning a witness in an abusive, intimidating, or disrespectful manner. The College has the right to take appropriate steps to ensure compliance with the Policy and Procedures, including placing limitations on the advisor's ability to participate in future meetings and proceedings.

XIV. INFORMAL RESOLUTION

Please see the Bethany College Title IX Informal Resolution Policy for a full discussion of Informal Resolution options. This Policy is attached hereto as Appendix B.

Informal Resolution is an alternative resolution process that does not include an investigation or hearing. Informal Resolution is typically a spectrum of facilitated, or structured, and adaptable processes between the Complainant, the Respondent, and/or other affected community members that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the Complainant and/or the College community.

Informal Resolution is not available in cases involving a Student-Complainant and Employee-Respondent. Additionally, the Informal Resolution process may not commence unless and until a Formal Complaint of Title IX Sexual Harassment is filed. Informal Resolution may be available, under appropriate circumstances, at any time prior to reaching a determination regarding responsibility.

The Title IX Coordinator reserves the right to determine whether Informal Resolution is appropriate in a specific case. Before the Title IX Coordinator commences the Informal Resolution process, both parties must provide informed consent in writing.

At any time prior to reaching a resolution, either party may withdraw from the Informal Resolution process and proceed with the formal grievance process for resolving the Formal Complaint.

Once an Informal Resolution is agreed to by all parties, the resolution is binding and the parties generally are precluded from resuming or starting the formal grievance process related to that Formal Complaint. Any breach of the terms of an Informal Resolution agreement may result in disciplinary action.

XV. FORMAL RESOLUTION PROCESS

A. The Investigation

An investigation affords both the Complainant and the Respondent an opportunity to submit information and other evidence and to identify witnesses. Although the parties have the option to submit evidence and suggest witnesses to be interviewed, the burden of gathering information in the investigation is with the College.

When the formal resolution process is initiated, the Title IX Coordinator will designate an investigator who will be responsible for gathering evidence directly related to the allegations raised in a Formal Complaint of Title IX Sexual Harassment. The investigator must be impartial, free of any actual conflict of interest, and have specific and relevant training and experience. Specifically, the investigator will be trained on (1) issues of relevance; (2) the definitions in the Policy; (3) the scope of the College's Education Program or Activity; (4) how to conduct an investigation; and (4) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

A Complainant or a Respondent who has concerns that the assigned investigator cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.) may report those concerns to the Title IX Coordinator, who will assess the circumstances and determine whether a different investigator should be assigned to the matter.

1. Investigation Timeframe

The investigation of a Formal Complaint will be usually concluded within 90 days of the filing of the Formal Complaint. The parties will be provided with updates on the progress of the investigation, as needed, and will be alerted if the process will go beyond the 90-day timeframe.

2. Interviews and Gathering Evidence

Interviews: The investigator will interview the Complainant and Respondent in order to review the disciplinary process and to hear an overview of each party's account of the incident. Before any interview, the individual being interviewed will be informed in writing of the date, time, location, participants, and purpose of the interview. Such notice will be provided with sufficient time for the individual to prepare for the interview. The Respondent will be informed in writing if, during the investigation, additional information is disclosed that may constitute additional Title IX Sexual Harassment under the Policy.

Following the interview, each party will be provided with a draft summary of their statement so that they have the opportunity to comment on the summary and ensure its accuracy and completeness. The parties' feedback may be

attached or otherwise incorporated into the final investigative report to the extent deemed relevant by the investigator.

Evidence: During the interview, and as the investigator is gathering evidence, each party will be given the opportunity to identify witnesses and to provide other information, such as documents, communications, photographs, and other evidence. Although the College has the burden of gathering evidence sufficient to reach a determination regarding responsibility, all parties are expected to share any relevant information and/or any information that is requested by the investigator. Such information shared by the parties with the investigator may include both inculpatory and exculpatory evidence.

The investigator will review all information identified or provided by the parties, as well as any other evidence they obtain. Evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint will be shared with the parties for their review and comment, as described below.

3. Draft Investigative Report and Opportunity to Inspect and Review Evidence

After all the evidence is gathered, and the investigator has completed witness interviews, the investigator will prepare a draft investigative report. The investigator will send each party, and the party's advisor, if any, the draft investigative report.

The investigator will also provide the parties, and their advisors, if any, with copies of all evidence directly related to the allegations of the Formal Complaint that was gathered during the investigation. Before doing so, the investigator may redact information in the evidence that is not directly related to the allegations of the Formal Complaint; information prohibited from disclosure pursuant to a recognized legal privilege; and/or a party's medical or mental health information/records unless the party consents in writing to the disclosure. The evidence may be provided in either an electronic format or a hard copy. Parties and their advisors may be required to sign a non-disclosure agreement that permits review and use of the evidence only for purposes of the Title IX grievance process.

The parties will have ten (10) days to review the draft investigative report and evidence and to submit a written response. The parties' written responses must include any comments, feedback, additional documents, evidence, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the investigation. Any party providing new evidence in their written response should identify whether that evidence was previously available to them, and if so, why it was not previously provided. The parties' feedback will be attached to the final investigation report.

Generally, only information that is provided to, or otherwise obtained by, the investigator during the course of the investigation will be considered in the

determination of whether a Policy violation occurred. Any and all information for consideration by the Hearing Officer must be provided to the investigator prior to the final investigation report and will not be allowed during the hearing unless it can be clearly demonstrated that such information was not reasonably available to the parties at the time of the investigation or that the evidence has significant relevance to a material fact at issue in the investigation. If, after the final investigation report is issued, a party provides or identifies evidence that they did not previously provide or identify despite that evidence being reasonably available to them during the investigation process, the Hearing Officer may, at their discretion, draw a negative inference from the party's delay in providing or identifying the evidence.

The investigator will review the feedback to the report, interview additional relevant witnesses (as the investigator deems appropriate).

4. Final Investigative Report

After the time has run for both parties to provide any written response to the draft investigative report and evidence, and after the investigator completes any additional investigation, the investigator will complete a final investigative report. The investigator will submit the final investigative report of relevant information to the Title IX Coordinator. The investigator shall not make any credibility determinations in the investigative report regarding witness testimony and/or evidence.

The Title IX Coordinator will review the report for completeness and relevance, and direct further investigation as necessary before the report is provided to the Complainant and Respondent.

The investigator and/or Title IX Coordinator, as appropriate, may exclude and/or redact information or evidence from the final investigative report as follows:

- Information that is not relevant to the allegations raised in the Formal Complaint;
- Information about a Complainant's prior or subsequent sexual activity, unless such information about the Complainant's prior sexual behavior is 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; and
- Medical or mental health information, treatment and/or diagnosis, unless the party consents.

After the Title IX Coordinator reviews the report and any further investigation, if necessary, is completed, the final report will be shared with

the Complainant, Respondent, and their advisors. The parties will have ten (10) business days to respond in writing to the final investigative report. The Complainant and Respondent must also submit in writing by that time the names of any witnesses the Complainant/Respondent wishes to testify and a summary of information each witness would provide through their testimony. Names of witnesses provided by the Complainant/Respondent will be shared with the other party.

After the ten (10) business day deadline, the Complainant and Respondent may not provide any additional written information for the hearing, unless that information was not reasonably available prior to the closing of the ten (10) business day window. The Hearing Officer determines whether to grant exceptions to this ten (10) business day deadline.

The Title IX Coordinator will determine what, if any, final changes or additions are made to the final investigative report based upon its review of the report and feedback as described above from the Complainant and Respondent.

The matter will then be referred to a Hearing Officer.

B. Hearing Procedure

1. The Hearing Officer

The Hearing Officer will be selected by the College. The College retains discretion to select a Hearing Officer from a pool of individuals, based on a case-by-case basis.

All Hearing Officers receive annual training on the following: how to conduct a hearing; issues of relevance, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant; how to serve impartially by, among other things, avoiding prejudice of the facts at issue, conflicts of interest, and bias; and other relevant issues. The Hearing Officer will also be trained on any technology that might be used during a hearing.

2. Notice

Both the Complainant and the Respondent will be notified in writing of the date and time of the hearing and the name of the Hearing Officer at least five (5) calendar days in advance of the hearing, with the hearing to occur no fewer than ten days after the parties are provided with the final investigative report. The Hearing Officer will receive the names of the Complainant and the Respondent at the same time.

3. Bias and Conflict of Interest

The Hearing Officer must be impartial and free from bias or conflict of interest, including bias for or against a specific Complainant or Respondent or for or against complainants and respondents generally. If the Hearing Officer has concerns that they cannot conduct a fair or unbiased review, the Hearing Officer may report those concerns to the Title IX Coordinator and a different Hearing Officer will be assigned.

A Complainant and/or Respondent may challenge the participation of the Hearing Officer because of perceived conflict of interest, bias, or prejudice. Such challenges, including rationale, must be made within 48 hours of notification of the name of the Hearing Officer.

At their discretion, the Title IX Coordinator will determine whether such a conflict of interest exists and whether a Hearing Officer should be replaced. Postponement of a hearing may occur if a replacement Hearing Officer cannot be immediately identified.

4. Pre-Hearing Procedures and Ground Rules

The Hearing Officer and/or the Title IX Coordinator may establish pre-hearing procedures relating to issues such as scheduling, hearing structure and process, witness and advisor participation and identification, and advance determination of the relevance of certain topics. The Hearing Officer will communicate with the parties prior to the hearing with respect to these issues and establish reasonable, equitable deadlines for party participation/input. If necessary, the Title IX Coordinator has the discretion to hold a pre-hearing conference with both parties, their advisors, and the Hearing Officer.

The Hearing Officer also has wide discretion over matters of decorum at the hearing, including the authority to excuse from the hearing process participants who are unwilling to observe rules of decorum.

5. Participation of Advisors

Both parties must be accompanied by an advisor to the hearing. If a party does not have an advisor for the hearing, the College will provide an advisor of the College's choice for that party.

Each party's advisor must be afforded the opportunity to conduct any cross-examination of the other party and any witnesses. Apart from conducting cross-examination, the parties' advisors do not have a speaking role at the hearing; an advisors' participation is limited to conferring with the party at intervals set by the Hearing Officer.

6. Participation of Parties and Witnesses

[This section has been updated in accordance with OCR Guidance and recent case law – October 8, 2021]

A party or witness who elects to participate in the process is expected, although not compelled, to participate in all aspects of the process (e.g., a witness who chooses to participate in the investigation is expected to make themselves available for a hearing if requested to do so).

“**Statements**” for purposes of the hearing means factual assertions made by a party or witness. Statements might include factual assertions made during an interview or conversation, written by the individual making the assertions (including those found in a Formal Complaint), and memorialized in the writing of another (e.g. in an investigative report, police report, or medical record).

If a party does not appear for the hearing, their advisor may still appear for the purpose of asking questions of the other party and witnesses. If a non-participating party’s advisor also does not appear for the hearing, the College will appoint an advisor to participate in the hearing for the purpose of asking questions of the other party on behalf of the non-participating party.

Parties are reminded that, consistent with the prohibition on Retaliation, intimidation, threats of violence, and other conduct intended to cause a party or witness to not appear for a hearing are expressly prohibited.

7. Witnesses

The Hearing Officer may, at their discretion, exclude witnesses or witness testimony the Hearing Officer considers irrelevant or duplicative. The Hearing Officer will explain any decision to exclude a witness or testimony as not relevant.

8. Electronic Devices and Record the Hearing

A Respondent, Complainant, advisor, and/or witness may not bring electronic devices that capture or facilitate communication (e.g., computer, cell phone, audio/video recorder, etc.) into a hearing room, unless authorized by the Hearing Officer.

The Title IX Coordinator will arrange for there to be an audio recording, or audiovisual recording, or transcript (or combination) of the hearing, which will be made available to the parties for review and kept on file by the College for seven years.

Reasonable care will be taken to create a quality recording or transcript. If making a recording of the hearing, the College must take all necessary steps to

minimize technical problems, however, technical problems that result in no recording or an inaudible recording are not a valid basis for appeal.

9. Hearing Location and Use of Technology

The hearing will be live, with all questioning conducted in real time. Upon request, the parties may be located in separate rooms (or at separate locations) with technology enabling the Hearing Officer and the parties to simultaneously see and hear the party or witness answering questions. A hearing may be conducted entirely virtually through the use of remote technology so long as the parties and Hearing Officer are able to hear and see one another in real time.

10. Hearing Structure

The Hearing Officer has general authority and wide discretion over the conduct of the hearing. Although the Hearing Officer has discretion to modify the hearing structure, the general course of procedure for a hearing is as follows:

- Introductions;
- Respondent's statement accepting or denying responsibility;
- Opening Statement from the Complainant;
- Opening Statement from the Respondent;
- Questioning of the Complainant by the Hearing Officer;
- Cross-examination of the Complainant by the Respondent's advisor;
- Questioning of the Respondent by the Hearing Officer;
- Cross-examination of the Respondent by the Complainant's advisor;
- Hearing Officer questioning of other witnesses (if applicable);
- Cross-examination of other witnesses by the parties' advisors;
- Closing comments from the Complainant; and,
- Closing comments from the Respondent.

A Complainant or Respondent may not question each other or other witnesses directly; they are permitted an opportunity to conduct the cross-examination through their advisors. Before a party or witness answers a cross-examination or other question, the Hearing Officer will first determine whether the question is relevant. The Hearing Officer may exclude irrelevant information and/or questions. The Hearing Officer will explain any decision to exclude a question or information as not relevant.

The evidence collected as part of the investigative process will be made available at the hearing to give each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

C. Determination Regarding Responsibility

Following the hearing, the Hearing Officer will consider all relevant evidence and make a determination, based on the preponderance of the evidence standard, whether the Respondent has violated the Policy.

A preponderance of the evidence standard means that, based on the information acquired during the investigation and the hearing, it is more likely than not the Respondent engaged in the alleged conduct.

The Hearing Officer shall issue a letter explaining their decision regarding responsibility within 5 business days from the end of the hearing. This letter will be sent simultaneously to all parties.

D. Remedies and Sanctions

In the event the Hearing Officer finds the Respondent responsible for a violation of the College's policies, appropriate remedies and sanctions will be determined by the Vice President and Dean of Students, or the Provost and Dean of Faculty, or their assignee. The official deciding remedies and/or sanctions shall be different from the Appeals Officer.

Remedies are designed to resort or preserve equal access to the College's Education Program or Activity and may be disciplinary or punitive.

Upon a finding of responsibility, the Complainant will be provided with remedies designed to restore access to the College's educational and employment programs and activities.

Sanctions for a finding of responsibility for Student Respondents include, but are not limited to, expulsion, suspension, disciplinary probation, recommended counseling, and/or other educational sanctions. In determining (a) sanction(s), the Vice President and Dean of Students will consider whether the nature of the conduct at issue warrants removal from the College, either permanent (expulsion) or temporary (suspension). Other factors pertinent to the determination of what sanction applies include, but are not limited to, the nature of the conduct at issue, prior disciplinary history of the Respondent (shared only upon a finding of responsibility for the allegation), previous College response to similar conduct, and College interests (e.g., in providing a safe environment for all).

Sanctions for findings of responsibility for Employee and Faculty Respondents include, but are not limited to, progressive disciplinary action; prohibition from various academic or managerial responsibilities involving the Complainant or others; letter of reprimand placed in a Respondent's personnel file; restrictions on a Respondent's access to College programs or facilities; limitations on merit pay or other salary increases for a specific period; or demotion, suspension, or dismissal/termination from the College.

E. Written Notice Regarding Outcome and, if applicable, Sanctions/Remedies

After a determination regarding responsibility and, if applicable, a determination regarding appropriate remedies and/or sanction has been made, the Complainant and Respondent will receive a simultaneous written notification including the decision regarding responsibility and, as applicable, remedies and sanctions. The written notification will include the following:

- Identification of the allegations potentially constituting Title IX Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint of Title IX Sexual Harassment, with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the College's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College's Education Program or Activity will be provided by the College to the Complainant; and
- The College's procedures and permissible bases for the Complainant and Respondent to appeal.

The written notification of outcome becomes final seven (7) days after it is sent to the Parties, unless an appeal is filed on or before that day.

XVI. APPEALS

A Respondent and Complainant both have the right to appeal (1) The Title IX Coordinator's decision to dismiss a Formal Complaint of Title IX Sexual Harassment; and (2) the Hearing Officer's decision regarding responsibility.

A party wishing to appeal the Title IX Coordinator's decision to dismiss a Formal Complaint of Title IX Sexual Harassment must file a written appeal statement within five business days of the date the decision to dismiss is communicated to the parties. In addition to a written appeal statement, the appellee must also submit a Title IX Appeals Form, available on the Bethany College website – [Title IX Appeals Form](#).

A party wishing to appeal a Hearing Officer's decision must file a written appeal statement within five business days of the date the written decision is sent to the parties. Appeal statements are limited to five pages. The written appeal statement must identify the ground(s) upon which the appeal is being made. In addition to a written appeal statement, the appellee must also submit a Title IX Appeals Form, available on the Bethany College website – [Title IX Appeals Form](#).

All written appeals statements and Title IX Appeals Forms must be submitted to the selected Appeals Officer prior to the date communicated in the Hearing Officer's decision regarding responsibility letter.

The Appeals Officer position will be filled by the Vice President and Dean of Students, or the Provost and Dean of Faculty, or their assignee. The Appeals Officer shall be different from the official deciding remedies and/or sanctions.

The only grounds for appeal are:

- New information not reasonably available at the time of the decision/hearing that could affect the outcome of the matter;
- The Title IX Coordinator, investigator, Hearing Officer, or Appeals Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent specifically that affected the outcome of the matter;
- Procedural error(s) that affected the outcome of the matter.
- To determine whether jurisdiction was properly asserted under the Student Code of Conduct;
- To determine whether the underlying proceeding was conducted fairly in light of the charges and evidence presented, and in conformity with procedures described in the Student Code of Conduct, such that no significant prejudice to a student or the College resulted;
- To determine whether the facts in the case were sufficient to establish that a violation of the Title IX Policy occurred; and/or
- To determine whether the sanction(s) imposed were appropriate.

An appeal is not a re-hearing of the case. The College may summarily deny an appeal if it is not based on one of the enumerated grounds for appeal.

Appellate Decision-Maker: If the College does not summarily deny the appeal, the College will appoint an appellate decision-maker. The appellate decision-maker's role is limited to reviewing the underlying record of the investigation and hearing, the appealing party's ("Appellant") written appeal statement, any response to that statement by the other party ("Appellee"), and information presented at a meeting of the appellate decision-maker, if convened.

Conflict of Interest: The College will notify the Appellant and Appellee of the name of the appellate decision-maker. The Appellant and/or Appellee may challenge the participation of an appellate decision-maker because of an actual conflict of interest, bias, or prejudice. Such challenges, including rationale, must be submitted in writing to the College no later than forty-eight (48) hours after notification of the name of the appellate decision-maker. The College will determine whether such a conflict of interest exists and whether an appellate decision-maker should be replaced.

Response to Appeal: The appellate decision-maker will provide written notice to the Appellee that an appeal has been submitted and will give the Appellee an opportunity to review the appeal statement. The Appellee may submit a written response to the

appeal (“response”). The response is due three (3) business days from the date the College provides written notice of the appeal to the Appellee. Response can be no more than five (5) pages. The College will provide the Appellant an opportunity to review the Appellee’s response, and Appellant shall have an additional three (3) business days to provide an additional response in writing.

Written Decision: The appellate decision-maker will provide written notification of the final decision to the Appellant and Appellee simultaneously.

The appellate decision-maker will typically notify the parties of its decision regarding an appeal in writing within fourteen (14) business days from receipt of the appeal statement. If the decision will take longer, the parties will be informed. The decision of the appellate decision-maker will be final and no subsequent appeals are permitted.

XVII. CONFIDENTIALITY

The College 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 Title IX 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, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or other proceeding arising thereunder.

XVIII. RECORD RETENTION

The College shall retain for a period of seven (7) years after the date of case closure: the official file relating to a formal resolution, including any investigation hearing, sanctioning, and/or appeals processes involving allegations of Title IX Sexual Harassment. In cases in which a Respondent was found to have violated the Policy and was expelled or terminated, the College may retain such official case files indefinitely.

APPENDIX A

The following is a list of College officials designated as “Officials with Authority.” An Official with Authority, as defined in this Policy, refers to an official of the College with the authority to institute corrective action on behalf of the College, and notice to whom causes the College to respond to Title IX Sexual Harassment.

- President
- Provost and Dean of Faculty
- Vice President and Dean of Students
- Director of Student Conduct
- Title IX Coordinator/Section 504 Coordinator
- Deputy Title IX Coordinator

APPENDIX B

Title IX Informal Resolution Policy

Bethany College

I. General

Informal Resolution is an alternative resolution process that does not include an investigation or hearing. Informal Resolution is typically a spectrum of facilitated, or structured, and adaptable processes between the Complainant, the Respondent, and/or other affected community members that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the Complainant and/or the College community.

Informal Resolution is not available in cases involving a Student-Complainant and Employee-Respondent. Additionally, the Informal Resolution process may not commence unless and until a Formal Complaint of Title IX Sexual Harassment is filed. Informal Resolution may be available, under appropriate circumstances, at any time prior to reaching a determination regarding responsibility.

II. Elements of an Informal Resolution Process

A. Procedures for Entering and Exiting Informal Resolution Process

Parties who do not wish to proceed with an investigation and live hearing, and instead seek the College's assistance to resolve allegations of Title IX-covered misconduct, may elect to enter the Informal Resolution process. Generally speaking, these resolution options are less time intensive than an investigation and live hearing, while still affording students an opportunity to actively participate in a process led by the College for resolution of their complaints.

The Parties may elect to enter the College's Informal Resolution process at any time after the filing of the Formal Complaint through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in Informal Resolution, and the College may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to Informal Resolution.

The Parties may elect to leave the Informal Resolution process at any point until the Informal Resolution process is concluded. If a Party elects to leave the Informal Resolution process, the formal grievance procedure recommences. In participating in the Informal Resolution process, the Parties understand that the timeframes governing the

formal process temporarily cease, and only recommence upon reentry into the formal process.

B. Determination to Approve Entry into Informal Resolution Process

Even where the Parties agree to submit a matter to Informal Resolution, the Title IX Coordinator makes the final decision to approve the parties request to move the matter to the Informal Resolution process. The Title IX Coordinator has discretion to determine whether Informal Resolution is appropriate under the circumstances.

Factors that the Title IX Coordinator may weigh in considering the appropriateness of the Informal Resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the respondent is a repeat offender, and/or whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal Resolution processes may never be applied where the allegations include a charge of sexual assault.

Informal Resolution is only permitted to address allegations of student-on-student sexual harassment, and is never allowed as an option to resolve allegations that an employee sexually harassed a student. See, 85 Fed. Reg. 30026, 30054 (May 19, 2020).

At any time after the commencement of the Informal Resolution process, the Title IX Coordinator may determine that the Informal Resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the formal process. This determination is not subject to appeal.

C. Role of the Facilitator

Informal Resolution processes are managed by facilitators, who may not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the specific Parties in the matter. The Title IX Coordinator may serve as the facilitator, subject to the below restrictions.

All facilitators must have training in the definition of sexual harassment under 34 C.F.R. § 106.30(a), the scope of the institution's education program or activity, how to conduct Informal Resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

D. Confidentiality

In entering the Informal Resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the Informal Resolution process concerning the allegations of the Formal Complaint is confidential while the parties are participating in the Informal Resolution process. No evidence concerning the allegations obtained within the Informal Resolution process may be disseminated to any person, provided that any Party to the Informal Resolution process

may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the Informal Resolution process, information disclosed or obtained for purposes of the Informal Resolution process may be incorporated into the formal investigation and live hearing, provided that this information is disclosed and reviewed by the Parties under the investigatory and hearing procedures described in the Title IX Sexual Harassment Policy.

III. Informal Resolution Options

Bethany College offers the following Informal Resolution procedures for addressing Formal Complaints of sexual harassment covered under this Policy:

A. Administrative Resolution

Should the Parties mutually determine to enter the Informal Resolution process, and the respondent elects to accept responsibility for the allegations of the Formal Complaint at any point during the Informal Resolution process, the institution may administratively resolve the Formal Complaint.

Where the respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a decision-maker will convene to determine the respondent's sanction and other remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including but not limited to the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and remedies, which may be appealed according to the process described in the College's Title IX Sexual Harassment Policy.

B. Mediation

The purpose of mediation is for the parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate remedies to address them. Either party can request mediation to seek resolution; mediation will be used only with the consent of both parties, who will be asked not to contact one another during the process. The Title IX Coordinator will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within a reasonable period of time after the Title IX Coordinator receives consent to mediate from both parties, and will continue until concluded or terminated by either party or the Title IX Coordinator. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded and the matter will be closed. If a resolution cannot be reached, the matter will be

referred to the Title IX Coordinator to re-evaluate other options for resolution, including investigation.

During mediation, a facilitator will guide a discussion between the parties and/or the parties' advisors. In circumstances where the parties do not wish to meet face to face, either party can request "caucus" mediation, and the facilitator will conduct separate meetings. Regardless of whether the parties agree to meet face to face, each party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the parties. The Title IX Coordinator will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

C. Restorative Justice

A restorative justice ("RJ") Conference is a dialogue, facilitated by an College faculty or staff member with appropriate training, intended to restore relationships and repair harm after a conflict has occurred. Both the responsible party and the individuals affected by the conflict come together to identify what harm was caused and, collaboratively, determine how conflict and trust might be, respectively, resolved and repaired.

A Party may request to engage in RJ at any stage of the disciplinary process, however, restorative justice may not be an appropriate mechanism for all conflicts. To qualify for RJ, the student accused of wrongdoing must accept responsibility and express remorse for the harm that was caused. The harmed party must also be willing to accept an apology offered by the student accused of wrongdoing. Additionally, all involved parties must agree to and abide by measurable and timely actions within the scope of this Policy and directives. The Title IX Coordinator will review any request for RJ, and may decline to initiate RJ based on the facts and circumstances of the particular case.

The RJ Conference proceeds only if all parties agree to participate willingly. Upon doing so, the RJ process typically commences within a reasonable number of days after the Title IX Coordinator receives written agreements from all involved parties. The conference will continue until the conference is successfully concluded or until the Title IX Coordinator determines that the conference will not be successful. If successful, an agreeable resolution is reached by all involved parties, at which time the process is concluded, and the matter is resolved. If a resolution cannot be reached, the matter will be referred to the Title IX Coordinator to re-evaluate other options for resolution, including investigation.

The Title IX Coordinator will monitor the parties' adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.