



## UNIVERSITY POLICY

### SEXUAL MISCONDUCT POLICY

<b>Number:</b>	7.100
<b>Organizational Part:</b>	Seven – Human Resources
<b>Chapter:</b>	One – University Policies
<b>Policy Type:</b>	Institution Wide
<b>Responsible Office:</b>	<b>Diversity, Equity, and Inclusion</b>
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#### Overview

Butler University (“the University”) is committed to maintaining a safe and inclusive environment in which no member of the University community is, on the basis of sex, sex stereotypes, sex characteristics, pregnancy or related conditions, parental status, sexual orientation, or gender identity, excluded from participation in, denied the benefits of, or subjected to discrimination in any University program or activity. Gender-based and sexual harassment, including sexual violence, are forms of sex discrimination in that they deny or limit an individual’s ability to participate in or benefit from university programs or activities.

In compliance with Title IX of the Education Amendments of 1972, related provisions of the Clery Act (as amended by the Violence Against Women Reauthorization Act (“VAWA”)), Title VII of the Civil Rights Act of 1964, the VAWA of 2013, and applicable Indiana law, Butler University’s Sexual Misconduct Policy (“the Policy”) prohibits discrimination on the basis of sex, sex stereotypes, sexual orientation, and pregnant or parenting status. It does not preclude application or enforcement of other University policies.

No Division, Department and/or College is permitted to develop and/or adopt procedures that contradict, modify or supplement this Policy. All decisions made utilizing this Policy are final and not subject to additional review, appeals, using this or another grievance procedure of the University.

Nothing in this Policy shall be construed to abridge academic freedom and inquiry, principles of free speech, or the University’s educational mission.

#### **1. Scope of the Policy**

The Title IX Coordinator coordinates the University's compliance with Title IX and related provisions of the Clery Act. The Title IX Coordinator oversees the University's centralized and efficient response to all reports of Prohibited Conduct to ensure consistent implementation of this policy and compliance with federal and state law. Below is the Title IX Coordinator’s contact information:

[Director for Institutional Equity and Title IX Coordinator](#)

Jordan Hall 072

Indianapolis, IN 46208

Office 317-940-6509

[titleix@butler.edu](mailto:titleix@butler.edu)

[oe@butler.edu](mailto:oe@butler.edu)

Current Office for Institutional Equity staff can be found on the website:

<https://www.butler.edu/diversity-equity-inclusion/institutional-equity/title-ix-office-staff/>

**A. *To Whose Conduct does this Policy apply?***

To the extent permitted by applicable law, this policy governs the conduct of Butler University students, faculty; staff; and third parties (i.e., non-members of the University community, such as affiliates, volunteers, vendors, and visitors).

A third party may report potential policy violations committed by a member of the University community, and the University will take appropriate steps to investigate and respond to the conduct consistent with the authority granted by the University's jurisdiction, if any, over the respondent. Third parties may be subject to investigation and/or other actions for alleged violations of this policy; a third party who is accused of violating University policy may be barred from areas and/or activities controlled by the University or be subject to other restrictions. The University may take such action against third parties without providing the full rights and processes afforded to Butler community members through the provisions in this policy.

Various procedures provided in this policy may be used to address Prohibited Conduct that occurs:

- on campus or University property;
- in the context of any University-related or sponsored education program or activity within the United States.
- by a Butler student, regardless of location, under the Code of Student Conduct;
- by a Butler employee, regardless of location;
- on property belonging to, or affiliated with, any officially recognized University student organization;
- through the use of University-owned or provided technology resources; or
- when the conduct has a nexus to the University, such as continuing adverse effects or the creation or continuation of a hostile environment on campus.

For every report, the Title IX Coordinator will review the circumstances of the reported conduct to determine whether the University has jurisdiction or disciplinary authority over the respondent or the conduct.

In instances where the University does not have disciplinary authority over the respondent, the University will still take reasonably available steps to support a complainant through supportive measures and will assist a complainant in identifying external reporting mechanisms.

**2. Policy Terms**

This Policy uses the following defined terms throughout:

- **Complainant** refers to an individual who is reported to have experienced conduct that could constitute Prohibited Conduct, even if they do not participate in any related process.

- **Respondent** refers to an individual who has been reported to have engaged in conduct that could constitute Prohibited Conduct.
- **Party** or **parties** may also be used to refer to a complainant or respondent.
- **Third party** refers to an individual who is not a university student, faculty member, or staff member (e.g., vendors, alumni/ae, volunteers or visitors).
- **Witness** refers to an individual who may have information relevant to a report of Prohibited Conduct.
- **Days** refers to calendar days, inclusive of weekends, federally recognized holidays and all other days whether the University is open or closed.
- **Reasonable person** refers to a rational person under similar circumstances.
- **Conflict of interest** refers to a situation in which personal or private interests may compromise one's judgment, decisions, or actions. Conflicts of interest may arise from family, friendships, faculty member relationships, financial investments, or other social factors which creates a competing personal interest or obligation.
- **Bias** refers to a tendency, inclination, or prejudice toward/against someone, rather than actual knowledge of an individual or a particular circumstance.

### 3. Prohibited Conduct

Pursuant to this Policy, Butler University prohibits all forms of sexual misconduct. Sexual misconduct is any conduct which falls into the following categories:

#### A. *Sexual Harassment*

Sexual Harassment is unwelcome conduct on the basis of sex<sup>1</sup> that satisfies the conditions outlined in (1), (2), and/or (3), below. "Unwelcome conduct" may include any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, electronic or otherwise.

1. *Quid Pro Quo*. Conduct by which an employee of the University conditions the provision of an aid, benefit, or service of the University on a student's or employee's participation in unwelcome sexual conduct.
2. *Hostile Environment*. Unwelcome conduct that is sufficiently severe, persistent or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the University's education or employment programs and/or activities. Conduct must be severe, persistent, or pervasive from a subjective and objective perspective. As in other scenarios, the University will evaluate allegations of sexual harassment by examining the totality of known circumstances, including the frequency, nature, severity, location, duration, and context of the conduct. The University recognizes that, in some circumstances, a hostile environment can be created by a single or isolated incident, if sufficiently severe.
3. *Denial of Equal Access*. Unwelcome conduct that a reasonable person would believe is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a university education program, activity, or event.

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<sup>1</sup> Including gender identity, gender expression, sexual orientation, and sex stereotypes.

### ***B. Domestic Violence***

Domestic Violence is any violent or abusive act committed against one's: current/former spouse, romantic partner with whom they have lived, or the parent of one's child.

### ***C. Dating Violence***

Dating violence is conduct that constitutes violence or abuse committed by a person who is or has been in an intimate relationship with the complainant. The existence of such a relationship shall be determined based on the parties' statements and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

### ***D. Stalking***

Stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

A course of conduct is two or more acts, including, but not limited to, acts in which the respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

### ***E. Sex and Gender-Based Discrimination***

Sex- or gender-based discrimination is unwelcome conduct based on the person's sex, gender, sexual orientation, gender identity, or gender expression, including verbal, nonverbal, or graphic acts of aggression, intimidation, or hostility, when such conduct is sufficiently severe, persistent, or pervasive that it interferes with, limits, or prevents an individual from participating in or benefitting from the University's education or employment programs and/or activities.

When deciding whether the conduct is severe, persistent, or pervasive, the University will consider the totality of the circumstances.

Please note that this Policy distinguishes sex- and gender-based discrimination and harassment from unwelcome conduct of a sexual nature. (See Sexual Harassment Information above).

### ***F. Sexual Exploitation***

Any act where one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another, including but not limited to:

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information without the knowledge and consent of all parties involved;
- providing alcohol or drugs to a complainant with the intent to perpetrate Prohibited Conduct;
- exposing one's genitals or inducing another to expose their own genitals in nonconsensual circumstances; or
- knowingly exposing someone to or transmitting an STI or HIV.

### ***G. Sexual Assault***

Sexual Assault is any sexual contact that occurs without consent. This includes touching of the breasts, buttocks, groin or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts, and/or making another person touch you or themselves with or on any of these body parts. Sexual assault includes nonconsensual (a) vaginal penetration by a penis, object, tongue, or finger, however slight; (b) anal penetration by a penis, object, tongue, or finger, however slight; and (c) any contact between the mouth of one person and the genitalia of another person.

## 1. What is Consent?

Consent is the voluntary, informed, and freely given agreement, through words and/or actions, to participate in mutually agreed-upon acts. Consensual activity happens when each partner willingly and affirmatively chooses to participate.

In evaluating whether consent has been freely given, the University will consider the totality of the circumstances and with reference to a reasonable person in the same or similar circumstances. The University will consider the presence of any force, threat of force, threats, or coercion; whether the complainant was incapacitated; and, whether the communication between the parties would be interpreted by a reasonable person as a willingness to engage in a particular act.

Consent cannot be coerced. Coercion is the use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the sexual activity.

*Important points regarding consent include:*

- Consent to one act does not constitute consent to another act.
- Consent on a prior occasion does not constitute consent on a subsequent occasion.
- Consent to an act with one person does not constitute consent to an act with any other person.
- The existence of a prior or current relationship does not, in itself, constitute consent; even in the context of a relationship, there must be mutual consent.
- Consent can be clearly withdrawn or modified at any time, and the act must cease immediately once consent is withdrawn. Consent has been clearly withdrawn when a reasonable person would understand, from either their words or actions, that the party no longer wishes to proceed with the sexual act.
- Consent cannot be inferred from silence, passivity, or lack of resistance.

## 2. What is Incapacitation?

Incapacitation is the inability to give consent because the individual is mentally and/or physically helpless, unconscious, asleep, or otherwise unaware that the activity is occurring. This state can be voluntary or involuntary.

The use of substances, such as alcohol or drugs, can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. Incapacitation is a state beyond drunkenness or intoxication. Substance use can impact each individual differently and determining whether an individual is incapacitated requires an individualized assessment.

The University does not expect community members to be medical experts in assessing incapacitation. Individuals should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. A person's level of intoxication is not always demonstrated by objective signs; however, some signs of intoxication may include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility. A person who is incapacitated may not be able to understand some or all of the following questions: "Do you know where you are?" "Do you know how you got here?" "Do you know what is happening?" "Do you know who you are with?" An individual's level of intoxication may change over a period of time based on a variety of subjective factors, including the amount of substance intake, speed of intake, body mass, and metabolism. Because the impact of alcohol and other drugs varies from person to person, the amount of

alcohol and/or drugs a person consumes may not be sufficient, without other evidence, to prove that they were incapacitated under this Policy.

Another effect of alcohol consumption can be memory impairment or forgetting entire or partial events (sometimes referred to as “black-out” or “brown-out”). A person may experience this symptom while appearing to be functioning “normally,” including communicating through actions or words that seem to express an interest in engaging in sexual conduct. Whether sexual conduct with a person who is “blacked-out” constitutes Prohibited Conduct depends on the presence or absence of the observable factors indicating that a person is also incapacitated, as described above. Total or partial loss of memory alone, may not be sufficient, without other evidence, to prove that a person was incapacitated under this policy.

In evaluating consent in cases of reported incapacitation, where the information is sufficient to raise the possibility that the complainant was incapacitated, the University asks two questions: (1) Did the respondent know that the complainant was incapacitated? and if not, (2) Should a sober, reasonable person in a similar set of circumstances as the respondent have known that the complainant was incapacitated? If the answer to either of these questions is “yes,” the complainant could not consent, and the conduct is likely a violation of this policy.

A respondent’s voluntary intoxication is never an excuse for or a defense to Prohibited Conduct, and it does not diminish the responsibility to determine that the other person has given consent and has the capacity to do so.

#### ***H. Retaliation***

Retaliation is intimidation, threats, coercion, or discrimination toward any individual covered under this Policy because that individual has made a report or complaint of prohibited conduct, participated or chosen not to participate in a process outlined in this Policy. Retaliation does not include vague criticisms, stray remarks, and petty slights that do not rise to the level of intimidation, threats, coercion, or discrimination; Likewise, the good faith pursuit of civil, criminal, or other legal action, even in response to an initial report under this Policy do not constitute retaliation.

Reports of retaliation may be consolidated into an ongoing Administrative Investigation and Adjudication Process at the discretion of the Title IX Coordinator.

#### **4. Reporting Responsibilities**

It is important to understand the different responsibilities of Butler employees under applicable laws, and University Policy. It is the University’s expectation that all employees, other than Confidential Resources, report allegations of sexual misconduct to the Title IX Coordinator (See below for Confidential Resource Information). Failure to do so could result in disciplinary action. **Please note that a party’s desire to keep the allegations confidential does not relieve employees of their reporting obligations.** Employees should not investigate matters about the information they receive in order to determine whether the reported information meets the definitions of misconduct. Employees should simply report all information, including the names of those involved, to the Title IX Coordinator.

##### ***A. Confidential Resources***

There are some University employees with whom students may speak *confidentially* concerning Prohibited Conduct. Those individuals are employees who are a licensed medical, clinical, or mental-health professional, or licensed clergy, acting in that professional role in the provision of services to the student.

*The DIRECTORS of the following offices are Confidential Resources:*

1. [Counseling and Consultation Services](#)

**Location:**

Health and Recreation Complex room 120 (HRC 120).

530 W. 49th St., Indianapolis, IN 46208

**Phone:** 317-940-9385, 317-940-9777

2. [The Compass Center](#)

**Location:**

The Blue House

4615 Sunset Avenue, Indianapolis, IN 46208

(across from the Schrott Center on Sunset Avenue)

**Phone:** 317-940-8253

3. [Student Health Services](#)

**Location:**

Health and Recreation Center 110

530 W. 49th St., Indianapolis, IN 46208

**Phone:** 317-940-9385

4. [Office of Student Advocacy](#)

**Location:**

Atherton Student Affairs

**Phone:** 317-940-2047

**Emergency Cell:** 317-910-5572

Unless given permission to disclose more information by the complainant, Confidential Resources will only disclose the type of incident and not personally identifiable information such as the individual's name or other identifying details to the Title IX Coordinator. More information on the confidential resources available on campus are found on the website: [OIE Title IX Resources](#).

**5. Clery Act Reporting**

Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. The Clery Act also requires the University to issue timely warnings to the University community about certain crimes that have been timely reported and may continue to pose a serious or continuing threat to campus safety.

**6. Emergency Resources and Law Enforcement**

Emergency medical assistance and law enforcement assistance are available 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.

*To contact law enforcement:*

1. [Butler University Police Department \(BUPD\)](#)

**Phone:**

- a. 317-940-9999
- b. 317-940-2873
- c. Or dial 999 from any campus phone

**Location:** On Campus

525 W. Hampton Dr., Indianapolis, 46208

2. [Indianapolis Police Department \(IMPD\)](#)

**Phone:** [Contact IMPD](#)

- a. 911
- b. 317-327-3811
- c. 317-327-6100

**Location:** Off Campus

4209 N College Ave, Indianapolis, 46205

*To access medical treatment (including Sexual Assault Forensic Exams) at local hospitals, contact:*

1. IU Health Methodist Hospital (off campus)

317-962-2000  
1701 N Senate Ave  
Indianapolis, IN 46202

2. Ascension St. Vincent Hospital (off campus)

317-338-2345  
2001 W 86<sup>th</sup> St.  
Indianapolis, IN 46260

*To access crisis counseling and other community resources, contact:*

3. The Julian Center (off campus)

317-920-9320 (24-hour crisis line)  
2011 N Meridian St.  
Indianapolis, IN 46202

4. St. Vincent's Stress Center (off campus)

317-621-4800 (24-hour line)

5. Community Health (off campus)

317-621-5700 (24-hour line)  
Or text HelpNow to 20121

6. Crisis Lifeline (off campus)

Dial 988 (24-hour crisis line)

Any individual may also access resources located in the local community. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in dealing with the criminal justice system. For a comprehensive list of on- and off-campus resources and support services, see the [OIE Resource Guide.pdf](#)



### Reports to Law Enforcement and the University

An individual may make a report to the University, to law enforcement, or to both. University investigations under this Policy and any law enforcement investigations operate independently of one another. However, under some circumstances the University may cooperate with law enforcement to fully investigate a matter. There are several Sexual Misconduct reporting options through the Office for Institutional Equity and Title IX Coordinator:

- a. Submit the [Online Reporting Form](#)
- b. Speak to the Coordinator in person
- c. Telephone at (317) 940-6509
- d. Email [titleix@butler.edu](mailto:titleix@butler.edu) or [oiie@butler.edu](mailto:oiie@butler.edu).

A report may also be made to the Butler University Police Department (BUPD). A complainant always has the right to report or decline to report potential criminal conduct to law enforcement. BUPD will alert the Title IX Coordinator of incidents that are within the scope of this Policy.

- e. If on campus, contact BUPD for assistance in filing a criminal complaint and preserving physical evidence.

#### Butler University Police Department (BUPD)

**Phone:** 317-940-9999, 317-940-2873

Or dial 999 from any campus phone

**Location:** On Campus

525 W. Hampton Dr., Indianapolis, 46208

- f. If off campus, contact local Indianapolis law enforcement (IMPD) to file a criminal complaint by calling 911.

## **7. University Reporting**

In order to facilitate a safe campus environment, the University offers several options to encourage the reporting of all Prohibited Conduct:

### ***A. Anonymous Reporting***

Anyone, including third parties, can make an anonymous report to the University by submitting information on the Butler website: [Online Reporting Form](#). Depending on the nature of the information submitted, the University's ability to respond to an anonymous report will likely be limited.

### ***B. Requests for Anonymity or No Action***

A complainant may always request that they remain anonymous, that no investigation occur, **or** that no disciplinary action be taken. The University endeavors to honor the complainant's wishes. However, there are some limited circumstances in which the University must proceed with an investigation, regardless of the complainant's wishes, in order to facilitate a safe, non-discriminatory environment, and protect the campus community. In those limited and rare cases, the Title IX Coordinator may decide to proceed with an investigation of Prohibited Conduct. To learn more about these rare cases, see Formal Complaint Signed by Title IX Coordinator.

### ***C. Amnesty***

The University will not pursue disciplinary action against a student enrolled at the University who makes a good faith report to the University as a complainant or a witness to an incident of Prohibited Conduct for a violation by the student of the University's Student Conduct Code. This means that the University will **not** pursue disciplinary action against a complainant or respondent for disclosure of a violation of university policies concerning the consumption of alcohol or other drugs, where the disclosure is made in connection with a good faith report under this Policy.

#### ***D. Timeframe for Reporting***

There is no time limit for reporting. Reports under this policy may be made at any time without regard to how much time has elapsed since the incident(s) in question. However, the University encourages complainants to report any violation of this Policy as soon as possible. Doing so maximizes the University's ability to respond effectively. For example, if the respondent is no longer a student or employee at the time of a report, the University may not be able to take disciplinary action against the respondent.

#### **8. Student Support**

Upon receipt of a report of Prohibited Conduct, the University will consult with the parties and provide reasonable and appropriate supportive measures designed to preserve the party's educational experiences and protect both parties during an investigation. Such measures cannot unreasonably burden the other party or negatively impact either party's ability to participate in a university event, course, or activity. Supportive measures may be provided at any time after a report is received, regardless of whether an investigation and resolution process has been initiated or completed.

*Supportive measures may include:*

- counseling;
- academic accommodations, such as extensions of deadlines or other course related adjustments, course schedule changes, late drops, and the ability to transfer course sections (this would include the University's allowing either party to drop a course in which both are enrolled in the same class section without academic penalty);
- modifications of work schedules, change in work locations, changing working arrangements, or providing other employment accommodations, as appropriate;
- mutual restrictions on contact between the parties (i.e., "no contact directives");
- residential accommodations, including but not limited to arranging for new housing, or providing temporary housing options, as appropriate;
- leaves of absence;
- assistance in accessing off campus support services;
- escort and other safety planning steps;
- referral to resources that can assist in obtaining a protective order under Indiana law; and/or
- any other measure that can be used to achieve the goals of this policy.

Requests for supportive measures may be made by either party to the Title IX Coordinator, who has the discretion to impose and/or modify any supportive measure, as needed.

#### ***A. Accessibility and Disability Support***

It is the University's goal to facilitate an accessible process under this Policy. In compliance with the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, the University will make appropriate adjustments to the Title IX process, and/or reasonable accommodations for qualified individuals with properly documented disabilities. If parties anticipate any issues related to the format, materials, or requirements of the process outlined in this Policy, please contact the Title IX Coordinator or [Student Disability Services](#).

#### **9. Resolution of a Report**

After the University receives a report, the Title IX Coordinator will promptly reach out to the complainant to discuss the availability of supportive measures, to explain the process for filing a formal complaint which initiates the University's investigation into the allegations. A formal complaint may be signed by a complainant or, in limited circumstances, by the Title IX Coordinator when the complainant requests no-action.

If the allegations in the report are outside the scope of this policy, the Title IX Coordinator may refer the matter to another appropriate office or department for resolution under the relevant policy.

### ***A. Formal Complaint signed by Complainant***

If the complainant chooses to file a formal complaint, one of the following methods for resolution may be applied:

- Formal Resolution, which involves an investigation and adjudication; and
- Informal Resolution, which includes informal or restorative options for resolving reports.

In either case, the University is committed to providing a prompt, thorough, equitable and impartial resolution of all reported violations of this Policy.

The Title IX Coordinator has the discretion to consolidate formal complaints, for the purpose of resolution, where the allegations arise out of the same facts or circumstances.

### ***B. Formal Complaint signed by Title IX Coordinator***

If a complainant does not wish to file a formal complaint regarding Prohibited Conduct under this Policy, the Title IX Coordinator may, in rare cases, exercise discretion to sign a Formal Complaint on behalf of the University and initiate an investigation and an Informal or Formal Resolution process.

In determining whether to exercise the discretion, the Title IX Coordinator will consider the seriousness of the alleged incident; whether the University has received other reports of Prohibited Conduct allegedly committed by the respondent(s); whether the alleged incident poses a risk of harm to others; and any other relevant factors. If, after analyzing these factors, the Title IX Coordinator believes it is necessary, the University will proceed with a formal investigation. In these rare instances, the Title IX Coordinator will notify the complainant of the University's decision to investigate the matter. The complainant is welcome but not required to participate in the investigation.

## **10. Dismissal of a Formal Complaint**

When a complainant signs and files a formal complaint, the Title IX Coordinator will first promptly determine whether the alleged conduct alleged would, if proved, constitute Prohibited Conduct under this policy, and if the conduct allegedly occurred in the University's education program or activity, if the conduct occurred within the United States, if the University has control of the respondent, and if the complainant is participating in or attempting to participate in the University's education program or activity at the time the complaint is filed. If it appears based upon initial review or upon information gathered during an investigation that a formal complaint does not satisfy and/or no longer satisfies all these criteria, the University may dismiss the formal complaint.

Even if the allegations of a formal complaint fall within the definitions of Prohibited Conduct, the Title IX Coordinator may, but is not required to, dismiss a formal complaint or any allegations therein if at any time during the investigation or resolution process:

- 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 University;
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; or
- Upon investigation, the Title IX Coordinator no longer finds that the alleged conduct, if proved, would constitute a violation of this Policy.

If a formal complaint is dismissed by the University under the circumstances described above, the University will simultaneously provide to the parties written notice of the dismissal and the reasons for the dismissal, and notice of the parties' opportunity to appeal such dismissal through the appeal procedures outlined below.

## **11. Risk Assessment and Emergency Removal**

During intake, the Title IX Coordinator will perform a risk assessment to evaluate and resolve any potential safety concerns for either party or the campus community. Where there is an immediate threat to the physical health or safety of any student, the University can remove the respondent from its education program or activity, employment or any activity at the University and issue any necessary no-trespass and no-contact orders.

If the University institutes an emergency removal, the respondent's ability to be present on university property and participate in university-related activities will be limited. When information indicates that emergency removal may be warranted, the Title IX Coordinator will refer that information to the appropriate decisional authority for consideration.

The appropriate decisional authority is determined by the status of Respondent, as described below.

### ***A. Emergency Removal of Students***

In combination with the Title IX Coordinator, the Dean of Students or designee has the discretion to institute emergency removal of a student and to determine the terms of such removal.

Notice of emergency removal will be provided to the student in writing. Upon receipt of notice, the student will be expected to comply with the terms of the removal immediately. The student may petition the Dean of Students for reinstatement. This petition must be made in writing and must articulate why the student does not pose a threat to the physical health or safety of any other individual. The Dean of Students or designee may choose to uphold the emergency removal, modify its terms, or lift it entirely. Failure to comply with the terms of an emergency removal may result in additional disciplinary action.

### ***B. Emergency Removal of Staff***

The leader of Human Resources has the sole discretion to institute emergency removal of a staff member and to determine the terms of such removal. Notice of emergency removal will be provided to the staff member in writing. Upon receipt of such notice, the staff member will be expected to comply with the terms of the removal immediately. The staff member may petition the leader of Human Resources for reinstatement. This petition must be made in writing and must articulate why the staff member does not pose a threat to the physical health or safety of any other individual. The leader of Human Resources may choose to uphold the emergency removal, modify its terms, or lift it entirely. Failure to comply with the terms of an emergency removal may result in additional disciplinary action.

The University always maintains the discretion to place employee respondents on paid or unpaid administrative leave during the pendency of an investigation and resolution process.

### ***C. Emergency Removal of Faculty***

The Dean of the faculty member's academic unit or designee has the sole discretion to institute emergency removal of a faculty member and to determine the terms of such removal. Notice of emergency removal will be provided to the faculty member in writing. Upon receipt of such notice, the faculty member will be expected to comply with the terms of the removal immediately. The faculty member may petition the Dean or designee for reinstatement. This petition must be made in writing and must articulate why the faculty member does not pose a threat to the physical health or safety of any other individual. The Dean or designee may choose to uphold the emergency removal, modify its terms, or lift it entirely.

### ***D. Emergency Removal of Third Parties***

The Title IX Coordinator has the sole discretion to institute emergency removal of a third party, including affiliates and guests other than those covered in the previous three sections, and to determine the terms of

such removal. Notice of emergency removal will be provided to the third party in writing. The individual will be expected to comply with the terms of the removal immediately or risk becoming permanently prohibited from entering University property.

## **12. Informal Resolution**

Informal Resolution is a voluntary and remedies-based resolution option. Once a Formal Complaint has been filed, Informal Resolution may be pursued instead of Formal Resolution at the request and agreement of both parties and as deemed appropriate by the University. The Title IX Coordinator will assess the request for Informal Resolution in light of factors such as, but not limited to, the stated goals of the requesting party, the severity of the alleged violation, and the potential risks to campus community members posed by the reported misconduct. Parties engaged in Formal Resolution may also request to end Formal Resolution and begin Informal Resolution at any time prior to the Decision-makers written determination regarding responsibility being shared with the parties.

Three options for Informal Resolution are Supportive Resolution, Alternative Resolution, and Accepted Responsibility.

1. Supportive Resolution is a resolution when the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation;
2. Alternative Resolution is when the parties agree to resolve the matter through an alternative resolution mechanism that may involve the party's agreement to appropriate and reasonable remedies in a mediation, restorative practice, or facilitated dialogue in which the parties are either separated throughout or in a facilitated, direct conversation setting;
3. Accepted Responsibility is when the Respondent accepts responsibility for violating policy and desires to accept the recommended sanction(s) and end the Resolution Process

Participation in Informal Resolution is voluntary and either (or any) party can request to end Informal Resolution at any time prior to signing a written Informal Resolution Agreement. Additionally, the Title IX Coordinator can end Informal Resolution if the Coordinator determines it is no longer an appropriate avenue for resolution of a given report. If Informal Resolution is stopped prior to completion, information that is shared with or documented by the facilitator of the Informal Resolution will not be shared with the investigator, in the event that Formal Resolution is initiated or resumed. A party's willingness to participate in Informal Resolution will not be considered as evidence in Formal Resolution.

Informal Resolution may involve the party's agreement to appropriate and reasonable remedies in a mediation in which the parties are separated throughout or in a facilitated, direct conversation setting.

The Title IX Office will maintain records of all reports and conduct referred for Informal Resolution. While the University will seek to honor confidentiality of the parties' communications with the facilitator during the Informal Resolution process to the extent necessary to facilitate the resolution, the University may share information discussed or created during this process, for example, in response to a judicial subpoena or a FERPA educational record request. However, if the respondent is found responsible for any violations of this policy in the future, information regarding the prior report processed through Informal Resolution may be used in the sanctioning phase for the subsequent report, provided that the respondent is granted the opportunity to address the prior report. If Informal Resolution is stopped prior to a resolution being reached, statements made by a party in Informal Resolution may not be used in a Formal Resolution process related to that matter.

If a party requests the initiation of an Informal Resolution process and the Title IX Coordinator agrees that the matter is appropriate for Informal Resolution, the Title IX Office will provide to each party a written notice that discloses the allegations, 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, the parties' right to withdraw from Informal Resolution and resume or initiate Formal Resolution with respect to the formal complaint, and information about maintenance of records or how records could be shared.

The matter will be deemed resolved if and when the parties expressly agree in writing to an outcome that is acceptable to them, and which is approved by the Title IX Coordinator (in consultation with other appropriate University administrators as necessary). Upon signing a resolution agreement, neither party may initiate a Formal Resolution process regarding the same factual allegations, and the parties agree to comply with the terms of the resolution agreement. Failure to comply with a resolution agreement, once signed and approved, may result in disciplinary consequences, which may include the University placing an appropriate hold on the student's account until the terms of the agreement are met, or employment discipline up to and including termination.

The University will not offer or facilitate an Informal Resolution process to resolve allegations that an employee engaged in Prohibited Conduct against a student.

When a resolution is accomplished, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Informal Resolution are not appealable.

### **Accepted Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is appropriate.

If Informal Resolution is appropriate, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, sanctions and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of the Policy and implements agreed-upon sanctions and remedies and determines the appropriate sanction(s) in coordination with other appropriate administrator(s), as necessary. This result is not subject to appeal once all parties indicate their written assent to all resolution terms. When the parties cannot agree on terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

### **13. Formal Resolution**

The formal resolution process involves an investigation and hearing prior to the issuance of a finding of responsibility under the policy and imposition of any sanctions. During this process, parties have equal rights, including the opportunity to receive a written notice of investigation; to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting; to timely and equally access information; to timely notice of meetings at which their presence will be requested or required; to simultaneous written notice of the determination, rationale, and, as appropriate, any sanction; and to an appeal of the finding.

Determinations regarding responsibility by decision-makers will be made by a preponderance of the evidence. A preponderance of the evidence means that based on all relevant evidence and reasonable inferences from the evidence, the greater weight of information indicates that it was more likely than not the alleged policy violation occurred. Evidence is relevant if it has a tendency to make a fact more or less likely than it would be without the evidence, and the fact is of consequence in the decision-maker's

determination.

Respondent will be presumed not responsible. This means that the University will not treat respondent as though they are responsible for violating this Policy prior to a finding of responsibility. No party or participant will be viewed as credible or not credible simply based on their status as complainant, respondent, or witness.

The burden of proof and the burden of gathering evidence rests on the University. Parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other evidence. Parties are not restricted in their ability to gather and present relevant evidence.

#### ***A. Notice of Complaint and Formal Resolution***

The Title IX Coordinator will provide the parties with written notice of the details then known of the Prohibited Conduct, the use of advisors, the gathering and preservation of evidence and information about the University's resolution process.

If, in the course of an investigation, the University decides to investigate allegations about any party that are not included in the notice described above, it will provide notice of the additional allegations to the parties whose identities are known.

When a Notice of Investigation is issued, appropriate campus departments such as Athletics and/or Human Resources may be notified, and respondents may be subject to applicable policies under those offices, which are not under the purview of the Title IX Coordinator.

#### ***B. The Investigation***

In cases that will be investigated, the Title IX Coordinator will appoint one or more investigators (referred to in this policy as "the investigator") to conduct a prompt, thorough, fair, and impartial investigation. The investigator may be a university employee and/or an experienced external investigator depending on the circumstances and availability. Any investigator used by the University will receive annual training on the issues related to Prohibited Conduct, and on how to conduct an unbiased investigation.

After the Title IX Coordinator identifies an investigator, the parties may, within three days of such notice, object to the service of the investigator by providing a written statement (which may be transmitted electronically) as to why the party believes that the investigator has a conflict of interest or bias. The Title IX Coordinator will inform the parties of the decision regarding an objection to the appointment of an alternate investigator, with reasonable promptness.

During the investigation, the Investigator will meet with both parties and may meet with witnesses and collect any and all relevant evidence provided by the parties and witnesses. The investigator will review all information identified or provided by the parties, and witnesses, to determine the relevance, and probative value of the information. In general, the investigator will not gather personal opinion or statements as to any party's general reputation for any character trait. Witnesses may not participate solely to speak about an individual's character. The investigator has discretion to determine which witnesses to interview and will consider requests or recommendations for witnesses made by the complainant and respondent. In situations in which multiple people were all eyewitnesses to the same event, the investigator may interview a sampling of the witnesses rather than every person.

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.

The investigator will provide periodic updates to the parties about the status of the investigation.

### ***C. The Investigative Report***

#### *1. The Preliminary Investigation Report*

The Investigator will prepare a report of all findings during the investigation process and provide each party with an equal opportunity to review any evidence obtained as part of the investigation that is directly related to the allegations raised, including the evidence upon which the University may not rely in reaching a determination regarding responsibility and/or which the investigator does not deem relevant.

The complainant and the respondent will have an opportunity to concurrently review such information and may, within five (10) days, submit a written response to the investigator. The parties' written responses will be considered by the investigator prior to completion of the investigative report, and some or all of the responses may be attached or otherwise incorporated into the final investigative report. In the event that new, relevant information is provided or identified at this stage, the information will be incorporated into the investigative report as deemed appropriate by the investigator.

#### *2. The Final Investigative Report*

The investigator will thoroughly address the responses of each party and promptly prepare a final investigative report which will summarize and include relevant evidence. The parties may provide a written response to the investigative report within five (10) days of the issuance of the final investigative report.

The investigative report and the parties' written responses, if any, will be provided to the decision-maker in advance of the hearing.

### ***D. The Formal Hearing***

#### *1. Hearing Notice(s)*

The Title IX Coordinator will provide the parties with at least ten (10) days' notice of a hearing, in most cases. However, these timelines may be modified, when necessary, with notice to the parties. For example, hearings may occur sooner when an academic term is ending. Conversely, delays may occur when the University is closed, during academic breaks or for other reasons necessitating a delay. The proceedings may be delayed or paused when there are concurrent criminal proceedings and the prosecutor or defense counsel for respondent request such a pause. The parties will be promptly notified of any modification to the intended timeline.

Please note that students will receive excused absences from classes to participate in a Title IX hearing.

Witnesses are restricted to individuals already interviewed in the investigation. The University cannot compel a witness to participate in a hearing but will provide witnesses notice of the hearing date and information on how to attend.

Hearings will be presided over by a "decision-maker", who will make the decision by a preponderance of the evidence as to whether the respondent violated the policy provisions at issue. The decision-maker has broad authority to determine what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and what cross-examination questions will be permitted during the hearing.

Decision-makers will be appointed by the Title IX Coordinator. The Title IX Coordinator will identify the decision-maker in advance of the hearing, and parties may, within three (3) days of such notice, object to the service of the decision-maker by providing a written statement as to why the party believes that the decision-maker has a conflict of interest or bias. The Title IX Coordinator will make decisions regarding



such objections and the appointment of an alternate decision-maker. Parties and their advisors are prohibited from contacting the decision-maker for any reason prior to the full conclusion of the resolution process. In addition, parties and their advisors are prohibited from contacting the decision-maker about the resolution process after its completion.

## 2. Hearing Advisor(s)

Each party may have an advisor of their choice present at a hearing for the limited purpose of conducting cross-examination on behalf of that party. Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice present at a hearing, the University will, without fee or charge to the party, provide an advisor of the University's choice. **All advisors will receive a mandatory training on Butler's Policy, and proper hearing conduct prior to participation in any Title IX matter. All advisors must sign an acknowledgment of the training contents prior to assignment or participation.**

Parties may prepare questions for assigned advisors to relay to the other parties and/or witnesses; the assigned advisor's role is limited to relaying questions drafted by their party. At a time and manner deemed appropriate by the decision-maker, the advisor for each party will be permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of their advisee. However, the advisor may consult privately in a non-disruptive manner during the hearing, or with their advisee during a recess in the hearing. Scheduling accommodations generally will not be made for advisors. The University reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the decision-maker, which may include exclusion of the advisor from the hearing and the appointment of an alternate University-provided advisor.

## 3. Hearing Procedure(s)

Before the hearing, the decision-maker will receive a copy of the investigative report, any attachments thereto, and copies of the parties' written responses to the investigative report, if any. That information will be part of the information to be considered by the decision-maker.

Formal rules of evidence do not apply to hearings conducted by the University. Therefore, decision-makers have great latitude in conducting hearings.

Before a complainant, respondent, or witness answers a cross-examination question, the decision-maker will first determine whether to permit the question. Neither advisors, nor parties are permitted to object to decision-maker's determination of relevance during a hearing.

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. Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), will not be admitted unless the person holding the privilege has waived the privilege.

The decision-maker may at their discretion consider statements of a party or witness made before or at a hearing and/or other information, regardless of whether the party or witness appears at or answers some or all cross-examination questions at a hearing. The decision-maker will determine the appropriate weight for such information based on the totality of available relevant evidence. The decision-maker will not 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.

At the discretion of the decision-maker, parties will be given an opportunity to make a closing statement at the conclusion of the hearing.

The University will create a transcript or recording of any live hearing and make it available to the parties for review upon request. No other individuals may record the hearings—this includes parties themselves, and their respective advisors. Moreover, copies of the live hearing will not be made available to third-parties, including legal representatives, unless compelled by court order.

#### ***E. Determination(s) of Responsibility and Findings***

After the hearing, the decision-maker will promptly prepare and issue a written determination regarding responsibility and any sanctions, if applicable. In determining responsibility, the decision-maker will apply the preponderance of the evidence standard. The written determination will include:

- Identification of the Prohibited Conduct section(s) of this policy, and of any other University policy sections considered in the investigation, alleged to have been violated;
- A description of the procedural steps taken from the receipt of the complaint through the determination, including but not limited to, as applicable, any notifications to the parties, interviews 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 University's definitions of Prohibited Conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility; and
- Identification of the University's procedures and permissible bases for the complainant and respondent to appeal (as outlined below).

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely. If the decision-maker finds the respondent responsible for behavior that violates this Policy, sanctions shall be assigned by the decision-maker as outlined below.

#### ***F. Sanctions***

Sanctions may include any of the sanctions that are listed below or as set forth in the University's Code of Student Conduct.

The decision-maker has latitude to recommend sanctions tailored to the facts and circumstances of each case. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, remedy its effects, and restore or preserve the complainant's equal access to university education programs or activities, while supporting the University's educational mission. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, and/or so deleterious to the educational process that it requires severe sanctions, including suspension or expulsion. The decision-maker will review the facts and recommend sanctions to the Title IX Coordinator. The Title IX Coordinator will defer the decision-maker's recommendation, except where a panel of decision-makers renders recommendations are inconsistent with one another. In that case, the Title IX Coordinator will impose only those consistent sanctions.

In determining the appropriate sanction, the decision-maker may consider factors including but not limited to the following:

- the nature and violence of the conduct at issue;
- the impact of the conduct on the complainant;
- the impact or implications of the conduct on the community or the University;

- prior misconduct by the respondent, including the respondent's relevant prior disciplinary or criminal history (if available);
- maintenance of a safe and respectful environment conducive to learning;
- protection of the University community; and
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

### *1. Student Sanctions.*

Sanctions may be imposed individually or in combination. For violations of this policy, the following sanctions, listed in ascending order of severity, may be imposed:

- **Warning Letter:** An official letter sent to a student who has violated a university rule or policy or to whom a letter should be sent to warn a student regarding failure to comply with university rules or regulations in the future. A copy of this letter shall be placed in the student's conduct file.
- **Disciplinary Probation:** A period of observation and review during which a student must demonstrate a willingness and ability to comply with all University regulations. The terms of the probation shall be for a specified period and may include restriction on participation in leadership roles and co-curricular activities, among other stipulations.
- **Residential or Other Facilities Restrictions or Removal:** Restriction or removal from residence halls or other campus facilities as designated in the written notification. No refunds will be given to a student who is removed from the residence halls or who is otherwise limited in their ability to utilize campus facilities or amenities.
- **Withholding of Degree:** In cases involving seniors or graduate students in their final semester, the University may withhold a student's academic degree for a specified period of time. This penalty is imposed instead of suspension at the end of senior year or final year of graduate study when all other degree requirements have been met. The sanction of withholding a degree may also occur if an expulsion-level offense occurs after all other degree requirements have been met but before the degree is conferred.
- **Suspension:** The student is suspended from continuing at the University for a specified period. While a suspension is in effect, a student may not, without the expressed permission of the Dean of Students: (a) Attend classes, or participate in any University-sponsored event or activity; or (b) Be present on university-owned or affiliated property, including University approved housing units. To be considered for return, a suspended student 1) must meet all stipulations outlined in their sanction letter and 2) must receive approval from the Dean of Students and the Title IX Coordinator.
- **Dismissal:** The student is dismissed permanently from the University. This sanction is noted on the student's transcript (See Student Conduct Records). Dismissed students are permanently trespassed from university property.

### *2. Additional Remedies*

The decision-maker may recommend additional remedies such as training or volunteer activities. Extended supportive or other measures may be included in the sanctions. The Title IX Coordinator will review the remedies recommended by the decision-maker and will consider the appropriateness of continuing supportive measures on an ongoing basis. The decision maker may suggest additional remedies in combination with the preceding sanctions. Additional Remedies include but are not limited to:

- **Community Service:** Community service up to ten (10) hours per week may be added to disciplinary probation for a portion or duration of the probationary period or following a warning.
- **Restriction of Access to Space, Resources, and Activities:** When appropriate, restrictions may be placed on access to space and/or resources or on participation in activities so as to limit

opportunities for contact between the parties.

- **Educational Programs:** In addition to any of the sanctions listed above, a student may be required to participate in educational programs.

### *3. Employee Sanctions*

In cases where the respondent is a university employee, in accordance with the University policies and procedures, the sanctions will be determined by the leader of Human Resources or designee.

When an employee is found responsible for violating this Policy, one of the following sanctions may be assigned *Verbal or Written Warning, Performance Improvement Plan/Management Process, Enhanced Supervision, Observation, or Review, Probation, Loss of Oversight or Supervisory Responsibility and/or Demotion.*

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation may also include: *Required Training or Education, Denial of Pay Increase, Transfer, Reassignment, Assignment to New Supervisor, Suspension/Administrative Leave with Pay, Suspension/Administrative Leave without Pay, and/or Restriction of Stipends, Research, Professional Development Resources, or Termination.*

*Other Actions:* In addition to or in place of the above sanctions/responsive actions, other responsive actions may be assigned as deemed appropriate.

The University may issue interim or administrative measures such as restriction of access to space, resources and activities, and/or no contact directives at its discretion even where no policy violation has been investigated or charged, and/or where no policy violation has been found.

### *4. Other Information about Sanctions*

*In most cases,* sanctions will be suspended during the period of any appeal. However, the University reserves the right to remove a dismissed or suspended student immediately following receipt of the decision from the decision-maker in cases where student safety requires the same. In order to determine whether this is necessary, on a case-by-case basis, the Title IX Coordinator will perform a risk analysis akin to the Emergency Removal Analysis.

In cases adjudicated prior to the last day of classes, if the final sanction is dismissal from the University, the granting of credit for the semester and/or the awarding of a degree will be at the discretion of the decision-maker.

A student who is dismissed from the University for a violation of this policy will have the notation "Ineligible to Reenroll" placed on his or her academic transcript. On request by the student, the University may remove the notation from the academic transcript if (1) the student becomes eligible to reenroll, or (2) the University determines that good cause exists to remove the notation. Such requests should be directed to the Title IX Coordinator in writing. The removal of the notation from the academic transcript shall not require the University to make any modification to the student's disciplinary records at the University.

## ***G. Other considerations in the Formal Resolution Process***

### *1. Expectation of Good-Faith*

All University community members are expected to provide truthful information in any report or proceeding under this policy, and to cooperate fully with the investigation and resolution procedures. It is understood that there may be circumstances in which a complainant or respondent wishes to limit their participation, and the University will respect the choice of the complainant or respondent as to how to engage in proceedings under this policy.

It is prohibited for any participant to knowingly make false statements or knowingly submit false allegations or information. All parties are expected to provide true and accurate information. Should a party, witness, or investigator willfully provide false information, they may be subject to disciplinary action.

If a complainant or respondent chooses not to answer any or all questions, or otherwise participate in an investigation for any reason, the University will evaluate whether to continue the disciplinary process. The University will not draw any adverse inference from a complainant's or respondent's decision not to participate in the investigation or any form of resolution under this policy; however, the complainant or respondent should be aware that declining to participate in the investigation may impact the timing and outcome of the case.

### Appeals

Either party to a matter covered by this Policy may file an appeal from: 1) a determination regarding responsibility; and/or 2) the Title IX Coordinator's dismissal of a formal complaint or any allegations therein from the Formal Resolution process, on the following grounds:

- a. Procedural irregularity that affected the outcome of the matter;
- b. 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;
- c. Conflict of interest or bias on the part of the Title IX Coordinator, investigator, or decision-maker that affected the outcome.

An appeal must be submitted in writing to the appellate officer within seven (7) days of a Finding of Responsibility. The appellate officer will be appointed by the Title IX Coordinator, and identified at the time the Finding of Responsibility is rendered. Parties may, within three days of such notice, object to the appellate officer by providing a written statement as to why the party believes that the appellate officer has a conflict of interest or bias. Prior awareness of the matter by the appellate officer will not form a basis for disqualification of the appellate officer. The Title IX Coordinator will make the final decision regarding such objections and the appointment of an alternate appellate officer. The appellate officer will not be the same person as the decision-maker, the investigator, or the Title IX Coordinator. Parties and their advisors are prohibited from contacting the appellate officer for any reason prior to the full conclusion of the resolution process.

Upon receipt, the appellate officer will make an initial determination as to whether any allegations contained in the appeal, if true, would constitute grounds for an appeal under this Policy. If a valid grounds for an appeal have been asserted, the Title IX Coordinator will notify the other party in writing that an appeal has been filed. The other party has five (5) days to submit a statement in support of the written determination and/or in opposition to the appeal. Any such statement will be shared with the party who filed the appeal, and their advisor. If no valid ground is found, the appellate officer will notify the party seeking the appeal of its denial.

After all information is received, the appellate officer will issue a written decision describing the result of the appeal and the rationale for the result, and the University will provide the written decision simultaneously to both parties. The appellate officer's decision on any appeal is the final step in the adjudication process, except as provided in such decision. The appellate officer may deny the appeal, or if one or more of the appeal grounds is meritorious may:

- (1) return the case to the original decision-maker for reconsideration; or
- (2) appoint an alternate decision maker to review the case; or
- (3) change or modify the decision.

It is the responsibility of the appellate officer to determine which if any aspects of the case merit a new review, and to direct the Title IX Coordinator accordingly. The Title IX Coordinator will provide the written decision to the Parties simultaneously.

The decision made by the appellate officer to grant or deny the appeal is final.

#### **14. Record Retention**

In accordance with the record retention policy of both the Title IX Coordinator and Student Affairs Office, the Title IX Coordinator will maintain records of all cases minimum of seven years. Findings of responsibility will also be included in a student's disciplinary record maintained by the Dean of Students Office and/or an employee's personnel records in Human Resources.

#### **15. Violations of Law**

Conduct that violates this policy also may violate the laws of the local jurisdiction in which the incident occurred and subject a respondent to criminal prosecution by the presiding authority, or under applicable Indiana law. Where the University has jurisdiction to investigate and address reported conduct that would constitute conduct prohibited by this policy, the definitions and standards in this policy will apply for purposes of university discipline, regardless of the definitions of various crimes used in the laws of the locality where the conduct allegedly occurred.

#### **16. Annual Review**

This policy is maintained by the Office of Institutional Equity and the Title IX Coordinator. Butler University will review this policy on an annual basis, or otherwise as needed.

Concerns about the University's application of Title IX and the Clery Act may be addressed to the Title IX Coordinator or may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Facsimile: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Room 509F, HHH Building  
Washington, D.C. 20201  
Customer Service:(800) 368-1019  
TDD toll-free: (800) 537-7697  
Email: [OCRMail@hhs.gov](mailto:OCRMail@hhs.gov)  
Web: <https://www.hhs.gov/ocr/about-us/contact-us/index.html>

Add contact information for any other applicable federal or state agency (e.g., DOJ). Federal grantees should indicate NASA, NOAA, NIH, etc. as applicable agencies per the terms of the grant.

For complaints involving employee-on-employee conduct: [Equal Employment Opportunity Commission](#) (EEOC)