UNIVERSITY POLICY

Policy on Sex Discrimination, Sexual Harassment, Sexual Misconduct and Domestic Violence

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POLICY STATEMENT
Consistent with federal laws known as Title IX, the Clery Act and the Violence Against Women Reauthorization Act of 2013 (“VAWA”), Butler University is committed to having an educational and working environment free from sex discrimination in any form including sexual harassment, misconduct, and violence.

REASON FOR POLICY
This Policy defines prohibited conduct and outlines procedures for reviewing, investigating and resolving complaints of sex discrimination, sexual harassment and sexual misconduct, domestic violence and stalking involving students, faculty and staff (collectively “Employees”), and visitors, contractors, and vendors (collectively “Third Parties”). No Division, Department and/or College is permitted to develop and/or adopt procedures that contradict, modify or supplement this policy.

The person responsible for implementing this policy is the Title IX Coordinator:

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Note: For additional Contacts and Resources, please see the “Forms/Resources” section of this policy.

SCOPE OF POLICY

A. To Whom Does the Policy Apply?
   a. Students (those enrolled in any courses in any format at the University or those having a continuing relationship with the University such as those eligible and/or applying for reenrollment and/or readmission or those involved in an appeal or grievance process);
   b. Employees (all persons legally defined as employees of the University);
   c. Third Parties (visitors, contractors, vendors)

B. When and Where Does This Policy Apply?
   a. This policy applies to prohibited conduct committed by or against, students, employees and Third Parties where:
      i. The conduct occurs on campus or other property owned or controlled by the University;
      ii. The conduct occurs in the context of a University employment or education program or activity, including but not limited to, a University-sponsored study abroad, research, on-line, or University approved internship programs; or
      iii. The conduct occurs outside the context of a University employment or education program or activity, but has continuing adverse effects that create a hostile environment for students, employees or third parties while on campus or other property owned or controlled by the University or in any University employment or education program or activity.
   b. Time for bringing a complaint
i. The University encourages all individuals to report violations of this policy immediately.

ii. Students are encouraged to report violations of this policy within 9 months of the date of harassment. A student may file a complaint as long as the student making the allegation and the person responding to the allegation are members of the University community or Third Parties. The University recognizes, however, that extenuating circumstances may prevent prompt reporting.

iii. All individuals should recognize that the University’s ability to investigate will be limited as time passes.

SEE HOW DO I REPORT A VIOLATION FOR ADDITIONAL INFORMATION

WHAT IS PROHIBITED CONDUCT

Prohibited Conduct includes the following behaviors: Sex Discrimination, Sexual Assault, Sexual Exploitation, Domestic Violence, Stalking, Sexual or Gender Based Harassment, and Retaliation.

A. SEXUAL ASSAULT

Sexual Assault is:

Sexual Contact and/or Sexual Intercourse that occurs without Consent (see below for Consent information).

Sexual Contact 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 Intercourse includes (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.

B. CONSENT

Consent is agreeing to or giving permission by words or actions for sexual contact to another person.

Consent is not:

1. Consent is not forced or coerced. Force is the use or threat of physical violence or intimidation that would reasonably overcome an individual’s freedom to choose whether to participate in sexual activity. Coercion is express or implied threats of immediate or future physical, emotional, reputational, financial, or other harm to an individual or others, that would reasonably place an individual in fear and that is employed to compel someone to engage in sexual activity.

2. An incapacitated individual cannot consent to sexual activity.
a. Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

b. A person who is incapacitated is unable, temporarily or permanently, to give Consent because of physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated as a result of the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition. Being impaired by alcohol or other drugs does not excuse a Respondent from responsibility for committing Prohibited Conduct that violates this policy.

c. When alcohol or other drugs are involved, it is important to understand the effect on the person’s level of consumption. The impact of alcohol and other drugs varies from person to person, and the effects can change quickly over time, and are not always shown by objective signs.

d. Evaluating whether another individual is incapacitated requires an assessment of whether the consumption of alcohol or other drugs has rendered that individual physically helpless or substantially incapable of:

i. making decisions about whether to engage in Sexual Contact or Sexual Intercourse; or

ii. communicating Consent to Sexual Contact or Sexual Intercourse

How does the University Evaluate Consent?
In evaluating Consent where the question of incapacitation is at issue, the University asks two questions:

1. Did the person initiating sexual activity know that the other party was incapacitated, and if not,

2. Should a sober, reasonable person, in the same situation, have known that the other party was incapacitated?

If the answer to either question is yes, then there has not been consent.

One should be cautious before engaging in Sexual Contact or Sexual Intercourse when either party has been drinking alcohol or using other drugs. The use of alcohol or other drugs may create uncertainty as to whether consent has been asked for or given. If one has doubt about either party’s ability to give consent, the safe thing to do is not to engage in any sexual activity.

Additional guidance about Consent:

1. A person who initiates a specific sexual activity is responsible for obtaining Consent for that activity.
2. Consent is not to be inferred from silence, passivity, or a lack of resistance, and relying on non-verbal communication alone may not be sufficient to ascertain Consent.

3. Consent is not to be inferred from an existing or previous dating or sexual relationship. Even in the context of a relationship, there must be mutual Consent to engage in any sexual activity.

4. Consent to engage in one sexual activity is not Consent to engage in a different sexual activity or to engage in the same sexual activity on a later occasion.

5. Consent to engage in sexual activity with one person is not Consent to engage in sexual activity with any other person.

6. Consent can be withdrawn by either party at any point. Once Consent is withdrawn, the sexual activity must cease immediately.

C. **SEXUAL EXPLOITATION**

   Sexual Exploitation is purposely or knowingly doing any of the following:
   
   1. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that persons’ ability to give Consent to sexual activity;
   
   2. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., livestreaming of images) without the consent of all subjects or participants;
   
   3. Engaging in voyeurism (e.g., watching private sexual activity without the consent of all participants or viewing another person’s intimate parts (including genitalia, groin, breasts or buttocks)) in a place where that person would have a reasonable expectation of privacy;
   
   4. Recording or photographing private sexual activity and/or a person’s intimate parts without the consent of all subjects or participants;
   
   5. Disseminating or posting images of private sexual activity and/or a person’s intimate parts without the consent of all subjects or participants;
   
   6. Prostituting another person; or
   
   7. Exposing another person to a sexually transmitted infection or virus without the other’s knowledge.

D. **DOMESTIC VIOLENCE**

   Domestic Violence includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship.

   Domestic Violence may include any form of Prohibited Conduct under this policy, including Sexual Assault, Stalking, and Physical Assault (as defined below).

   Physical Assault is attempting, threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person or group. In general,
Physical Assault will be addressed under this policy if it involves Sexual or Gender Based Harassment, Domestic Violence, or is part of a course of conduct under the Stalking definition.

E. STALKING

1. Stalking occurs when a person engages in a Course of Conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress.

2. Course of Conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person’s property.

3. Substantial emotional distress means significant mental suffering or anguish.

4. Stalking includes “cyber-stalking,” a particular form of stalking in which a person uses electronic media, social networks, blogs, cell phones, texts, or other similar devices or forms of contact.

F. SEXUAL OR GENDER-BASED HARASSMENT

Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, electronic or otherwise, when the conditions outlined in (1) and/or (2), below, are present.

Gender Based Harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions outlined in (1) and/or (2), below, are present. The University recognizes that gender and sexual orientation are different, but both are protected under this policy as “Gender-Based Harassment.”

1. Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person’s employment, academic standing, or participation in any University programs and/or activities or is used as the basis for University decisions affecting the individual (often referred to as “quid pro quo” harassment); or

2. Such conduct creates a hostile environment. A “hostile environment” exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University’s education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the University will consider the totality of known circumstances, including, but not limited to:
   a. The frequency, nature, severity, location, duration and context of the conduct; b. Whether the conduct implicates concerns related to academic freedom or protected speech.
A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of Sexual Assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

Sexual or gender based harassment that is alleged to have occurred in a teaching or classroom setting presents different issues from those occurring in other environments. For the handling of those complaints see: Appendix A.

A. RETALIATION
Retaliation is a significant adverse action (threat, intimidation, harassment or penalty) taken against a person for making a good faith report of Prohibited Conduct or participating in this process. Even where there is a finding of “no responsibility,” retaliation is prohibited. A good faith pursuit of civil, criminal or other legal action, even in response to an initial report under this Policy, does not constitute retaliation.

Any report of alleged retaliatory behavior may be investigated through the Administrative Investigation process outlined below. After Administrative Investigation, the matter may be referred to the appropriate division for discipline (Student Affairs for student conduct, Provost’s Office for faculty conduct, and HR for staff conduct).

The reporting party should make every effort to submit a written report of the retaliatory conduct to the Title IX Coordinator or Designee within thirty (30) calendar days of the alleged conduct.

TITLE IX ADMINISTRATIVE INVESTIGATION PROCEDURES

A. HOW DO I REPORT A VIOLATION?
The person who makes a complaint under this policy is called the “Complainant.” The person(s) who has been accused of violating this policy is referred to as the “Respondent.”

A Complainant has the option to pursue a complaint of sexual assault, sexual misconduct, dating violence, domestic violence, stalking and/or conduct that creates a hostile environment through this policy (“Administrative Investigation”). In addition, a Complainant may also pursue a criminal complaint with the appropriate law enforcement agency, BUPD https://www.butler.edu/sites/default/files/clerymap_20150312.pdf or IMPD. The Complainant has the right to pursue both a criminal complaint and the University Title IX process simultaneously.

University officials, depending on their roles at the University, have different reporting responsibilities and ability to maintain confidentiality. In order to make informed choices, be
aware of confidentiality and mandatory reporting requirements when consulting campus resources. See section C below.

B. REPORTING TO LAW ENFORCEMENT

This policy and process is distinct from the criminal investigation and flows from the University’s obligation under Title IX to ensure it is providing a safe environment. The Complainant’s decision on whether to seek a criminal resolution of the matter does not impact the administrative actions taken or to be taken. The University may undertake a short delay to allow evidence collection when criminal charges on the basis of the same behaviors that invoke this process are being investigated.

If a Complainant wishes to pursue a criminal complaint exclusively, the Complainant may request, in writing, that the Title IX Coordinator temporarily defer the Administrative Investigation. In most cases, the Complainant’s wishes will be respected. However, the University may continue the Administrative Investigation where the allegation leads the University to believe that the Respondent may be an imminent threat to the safety of the Complainant, other students or faculty/staff members.

The criminal investigation and process may be continued regardless of a Complainant’s wish to pursue the Administrative process. The criminal process focuses on satisfying the requirements in the Indiana Criminal Code 35-42-4, which may include force. The Administrative process focuses on consent. Please see the definition above on pages 3 – 5. The criminal process makes determinations of guilt based off a different standard of proof (beyond a reasonable doubt) than does the Administrative process (preponderance of the evidence).

University administrative action is not impacted by whether civil or criminal charges involving the same incident have or have not been filed or that charges have been dismissed or reduced. Resolution of one proceeding will not necessarily impact the other.

C. CONFIDENTIAL REPORTERS– THOSE WHO ARE PROTECTED BY INDIANA LAW FROM DISCLOSING INFORMATION EXCEPT WHEN LAW OR COURT ORDER REQUIRES OR PERMITS DISCLOSURE

If a reporting student would like the details of an incident to be kept confidential, the reporting party may speak with on-campus counselors and campus health service providers. Counselors in Counseling & Consultation Services are available to students 8:00am – 5:00pm Monday through Friday, free of charge and can be accessed on an emergency basis. On campus clergy/chaplains are available through the Center for Faith and Vocation. For faculty and staff, the Employee Assistance Plan (“EAP”) provides support services. See Resources at the end of this policy for contact information.

Off-campus resources available to all Butler campus community members include local rape crisis counselors, domestic violence resources, private agencies, and members of the clergy/chaplains who will maintain confidentiality except in extreme cases of immediacy of
threat or danger or abuse of a minor. A web link to several campus community resources is listed under Forms/Resources at the end of this policy.

Licensed counselors, a Victim Advocate, health care providers and affiliated clergy must abide by professional codes of conduct and state licensing expectations. Other responsible employees are obligated to inform a Complainant of their reporting obligations.

On campus resources for Respondents include Counselors in Counseling & Consultation Services for students and on campus clergy/chaplains through the Center for Faith and Vocation. For faculty and staff, the Employee Assistance Plan (“EAP”) provides support services. See Resources at the end of this policy for contact information.

D. IMMUNITY
The University seeks to remove any barriers to reporting or participating in a complaint. Any student, whether the Complainant or a third party, who reports or participates in an investigation under this policy will generally be offered immunity from being disciplined for policy violations related to the personal ingestion of alcohol or other drugs, provided that any such violations did not and do not place the health and safety of any person at risk. The University may encourage educational or therapeutic remedies for those individuals.

This limited immunity does not protect any student organization from discipline if information is learned through the course of an investigation under this policy pertaining to unregistered parties or other violations.

WHAT HAPPENS AFTER THE REPORT IS MADE?

A. INITIAL DETERMINATION
Based on available information the Title IX Coordinator determines whether a case merits investigation under this policy.

If the complaint does not appear to allege a violation of this policy, or if mediation is desired by the Complainant and appears appropriate given the nature of the alleged behavior, then the complaint does not proceed to investigation.

Sexual or gender based harassment that is alleged to have occurred in a teaching or classroom setting may present different issues from those occurring in other environments. For the handling of those complaints see: Appendix A.

B. CONSENT TO INVESTIGATION
The University will seek the consent of the Complainant before proceeding with the Administrative Investigation. This consent is requested to be in writing to the Title IX
Coordinator. Any form of written consent is acceptable: text message, email message, letter, signature on the Consent Form, etc.

C. REQUESTS FOR ANONYMITY AND/OR NO ADMINISTRATIVE INVESTIGATION
In the event that a Complainant requests anonymity or that a matter not go to an Administrative Investigation, the University will consider the request. The Title IX Coordinator will decide whether the request should be granted. The factors the Title IX Coordinator will consider, on a case-by-case basis, include:
1. The seriousness of the alleged conduct;
2. The Complainant’s age;
3. Other complaints or patterns of behavior by the Respondent;
4. Aggravating circumstances such as the use of force, threats, intimidation, multiple assailants, etc.;
5. The use of a weapon, and/or
6. Other risks to the University community.

If the University agrees to a Complainant’s request for anonymity and/or to not proceed with an Administrative Investigation, the Complainant will be notified in writing that the Complainant has nine (9) months from the date of the Title IX Coordinator’s decision to request that the matter be reopened and referred to an Administrative Investigation.

If the University agrees to a Complainant’s request for anonymity or if a Complainant decides not to participate in the Administrative Investigation, the University’s ability to meaningfully investigate the incident or pursue conduct action against the alleged Respondent may be limited or adversely impacted.

In some cases, the University may not be able to agree to the Complainant’s request in order to satisfy its obligation to provide a safe, non-discriminatory environment for all students. If the University determines that it is unable to agree to a Complainant’s request not to conduct an Administrative Investigation, the Complainant will be notified prior to starting the Administrative Investigation. If the University cannot agree to the Complainant’s request for anonymity, the Title IX Coordinator will notify the Complainant in writing prior to the Administrative Investigation and will, to the extent possible, share information with school officials having a reason to know the information, only.

D. ASSIGNMENT OF ADVISORS
Following receipt of a complaint, the Title IX Coordinator will promptly assign University trained advisors (University Advisor) for the Complainant and the Respondent.

1 If circumstances require, the Title IX Coordinator may designate another person to oversee the process below, should a complaint be made against the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.
A University Advisor acts in a consultative role by providing, as needed, interim remedies, guidance on the policy and process, and resources for care and treatment. University Advisors are not advocates and should not be considered as such. Their role is to provide factual information, not opinions or advice. University Advisors have been trained in all aspects of the University’s Title IX Administrative Investigation process.

A Complainant or Respondent may also select an advisor from outside the University community to act as an advisor (“Outside Advisors”). Complainants and Respondents are allowed only one Outside Advisor.

Both University Advisors and Outside Advisors are permitted, if a Complainant or Respondent so chooses, to be present in all phases of the Administrative Investigation process, but the Advisor is not allowed to interrupt the process, speak on behalf of the Complainant/Respondent or otherwise interject oneself into the matter. If an Advisor violates these parameters, the Advisor may be removed from the process and not permitted to attend with the Complainant or Respondent.

E. INTERIM REMEDIES

The University Advisor will, as requested by the Complainant or Respondent and as necessary, provide interim remedies while the process is pending. If, upon conclusion of the Administrative Investigation, there is a finding of “no policy violation” then the interim measures will be removed. In certain cases, the parties may, however, voluntarily agree to continue interim measures.

These interim remedies may include University imposed administrative No Contact Orders, referral to counseling and health services or to the Employee Assistance Program, education to the campus community, altering the housing situation of a Respondent or resident employee (or the Complainant, if desired), altering work arrangements, providing campus escorts, offering adjustments to academic deadlines, course schedules, dining arrangements, co-curricular activities, etc.

Information about University Imposed Administrative No Contact Orders

Unless otherwise stated in writing, a person who is issued an administrative No Contact Order by the University may not have contact, either directly, indirectly, or through third parties, with specific individuals for a period of time. “Third parties” include friends, family, attorneys, and other individuals acting on behalf of a person who has been issued a No Contact Order. “Contact” includes, but is not limited to, email, social media, instant messaging, text messaging, phone calls, voicemail, or direct visits. Unintentional contact is not considered a violation of the administrative no contact order.

Individuals are encouraged to report violations of administrative No Contact Orders promptly.
Individuals should report a violation of the administrative No Contact Order to their University Advisor. Individuals found responsible for violating a University issued administrative No Contact Order may face additional discipline.

University issued administrative No Contact Orders are separate and distinct from court-administered actions such as Protective Orders and Restraining Orders. Questions about court-administered actions should be directed to local law enforcement.

**Interim suspension** may also be used when, in the judgment of the Title IX Coordinator, the safety or well-being of any member(s) of the campus community may be jeopardized or the process may be compromised.

1. The University may impose an interim suspension on an employee, student, and/or organization pending the completion of Administrative Investigation and procedures.
2. In all cases in which interim suspension of an employee is considered, the employee will be given the opportunity to meet with Title IX Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Coordinator will consult with HR in staff matters and the Provost in faculty matters prior to imposing a suspension.
3. When a student or student organization is involved, the student or student organization will be given the opportunity to meet with Title IX Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX Coordinator will consult with Student Affairs prior to imposing a suspension.

The Title IX Coordinator has sole discretion to impose or stay an interim suspension under this policy, and to determine its conditions and duration. Violation of an interim suspension under this policy will be grounds for expulsion or termination.

During an interim suspension, a **Respondent** may be denied access to University housing and/or the University campus/facilities/events. As determined by the Title IX Coordinator in conjunction with the Vice President of Student Affairs (or designee), this restriction includes classes and/or all other University activities or privileges for which the individual might otherwise be eligible. At the discretion of the Title IX Coordinator in conjunction with the appropriate administrative officer, alternative coursework options may be pursued to ensure as minimal an impact as possible on the **Respondent**.

**THE ADMINISTRATIVE INVESTIGATION PROCESS**

**Appointment of Investigator**
The Title IX Coordinator will appoint an investigator to conduct a thorough, impartial and equitable investigation of the complaint. The investigator may be a member of the University community or a person from outside the University; in either situation, the investigator will be
appropriately trained in Title IX and conducting investigations. Should either party want to challenge the impartiality of the investigator, the party shall notify the Title IX Coordinator of the basis of the claim within three (3) calendar days of the notice of the appointment.

**Investigative Steps**
The investigator will conduct the investigation in an appropriate manner in the light of the circumstances of the case. The Complainant and Respondent will have an equal opportunity to be heard, to submit information, and to identify witnesses who may have relevant information.

**Complainant and Respondent Interviews**
The investigator will interview the Complainant and Respondent separately. Each party will be asked to participate in an initial interview and may be asked to participate in a follow up interview(s) as needed. The notes of the interviews will be maintained by the University until the parties have had the opportunity to review and comment on the draft investigation report.

**Witness Interviews**
The investigator will make a good faith effort to contact and interview any witness identified by the parties or in the documentation, including those no longer at the University. Witnesses must have first-hand knowledge of the acts in question or have information relevant to the incident and cannot be participating solely to speak about an individual’s character. The investigator may also interview any other individual the investigator finds to be potentially relevant to the allegations of the complaint. The investigator will inform each witness that they are prohibited from retaliating against the Complainant and Respondent or other witnesses, and request that the witness respect the privacy of the parties and the integrity of the process.

During the interview, the investigator will ask questions about the incident. All University community members are expected to provide complete and truthful information in any report or proceeding under this policy. Once the interview is complete, the investigator will compile the information collected. The investigator will schedule a follow up meeting where the interviewee will review the notes, make any corrections and sign the notes confirming the accuracy. The notes of the interview will be maintained by the University until the parties have had the opportunity to review and comment on the draft investigation report.

**Other Sexual History**
The Sexual History of a Complainant or Respondent will never be used to prove character or reputation. An investigation under this policy may consider prior or subsequent sexual history between the parties if the investigator, with the agreement of the Title IX Coordinator, determines that there was a prior or ongoing relationship between the Complainant and Respondent and the investigator is asked to determine whether consent was sought and given. As noted in other sections of the policy, whether someone consented on a prior or subsequent occasion is not evidence that the person consented on this occasion, and consent must be sought and given each time. Any prior or subsequent sexual history between the parties will
only be used to help understand the manner and nature of communications between the parties and the context of the relationship. If the investigator and Title IX Coordinator determine that prior or subsequent sexual history should be considered both the Complainant and Respondent will be notified and have the opportunity to provide any additional relevant information to the investigator.

**Consideration of Other Conduct by a Respondent**
Evidence of an occurrence or occurrences of sexual or other relevant behavior so distinctive and so closely resembling either party’s version of the alleged encounter as to tend to prove a material fact, including whether consent was sought or given, may be admissible. Where there is evidence of a pattern of similar conduct, either before or after the conduct in question, regardless of whether there has been a prior finding of a policy violation, this information may be deemed relevant to the determination of policy violation or assigning of a sanction.

**Consolidation of Investigation**
The investigator and the Title IX Coordinator have the discretion to consolidate multiple reports involving a Respondent into one investigation if the evidence related to each incident would be relevant in reaching a determination in the other incident.

**Experts**
The investigator may contact any expert necessary to help understand the facts related to the complaint. An expert may be contacted for an informal consultation or for a professional opinion regarding information learned from the investigation. Neither the Complainant nor the Respondent has the right to demand an expert. Consultation with the expert is at the discretion of the investigator.

**Documents/Records Review**
In addition to reviewing any documents submitted by the Complainant and Respondent, the investigator will accept or seek such other physical evidence relevant to the investigation as the investigator determines, in their judgment, to be necessary, including but not limited to documents, police records, electronic or other records of communications between the parties or witnesses and records of other relevant information. The investigator has no ability to subpoena information.
If medical records or information from the medical records are offered by either the Complainant or Respondent, with appropriate HIPAA release, the records or information will be shared with the other party.

**Site Visits**
The investigator may visit relevant sites or locations and record observations through written or electronic documentation, such as videos or photographs.
Investigation Report Content
At the conclusion of the investigation, the investigator will prepare a draft report that summarizes the information gathered, identifies the areas of agreement and disagreement between the parties and any supporting information or accounts, and analyzes the relevant facts determined through the investigation, referencing any supporting documentation or statements. The investigation report may include summaries of interviews with the Complainant, Respondent, third-party witnesses, experts, and any other individuals with relevant information, photographs of relevant sites or physical evidence, electronic records, and forensic evidence.

Review of Draft Investigation Report
Before the report is finalized and a recommendation made, the Complainant and Respondent will be given the draft report. Consistent with FERPA or assurances of anonymity, identifying information about the Complainant or witnesses may be redacted at the discretion of the Title IX Coordinator. A Complainant and Respondent may submit any additional comment or evidence to the investigator within seven (7) calendar days of receiving the report. Upon receipt of additional information or comments, the investigator will share one party’s information and comments with the other party and give three (3) calendar days for any additional response. If additional investigation is required, the investigator will do so promptly.

Final Investigation Report
The investigator will prepare the final investigation report. The investigator shall determine whether there is sufficient information to find, by a preponderance of the evidence i.e., whether it is more likely than not that a policy violation occurred. The investigator will submit a final report and recommended finding to the Title IX Coordinator. The final report will include all investigation materials subject to the guidelines set forth in the preceding section, the Complainant and Respondent responses, an assessment of the credibility of the witnesses, the recommended finding of whether this policy has been violated, and the investigator’s rationale. The recommended finding will be based on the standard of preponderance of the evidence, i.e., whether it is more likely than not that the policy was violated. The report will conclude with a finding on responsibility and recommended sanctions, if any. The Title IX Coordinator can ask the investigator to supplement the report or do further investigating.

The University aims to complete all investigations within a 60 day time period, which can be extended as necessary by the Title IX Coordinator with notice to the parties. Delays could occur when the University is closed, during academic breaks or for other good reason. Investigation may take longer when initial complaints fail to provide direct, first-hand information.

COMPLAINT RESOLUTION
A. Formal Resolution
The Title IX Coordinator makes the final (subject to appeals, if any) decision whether the
**Respondent** is responsible for each alleged violation and assigns appropriate sanctions or remedies. The Title IX Coordinator will inform the **Respondent** and the **Complainant** of the decision within ten (10) calendar days after receiving the investigator’s final report. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties’ University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumed to be delivered.

**B. INFORMAL RESOLUTION: MEDIATION**

Mediation is a voluntary process. The Title IX Coordinator will determine if mediation is appropriate, based on the willingness of the parties and the conduct at issue. The Title IX Coordinator will appoint a mediator to talk to each party about resolution, if possible, and appropriate sanctions or remedies. The Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the agreement can result in appropriate disciplinary actions. To be clear, mediation does not involve the parties being in the same room, at the same time trying to resolve the complaint. Rather, the Title IX investigator works with each party separately toward a mutually agreeable conclusion.

It is not necessary to pursue mediation first in order to make a formal complaint, and anyone participating in mediation can stop that process at any time and request a formal investigation. If agreed to by the parties, mediation can take place at any point in time after a complaint is filed but should typically be completed within thirty (30) calendar days of the initial report.

**Sanctions and/or Remedies**

Sanctions and/or remedies will be recommended by the investigator to the Title IX Coordinator. Factors considered when determining a sanction and/or remedy may include:

1. The nature, severity of, and circumstances surrounding the violation.
2. An individual’s disciplinary history.
3. Previous complaints involving similar conduct.
4. Any other information deemed relevant by the Investigator.
5. The need for sanctions and/or remedies to bring an end to the misconduct.
6. The need for sanctions and/or remedies to prevent the future recurrence of the misconduct.
7. The need to remedy the effects of the misconduct on the **Complainant** and the campus community.

**Student**

The following are sanctions that may be imposed upon students or student organizations singularly or in combination:

1. **Warning**: A formal statement that the behavior was unacceptable and a warning that further infractions of any University policy, procedure or directive will result in more severe sanctions or remedial actions.
2. **Probation:** A written reprimand providing for more severe conduct sanctions in the event that the student or organization is found in violation of any University policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, administrative no contact orders and/or other measures deemed appropriate.

3. **Suspension:** Termination of student status for a definite period of time, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their time at the University. This sanction will not be noted on the student’s official transcript.

4. **Dismissal:** Permanent termination of student status, revocation of rights to be on campus for any reason or attend University sponsored events. This sanction will be noted on the student’s official transcript.

5. **Withholding Diploma:** The University may withhold a student’s diploma for a specified period of time and/or deny a student participation in commencement activities if the student has a complaint pending, or as a sanction if the student is found responsible for an alleged violation while a student.

6. **Organizational Sanctions:** Deactivation, de-recognition, loss of all privileges (including University registration), for a specified period of time.

7. **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

**Employee**

Responsive actions for an employee who has engaged in sexual harassment, sexual misconduct and/or retaliation could include one or more of the following:

1. **Warning:** A warning is a formal method of informing an employee of a violation of University rules, guidelines, and/or policies. Additional violations will initiate the progressive disciplinary process.

2. **A mandated assessment by a university approved licensed psychologist, physician or healthcare provider**

3. **Demotion:** A reduction in rank or status.

4. **Suspension with pay:** Temporary removal of an employee from performing his/her work duties.

5. **Suspension without pay:** Temporary removal of an employee from performing his/her work duties and from receiving pay.

6. **Termination:** If the nature of the violation is so problematic and/or harmful to the campus community that a warning or a suspension is not appropriate, the University's recommendation will be to terminate employment.

**Contractors and Visitors**

1. **Warning:** A warning is a formal method of informing a contractor or visitor of a violation of University rules, guidelines, and/or policies.
2. *Trespass*: Individuals or groups may be formally banned or trespassed from University property or sponsored events.

3. *Termination*: Contractor agreement may be terminated.

C. **APPEALS**

Either party may appeal the Title IX Coordinator's decision to the Vice President for Student Affairs ("Vice President"). A review of the matter will be prompt and narrowly tailored to stated appeal grounds. Dissatisfaction with the outcome of the investigation is not grounds for appeal. Grounds for appeals are limited to the following:

1. A procedural error or omission occurred that significantly impacted the outcome of the process (e.g. substantiated bias, material deviation from established procedures, etc.).
2. To consider new evidence, unknown or unavailable during the original investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.

All requests for appeal considerations must be submitted in writing, asserting the reason for the appeal, to the Vice President within seven (7) calendar days of the delivery of the written determination of the Title IX Coordinator.

The Vice President will review the appeal request(s). The original finding and sanction and/or remedy will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. When any party timely appeals, the other party will be provided a copy of the other party’s appeal and may respond to the appeal within seven (7) calendar days from receipt of the appeal from the Vice President.

In deciding the appeal, the Vice President will appoint an appeal panel of three (3) individuals representing Student Affairs, the Provost’s office and Human Resources. The appeal panel will follow these guidelines:

1. Appeals decisions are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction and/or remedy only if there is a compelling justification to do so.
2. Appeals granted based on new evidence should normally be remanded to the original investigator for reconsideration of the recommendation to the Title IX Coordinator. Other appeals may be remanded to the investigator and/or Title IX Coordinator at the discretion of the appeal panel. Sanctions imposed by the Title IX Coordinator are implemented immediately unless the Vice President stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
3. The appeal panel, by a majority vote, will render a written decision on the appeal to all parties within fourteen (14) calendar days from the date upon which the appeal was initiated.
All parties will be informed of the appeal decision. Once an appeal is decided, the outcome is final: further appeals are not permitted.

In the event that the Vice President for Student Affairs is the Respondent, the appeal will be considered by the President or the President’s designee.

D. WITHDRAWAL OR RESIGNATION WHILE CHARGES PENDING
Should a student Respondent decide to leave, they may still participate in the investigation. If they choose to not participate in the investigation, the process will nonetheless proceed in the student’s absence to a reasonable resolution and that student will not be permitted to return to Butler University unless all sanctions, if any, have been satisfied. Additionally, the transcript may reflect that the student withdrew while investigation of a complaint under the Title IX Policy was pending. A hold may be placed on the student’s account to prohibit re-enrollment and the release of official transcripts.

This process may continue even in the event of the withdrawal of the Complainant.

The University does not support an employee resigning if that employee has a Title IX Policy complaint pending. Should an employee resign while charges are pending, the employee’s record will reflect “resigned with charges pending.”

Despite a withdrawal or resignation, the Title IX Coordinator will act to promptly and effectively remedy the effects of the conduct upon the Complainant and the campus community.

E. FAILURE TO COMPLETE SANCTIONS/REMEDIES/ CORRECTIVE ACTIONS
All Respondents are expected to comply with conduct sanctions/remedies/corrective actions within the time frame specified. Failure to follow through on conduct sanctions/remedies/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/remedies/corrective actions including suspension, dismissal or termination from the University. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator. For students or student organizations this decision will be made in consultation with the Vice President for Student Affairs.

F. RECORDS
In implementing this policy, records of all complaints, investigations, and resolutions will be kept by the Title IX Coordinator. Employee records will be retained indefinitely. Decisions regarding a student found responsible for violations of this policy will be noted in his/her student conduct file. Records will be kept seven (7) years or longer if there is reason to believe there will be government investigation or related litigation.
FORMS/RESOURCES

To report directly to the Title IX Coordinator click [here](#). This form of reporting can be anonymous. However, anonymous complaints will be investigated.

For online Campus Security Authority reporting click [here](#). Personally identifiable information may be withheld at the Complainant’s request.

Butler University Police Department “Silent Watch” online reporting [form](#). This form of reporting can be anonymous. However, anonymous complaints will be investigated.

**Tammy Pressler, Deputy Title IX Coordinator**
See page two for contact information

**Molly Sullivan, Deputy Title IX Coordinator**
See page two for contact information

**Frank Ross, Vice President for Student Affairs**
Atherton Union 200
317-940-9570

**Butler University Police Department**
525 W. Hampton Drive
Indianapolis, IN 46239
Emergency # 911 (from campus phone)
Emergency # 317-940-9999 (from any cell phone)
Phone: 317-940-9396

**Butler University Victim Advocate (for students)**
Available Monday – Friday from 9:00am – 5:00pm
Phone: 317-910-5572

After Hours:
**The Julian Center**
Phone: 317-920-9320 (available 24/7)

**Butler University Counseling & Consultation Services (for students)**
Health and Recreation Complex (HRC)
Room 120 D
Phone: 317-940-9385
After Hours:
St. Vincent’s Stress Center
Phone: 317-338-4800 (available 24/7)

Community North
Phone: 317-627-5700
Text: HelpNow to 2021
Butler University Health Services (for students) *
Health and Recreation Complex (HRC)
Room 110
Phone: 317-940-9385

Butler University Student Disability Services (for students)
Jordan Hall, Room 136
V/TT: (317) 940-9308

Center for Faith and Vocation *
Rev. Daniel Meyers
The Blue House
Phone: 317-940-8252

Employee Assistance Program *
Phone: 855-387-9727
TDD: 800-697-0353
Web: https://www.guidanceresources.com
Web ID: ONEAMERICA3

Community Resources
This link provides a list of community resources

Connect2Help
Phone: 317-926-4357

Indianapolis Metropolitan Police Department
Victim Assistance Unit
50 N. Alabama Street
Indianapolis, IN 46204
Emergency # 911
Phone: 317-327-3331

Marion County Prosecutors Office (Indianapolis)
251 E. Ohio Street, Suite 160
Indianapolis, IN 46204
Phone: 317-327-3522

**Center of Hope at St. Vincent Hospital***
2001 W. 86th Street
Indianapolis, IN 46260
Phone: 317-338-3756

**Center of Hope at Methodist Hospital***
1701 N. Senate
Indianapolis, IN 46206
Phone: 317-926-4673

**The Office for Civil Rights (OCR)**
Chicago Office (for Indiana)
Office of Civil Rights
U.S. Department of Education
Citigroup Center
500 W. Madison Street, Suite 1475
Chicago, IL 60661-4544
Phone: 312-730-1560
Email: OCR.Chicago@ed.gov

*Indicates confidential resource

**HISTORY/REVISION DATES**
Board of Trustees: June 9, 2017
Harassment in Teaching or Classroom Setting

Sexual or discriminatory harassment that is alleged to have occurred in a teaching (including advising) or classroom setting may present different issues than allegations of these forms of harassment occurring in other environments. This is because there are times when the subject matter, the words being used or even touching is necessary and appropriate in the scope of teaching the course. It is for this reason that a different procedure for investigation and resolution of sexual or discriminatory harassment allegations in teaching or classroom settings is followed.

The goals of this procedure are:

1. To gather facts relevant to an investigation of sexual or discriminatory harassment in a way that allows the Title IX Coordinator to appropriately address those allegations;
2. To partition facts alleged that do not support a policy violation but should be reviewed and/or addressed by the Provost’s office;
3. To avoid duplication of efforts in interviewing witnesses;
4. To preserve the academic freedom of faculty members;
5. To preserve the academic freedom of the University;

Initial action: Upon receipt of a complaint of sexual or discriminatory harassment in a teaching or classroom setting, the Title IX Coordinator will alert the Provost’s Liaison to the new matter. If the Title IX Coordinator and the Provost’s Liaison determine that, treating the complaint as accurate, the allegations do not constitute possible violation of the University’s Policy on Sex Discrimination, Sexual Harassment, Sexual Misconduct and Intimate Partner Violence (“Title IX Policy”), the matter will be closed. If they determine that the complaint should move forward, the Title IX Coordinator will assign an investigator. The Title IX investigator (copying the Provost’s Liaison) will send an initial letter to the faculty member who is the subject of the complaint (Respondent) outlining the nature of the complaint, the name(s) of the Complainant(s) (unless proceeding anonymously) and the approximate timeframe in which the actions allegedly occurred.

The investigation: The Title IX investigator, with the Provost’s Liaison, will interview the Complainant, the Respondent (faculty), and witnesses suggested by the Complainant and the Respondent. In classroom settings, particularly in larger classes, it may be duplicative to interview the entire class. Rather, the Title IX investigator and the Provost’s Liaison will determine the appropriate number of witnesses who should be interviewed.

During each interview, the Title IX investigator and the Provost’s Liaison may question the witness. The Title IX investigator’s focus is on whether the alleged discriminatory harassment is more likely than not to have occurred. The Provost’s Liaison will focus on any facts that are outside that scope but would be concerning from a teaching, scholarship or research standpoint.

After the interviews are completed, the Title IX investigator and the Provost’s Liaison will analyze:

1. whether there was sexual conduct; and
2. If so, whether the conduct was related to a valid pedagogical method.
The University supports the academic freedom of the faculty member and the Title IX investigator will defer to that academic freedom when the alleged discriminatory harassment can also be explained by a valid pedagogical reason for the conduct.

If the determination of the Title IX investigator and the Provost’s Liaison is that discriminatory harassment has occurred, the Title IX investigator’s report, authored to the Title IX Coordinator, will address the facts supporting the conclusion and the recommended sanctions, if any.

The Provost’s Liaison will address, separate from the Title IX report, any facts raised that are concerning from a teaching, scholarship or research standpoint and will submit that report to the Provost’s office.

**Timeline:** The goal is to have the investigation, including the reports and recommendations, completed within 60 calendar days. If an appeal is granted, then this timeline will be extended.

**Retaliation:** Retaliation is a significant adverse action (threat, intimidation, harassment or penalty) taken against a person for making a good faith report of sexual or discriminatory harassment or participating in this process. Even where there is a finding of “no responsibility,” retaliation is prohibited.

Any report of alleged retaliatory behavior may be investigated through the Administrative Investigation process outlined in the Title IX Policy. After Administrative Investigation, the matter of retaliation may be referred to the appropriate division for discipline (Student Affairs for student discipline; HR for staff discipline; Provost for faculty discipline).

The reporting party should make every effort to submit a written report of the retaliatory conduct to the Title IX Coordinator within thirty (30) calendar days of the alleged conduct.

**Appeals:** Either party may appeal the Title IX Coordinator's decision to the Vice President of Student Affairs ("Vice President"). A review of the matter will be prompt and narrowly tailored to stated appeal grounds. Dissatisfaction with the outcome of the investigation is not grounds for appeal. Grounds for appeals are limited to the following:

- A procedural error or omission occurred that significantly impacted the outcome of the process (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.

All requests for appeal considerations must be submitted in writing, asserting the reason for the appeal, to the Vice President within fourteen (14) calendar days of the delivery of the written determination of the Title IX Coordinator.

The Vice President will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. When any party requests an appeal, the other party (parties) will be notified and may respond to the appeal. The response to the appeal must be submitted within seven (7) calendar days from receipt of the appeal from the Vice President. In the event that both parties initially appeal the findings, each party will be provided notice and a copy of the other party’s appeal.

The Vice President in consultation with the Provost will appoint an appeal panel of three (3) individuals
representing Student Affairs, the Provost’s office and Human Resources. The appeal panel will follow these guidelines:

- Appeals decisions are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be a full rehearing of the complaint. In most cases, appeals are confined to a review of the written documentation or record of the original investigation and pertinent documentation regarding the grounds for appeal. Appeals granted based on new evidence should normally be remanded to the original investigator for reconsideration of the recommendation to the Title IX Coordinator. Other appeals may be remanded to the investigator and/or Title IX Coordinator at the discretion of the Vice President. Sanctions imposed by the Title IX Coordinator are implemented immediately unless the Vice President stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The appeal panel, by a majority vote, will render a written decision on the appeal to all parties within fourteen (14) business days from the date on which the appeal was initiated.
- All parties will be informed of the decision on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted.

In any case in which the Vice President is the Respondent or should for any other reason be disqualified to act, the President or President’s designee will appoint an individual to assume the Vice President’s role in this process.

How this process is different from other Title IX processes:

1. In the teaching or classroom setting, there will be no assignment of advisors. Should a Complainant or Respondent have questions concerning the process, they can direct those questions to the Title IX Coordinator.
2. The timeline for appeals of issues involving academic freedom is slightly longer. The basis for appeal for the Title IX issues remains unchanged (new evidence or procedural error).
3. Once the Provost’s Liaison has reported to the Provost’s office on other non-discriminatory but concerning behavior, all subsequent actions and processes are governed by the Faculty Handbook.