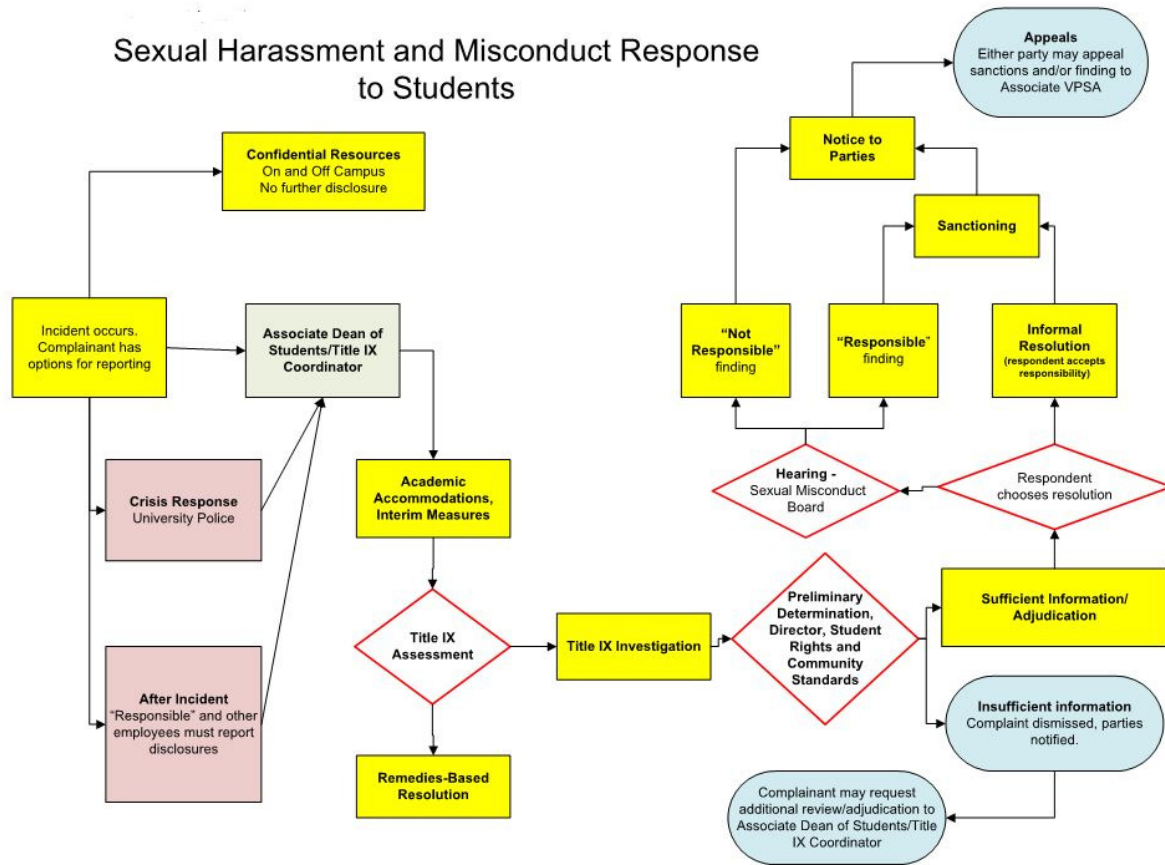


**Ball State University**  
**Code of Student Rights and Responsibilities**  
**APPENDIX K - Sexual Harassment and Misconduct Policy**

**2017-2018**

This policy applies to all forms of sex and gender-based discrimination, sexual harassment, sexual violence, stalking, and intimate partner violence.

**Overview of the Reporting/Complaint Process**



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**Ball State University**  
**Code of Student Rights and Responsibilities**  
**Sexual Harassment and Misconduct Policy (Appendix K)**

**Introduction**

Ball State University is committed to establishing and maintaining an effective, safe, and nondiscriminatory educational environment in which all individuals are treated with respect and dignity. The University prohibits discrimination or harassment in its programs and activities on the basis of race, religion, color, sex (except where sex is a bona fide qualification), sexual orientation, gender identity/gender expression, physical or mental disability, national origin, ancestry, age, or any other characteristic protected by institutional policy or state, local, or federal law.

Discrimination on the basis of sex or gender is also specifically prohibited by federal laws, including Title VII and Title IX. This policy governs the University's response to complaints of discrimination based on sex or gender, and all forms of sexual misconduct (which includes sexual harassment, sexual assault, other forms of sexual violence, dating violence, domestic violence, sexual exploitation and stalking) made against any Ball State University student or student organizations, including off-campus conduct. Sexual misconduct complaints made against faculty, staff and other parties are handled pursuant to other policies.

The University will respond promptly to all reports of sexual misconduct and will take appropriate steps to eliminate such misconduct, prevent its recurrence, and address its effects through clear and effective policies, a coordinated education and prevention program, and prompt and equitable complaint resolution processes and procedures.

**Title IX Coordinator**

For the purposes of implementing this policy, Ball State has designated Ms. **Katie Slabaugh** to serve as the institution's Title IX Coordinator. The Title IX Coordinator will be informed of all reports of sexual harassment and misconduct involving students, and will oversee the university's centralized review, investigation, and resolution of those reports to ensure the university's compliance with Title IX and the effective implementation of this policy.

The Title IX Coordinator is:

1. Responsible for oversight of the investigation and resolution of all reports of sexual harassment, sexual violence, stalking, and intimate partner violence involving students;
2. Knowledgeable and trained in university policies and procedures and relevant state and federal laws;
3. Available to advise any individual, including a complainant, a respondent, or a third party, about the courses of action available at the university, both informally and formally, and in the community;
4. Available to provide assistance to any university employee regarding how to respond appropriately to a report of sexual harassment, sexual violence, intimate partner violence, or stalking;

5. Responsible for monitoring full compliance with all procedural requirements, record-keeping, and timeframes outlined in this policy;
6. Responsible for overseeing training, prevention, and education efforts, and periodic reviews of climate and culture; and
7. Authorized to designate other university employees to implement procedures outlined in this policy.

Inquiries or complaints concerning the application of Title IX may be referred to any of the following:

Ms. Katie Slabaugh  
 Associate Dean of Students/Title IX Coordinator  
 Administration Building 238  
 2000 W. University Ave  
 Muncie, IN 47306  
 Phone: (765) 285-1545  
 Email: [kslabaugh@bsu.edu](mailto:kslabaugh@bsu.edu)

Office of the General Counsel  
 Administration Building 335  
 2000 W. University Ave.  
 Muncie IN 47306  
 Phone: (765) 285-5162

U.S. Department of Education:  
 Office for Civil Rights, Chicago Office  
 Citigroup Center  
 500 W. Madison Street  
 Suite 1475  
 Chicago, IL 60661-4544  
 Telephone: 312-730-1560  
 FAX: 312-730-1576; TDD: 800-877-8339  
 Email: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)

A list of persons designated as Deputy Title IX Coordinators and who may provide information and receive reports and complaints is provided in Appendix 1.

## **Application**

### **Complaints against Students or Student Organizations**

This policy and these procedures apply to alleged violations by Ball State students and student organizations as defined in the *Code of Student Rights and Responsibilities (Code)* which may be found at [www.bsu.edu/studentcode](http://www.bsu.edu/studentcode). Any person (student, university employee, or third party including those persons not affiliated with the university) may file a complaint against a student under this policy. All complaints against students regarding sexual misconduct should be made to the Associate Dean of Students/Title IX Coordinator [Administration Building (AD) 238, (765) 285-1545. Complaints against a student for sexual misconduct also may be filed with the University Police Department by calling (765) 285-1111.

### **Complaints against Graduate Assistants**

The university recognizes that graduate assistants occupy roles as students and as employees with teaching, administrative, and/or research functions. When a complaint is made against a graduate assistant that alleges sexual harassment or misconduct, the allegation will be carefully examined to determine how best to proceed. However, complaints typically will proceed under the procedures outlined in this document with the understanding that the circumstances of the case, once resolved, may have repercussions on the student's employment. See section above for information on making a complaint.

### **Complaints against Employees**

The *Statement on Sexual Harassment* applies to complaints against employees. Complaints of sexual harassment or misconduct against an employee should be filed with the Office of the General Counsel [AD 335, (765) 285-5162] or with the University Police Department [200 N. McKinley Avenue or (765) 285-1111.] A student filing a complaint against an employee may also have rights outlined in this policy, including but not limited to support and assistance from campus resources (e.g., Office of Victim Services, Counseling Center) and assistance from the Associate Dean of Students/Title IX Coordinator for academic accommodations and other appropriate interim measures.

### **Complaints against Other Individuals**

Complaints of sexual harassment or misconduct against an individual who is not a student or employee (e.g., a guest of or visitor to the university) should be filed with the University Police Department located at 200 N. McKinley Avenue [(765) 285-1111]. Students bringing complaints of sexual harassment or misconduct against an individual who is not a student, or in instances when the alleged offender is unknown to the complainant, may request support and assistance from campus resources (Office of Victim Services, Counseling Center) and may request assistance from the Associate Dean of Students/Title IX Coordinator for academic accommodations and other appropriate interim measures.

### **On and Off Campus Behaviors**

This policy applies to conduct that occurs on campus or in the context of any university program or activity, including off-campus conduct in the context of a university program or activity. This policy also applies to conduct that has a continuing adverse effect or creates a hostile environment on campus or in any university program or activity whether on or off campus. Prohibited conduct that takes place off campus is covered in this policy when it is (from *Code section 2.2 Authority*):

- a. Conduct that causes or threatens harm to the health or safety of a person or damage or destruction to the property of a member of the university community;
- b. Conduct in connection with an academic course assignment, internship, practicum, field trip, student teaching, research, or other university activity;
- c. Conduct in connection with any activity sponsored, conducted, or authorized by the university or by a student organization;
- d. Conduct involving serious crimes including all crimes of violence, felonies, or the sale or distribution of illegal drugs or controlled substances, if a police report has been filed, a summons or indictment has been issued, or an arrest has occurred; or
- e. Conduct adversely affecting the university community or indicating that the continued presence of a student on campus poses a threat to the student's well-being or the well-being of other members of the university community.

### **Privacy and Confidentiality**

The university is committed to protecting the privacy of all individuals involved in a report of sexual harassment, sexual violence, stalking, or intimate partner violence. In any report made

under this policy, every effort will be made to protect the privacy interests of all individuals involved in a manner consistent with the need for a careful assessment of the allegation and any necessary steps to eliminate the harassment, prevent its recurrence, and address its effects.

The privacy of the parties will be respected and safeguarded at all times. All university employees who are involved in the university's Title IX response receive specific training and guidance about safeguarding private information.

Privacy and confidentiality have distinct meanings under this policy:

**Privacy:** Privacy generally means that information related to a report of misconduct will only be shared with a limited circle of individuals. The use of this information is limited to those university employees who "need to know" in order to assist in the active review, investigation, or resolution of the report. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. Information will be handled consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA).

**Confidentiality:** Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without express permission of the individual. Those campus and community professionals include medical providers, mental health providers, ordained clergy, victim advocates, and rape crisis counselors, all of whom have privileged confidentiality that has been recognized by federal or Indiana law. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others, or the conduct involves suspected abuse of a minor under the age of 18.

Students seeking confidential assistance on campus may speak with counselors in the Ball State Counseling Center, the Victim Advocate in the Office of Victim Services, the Health Educator in the Office of Health, Alcohol, and Drug Education, and health service providers in the Health Center.

Students also may seek confidential assistance from off-campus providers and resources. These are listed in Appendix 2.

**Reporting on Campus:** Any Ball State employee who is not designated as a confidential resource under this policy is **required to share promptly** a report of sexual harassment, sexual violence, stalking, or intimate partner violence involving university students with the Associate Dean of Students/Title IX Coordinator. In addition, there are a number of university personnel who are designated as "responsible employees." Responsible employees have the additional authority and obligation to take action to redress the harassment in addition to their reporting duties. These employees include but are not limited to vice presidents, deans and associate deans, directors, and department chairpersons. Student resident assistants are also considered responsible employees. All employees, including responsible employees, are required to forward all known details of the reports they receive (including the identity of parties, time, date, location, and description of the alleged behavior) to the Associate Dean of Students/Title IX Coordinator.

**Release of Information:** If a report of misconduct discloses a serious and continuing threat to the safety of the campus community, the university will issue a timely warning (a.k.a. Public Safety Advisory) to the community to protect the health or safety of the community. The

university may also share non-identifying information about the reports received; when the university does share this information, information (such as data about outcomes and sanction) is typically combined. The university will not release the names of students who are parties to a complaint to the general public without the express consent of the students or as otherwise permitted or required by law.

No information shall be released from proceedings under this policy except as required or permitted by law and university policy. For example, information will be shared with the University Police Department or the Office of Student Rights and Community Standards as needed to comply with the Clery Campus Safety and Security Act (a.k.a. “Clery Act”).

### **Prohibited Conduct**

The university prohibits a variety of behaviors under this policy, including but not limited to sexual harassment, sexual violence, and intimate partner violence. Sexual harassment and sexual violence generally refer to verbal or physical acts that are unwelcome or without consent. Intimate partner violence—also referred to as dating violence, domestic violence, or relationship violence—includes any act of violence or threatened act of violence against a person who is or has been involved in a sexual, dating, domestic, or other intimate relationship with that person. Intimate partner violence can encompass a broad range of behavior including, but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. Domestic violence and dating violence are further defined as crimes by the state of Indiana; those definitions are included here as reports of these crimes can be found in Ball State’s annual security report:

**Domestic violence** is defined as violence committed by a current or former spouse or intimate partner of the complainant; by a person with whom the complainant shares a child in common; by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the state of Indiana; or by any other person against an adult or youth who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

**Dating violence** is defined as violence committed by a person who is or has been in a relationship of a romantic or intimate nature with the complainant—characterized by the expectation of affection or sexual involvement between the parties—but not including acts covered by domestic violence as defined above.

The following conduct is specifically prohibited under this policy and may form the basis of specific charges under the *Code of Student Rights and Responsibilities* as modified by this policy:

#### **Sexual Harassment**

Sexual harassment is defined as any unwelcome sexual advance, request for sexual favor or other unwelcome verbal or physical conduct of a sexual nature, when:

1. Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment or participation in a university-sponsored education program or activity;



2. Submission to or rejection of such conduct by an individual is used as the basis or threatened to be used as the basis for employment decisions or academic decisions or assessments affecting an individual;
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e., it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, or offensive living, working, or educational environment; or
4. The behavior persists despite objection by the person to/at whom the conduct is directed.

Sexual harassment also includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex/gender or sex/gender-stereotyping, even if the acts do not involve conduct of a sexual nature.

Sexual harassment can take many forms. Sexual harassment:

1. May be blatant and intentional and involve an overt action, a threat, or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated.
2. Does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.
3. May be committed by anyone, regardless of gender, age, position, or authority. When there is a power differential between two persons—perhaps due to differences in age or their relative positions in social, educational, or employment relationships—harassment can occur in any context.
4. May be committed by a stranger, an acquaintance, or someone with whom the complainant has an intimate or sexual relationship.
5. May be committed by or against an individual or may be a result of the actions of an organization or group.
6. May occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation.
7. May occur in the classroom, in the workplace, in residential settings, over electronic media (including the internet, telephone, and text), or in any other setting.
8. May be a one-time event or part of a pattern of behavior.
9. May be committed in the presence of others or when the parties are alone.
10. May affect the complainant and/or third parties who witness or observe harassment.
11. May take the form of unwanted sexual statements, e.g., sexual or “dirty” jokes, comments on physical attributes, spreading rumors about others, rating others as to sexual activity or performance, talking about one's sexual activity in front of others, or displaying/distributing sexually explicit images or text.
12. May be unwanted personal attention in the form of letters, calls, messaging (e.g., texts, social media) visits, or pressure for sexual favors, dates, or unnecessary personal interaction.

13. May create a hostile environment. A single, isolated incident of sexual harassment alone may create a hostile environment if the incident is sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical. A hostile environment occurs when unwelcome conduct of a sexual nature is so severe, persistent, or pervasive that it affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, or abusive educational environment. A hostile environment can be created by another student, an employee, or a visitor to the university. Generally, a statement that is a mere utterance of an epithet which offends, or which offends by mere discourtesy or rudeness, does not create a hostile environment. The determination of whether an environment is "hostile" must be based on all the circumstances. These circumstances could include, but are not limited to:

- a) The frequency of the speech or conduct;
- b) The nature and severity of the speech or conduct;
- c) Whether the conduct was physically threatening;
- d) Whether the speech or conduct was humiliating;
- e) The effect of the speech or conduct on the complainant's mental and/or emotional state;
- f) Whether the speech or conduct was directed at more than one person;
- g) Whether the speech or conduct arose in the context of other discriminatory conduct;
- h) Whether the speech or conduct unreasonably interfered with the complainant's educational opportunities or performance (including study abroad), university-controlled living environment, or university-controlled work opportunities or performance;
- i) Whether the speech or conduct is constitutionally protected or deserves the protections of academic freedom.

14. May take the form of exclusion, separation, or otherwise differential treatment on the basis of sexual orientation, gender identity, transgender status, or gender transition.

Sexually harassing behaviors differ in type and severity and can range from subtle verbal harassment to unwelcome physical contact. There is a wide range of behaviors that fall within the general definition of sexual harassment and many differing notions about what behaviors are and are not acceptable. Key determining factors are that the behavior is unwelcome, is based on sex or gender, and is reasonably perceived as offensive and objectionable under both a subjective and objective assessment of the conduct.

### **Non-consensual Sexual Intercourse**

Non-consensual sexual intercourse is having or attempting to have sexual intercourse with another individual without effective consent. See discussion of consent in a following section. *Sexual intercourse* includes vaginal or anal penetration, however slight, with a body part (e.g., penis, tongue, finger, hand) or object, or oral penetration involving mouth-to-genital contact.

## **Non-consensual Sexual Contact**

Non-consensual sexual contact is having sexual contact with another individual without effective consent. See discussion of consent in a following section. *Sexual contact* includes any intentional touching of the intimate parts of another, causing another person to touch one's own intimate parts, or disrobing or exposure of another without permission. Intimate parts may include the breasts, genitals, buttocks, groin, mouth, or any other part of the body that is touched in a sexual manner.

## **Sexual Exploitation**

Sexual exploitation is taking advantage of the sexuality of another person without consent or in a manner that extends the bounds of consensual sexual activity without the knowledge of the other individual for any purpose, including sexual gratification, financial gain, personal benefit, or any other non-legitimate purpose. Examples of sexual exploitation include, but are not limited to:

1. Exposing one's genitals without consent;
2. Non-consensual streaming, audio- or video-recording, photographing, or transmitting intimate or sexual utterances, sounds, or images without consent of all parties involved;
3. Allowing others to view sexual acts (whether in person or via a video camera or other recording device) without the consent of all parties involved;
4. Engaging in any form of voyeurism (e.g., "peeping");
5. Prostituting another individual;
6. Compelling another individual to touch his or her own or another person's (third party) intimate parts without consent;
7. Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
8. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

## **Harm, Threat, or Endangerment**

Harm, threat, or endangerment is prohibited separately in the *Code* as follows: "conduct that causes physical harm to any person is prohibited, as is any reckless or unauthorized conduct that threatens, endangers or reasonably could threaten or endanger the health or safety of any person. Conduct covered under this rule also includes but is not limited to intimidation, coercion, or impairment of any person's freedom of movement as well as verbal or written threats of any action described above."

When these acts occur in the context of intimate partner violence or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under this policy.

## **Harassment, Bullying, or Cyber-bullying**

Harassment, bullying, or cyber-bullying, are defined as repeated and/or severe aggressive behavior likely to or intended to intimidate, hurt, coerce, or control another person whether physically or emotionally. These behaviors include but are not limited to: creating web pages;

posting photos on social networking sites; and/or spreading rumors. When these acts occur in the context of intimate partner violence or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under this policy.

### **Stalking**

Stalking is a knowing or intentional course of conduct that (1) would cause a reasonable person to feel frightened, harassed, intimidated, threatened, or alarmed and (2) that causes the person who is the subject or target of the stalking to feel frightened, harassed, intimidated, threatened, or alarmed. Such actions could be either implicit or explicit threats against a specific person; an acquaintance, friend, family member, or pet of that person; or that person's property.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited fashion.

Examples of stalking include:

1. Unwelcome and repeated visual or physical proximity to a person;
2. Repeated oral or written threats;
3. Extortion of money or valuables;
4. Unwelcome/unsolicited written communication, including letters, cards, emails, instant messages, and messages on on-line bulletin boards;
5. Unwelcome/unsolicited communications about a person, their family, friends, or co-workers; or
6. Sending/posting unwelcome and/or unsolicited messages with another username;
7. Implicitly threatening physical conduct or any combination of these behaviors directed toward an individual person.

### **Retaliation**

Retaliation is any adverse action, including but not limited to:

- reprisal;
- interference;
- restraint;
- penalty;
- discrimination;
- intimidation; or
- harassment

taken against any person or group for making a good faith report of prohibited conduct or participating in any proceeding under this policy. This policy also prohibits retaliation against individuals who oppose, in a reasonable manner, an act or policy believed to constitute sex or gender-based discrimination (e.g., a student who steps in or speaks up to prevent a potential sexual assault at a party).

Retaliation can take many forms, including but not limited to, continued abuse or violence, threats, intimidation, coercion, disregard of or non-adherence to university instructions, or any other conduct that would discourage or interfere with a reasonable person similarly situated from engaging in activity protected addressed in this policy, e.g., making a complaint or participating as a witness in an investigation. Any individual or group of individuals, including a complainant or respondent, can engage in retaliation and will be held accountable under this policy. Retaliation may be present even where there is a finding of “not responsible” for alleged violations of policy.

A good-faith pursuit by either party of civil, criminal, or other legal action does not constitute retaliation.

Behavior that may be retaliation should be reported immediately to the Ball State police by calling (765) 285-1111, or the Associate Dean of Students/Title IX Coordinator at (765) 285-1545.

### **Intimidation or Threats to Inhibit Reporting**

Intimidation is any threatened retaliation or other adverse action to prevent or otherwise obstruct the reporting of sexual harassment or misconduct or the participation in an investigation or adjudication related to sexual harassment or misconduct. Intimidation includes acts by the respondent, a third party, agents of Ball State, or any other individual.

Behavior that may be intimidation should be reported immediately to the Ball State police by calling (765) 285-1111 or the Associate Dean of Students/Title IX Coordinator at (765) 285-1545.

### **Aiding and Abetting**

Aiding and abetting are prohibited separately in the *Code* as follows: “Knowingly, recklessly, or willfully encouraging or assisting others to commit acts prohibited by this *Code*.”

When these acts occur in the context of intimate partner violence or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under this policy.

### **Understanding Consent**

Consent is a knowing, voluntary, and clear mutual agreement to engage in sexual activity. Consent is effective when it is informed, freely and actively given, and communicated by clearly and mutually understandable words or actions to participate in each form of sexual activity. This includes the following concepts:

1. Consent cannot be given by someone who is incapacitated. Engaging in sexual activity with someone who one knows to be, or reasonably should know to be, incapacitated is a violation of this policy. [Incapacitation is addressed below.] Where alcohol or other drugs are involved, incapacitation is assessed with respect as to how the alcohol or other drugs consumed affects a person’s ability to understand fully the “who, what, when, where, why, and/or how” of his/her sexual interaction with someone else. An individual accused of sexual harassment or misconduct is not excused if he or she was intoxicated and, therefore, did not realize the incapacity of the other person;

2. Indiana law provides that a minor (meaning a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old is a crime, as well as violation of this policy, even if the minor wanted to engage in the act;
3. Consent cannot be inferred from silence, passivity, or lack of active resistance;
4. Consent to one form of sexual activity does not imply consent to other or additional forms of sexual activity;
5. Consent can be withdrawn at any time;
6. Consent does not exist when there is force, a threat of force, violence, or any other form of coercion or intimidation whether of a physical, psychological, or, financial nature. [See discussions on force and intimidation below.] A person who is the object of sexual aggression is not required to physically or otherwise resist the aggressor;
7. A current or previous dating or sexual relationship is not sufficient to constitute consent; past consent does not imply future consent; and
8. Consent to engage in sexual activity with one person does not imply or confer consent to engage in sexual activity with another person.

### **Incapacitation**

Incapacitation is a state where someone cannot make informed, rational judgments and cannot consent to sexual activity. States of incapacitation can be temporary or permanent and include, but are not limited to unconsciousness, sleep, mental disability, or any other state in which a person is unaware that sexual activity is occurring.

Where alcohol or other drugs are involved, incapacitation is defined with respect to how the alcohol or other drugs consumed affected a person's decision-making capacity, awareness of consequences, ability to make fully informed judgments, the capacity to appreciate the nature and quality of the act, or level of consciousness. In other words, a person may be considered unable to give effective consent due to incapacitation if the person cannot appreciate or understand the "who, what, when, where, why, and/or how" of a sexual interaction.

Incapacitation is a state beyond "under the influence," drunkenness, or intoxication. The impact of alcohol and other drugs varies from person to person. However, warning signs that a person is approaching or has become incapacitated may include slurred speech, vomiting, walking with difficulty or with assistance, falling/stumbling, odor of alcohol, combativeness, or emotional volatility. Evaluating incapacitation also requires an assessment of whether a respondent should have been aware of the complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the respondent's position.

In determining whether consent has been given, the university will consider both (1) the extent to which a complainant affirmatively gives words or performs actions indicating a willingness to engage in sexual activity, and (2) whether the respondent was aware of or reasonably should have known the complainant's level of alcohol consumption and/or level of impairment. A respondent is not excused from responsibility if he or she was intoxicated and, therefore, did not realize the incapacity of the other person.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a rational, reasonable decision about whether to engage in sexual activity is in violation of this policy.

### **Force**

Force is the use or threat of physical violence (including but not limited to strong-arming, physical action, trapping, isolating, or intimidation) to overcome an individual's freedom of will to choose whether or not to participate in sexual activity. There is no requirement for a party to resist physically or verbally the sexual advance or other behaviors, but resistance will be viewed as a clear demonstration of non-consent.

### **Coercion**

Coercion is the use of unreasonable and persistent 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. Coercion may be emotional, intellectual, psychological, or moral. 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 or not to engage in sexual activity. Examples of coercion include, but are not limited to, (1) threatening to disclose another individual's sexual history or private information related to sex, sexual orientation, gender identity, or gender expression and (2) threatening to harm oneself if the other party does not engage in the sexual activity. Coercing an individual into engaging in sexual activity violates this policy in the same way as physically forcing someone into engaging in sexual activity.

### **Assistance Following an Incident of Sexual Harassment or Misconduct**

Information about these resources can be found in Appendix 2 of this policy.

### **Reporting Sexual Harassment and Misconduct**

Students may contact Ms. **Katie Slabaugh**, Associate Dean of Students/Title IX Coordinator, directly to make a formal complaint during business hours. They may contact her or her designee at (765) 285-1545 or by email at [kslabaugh@bsu.edu](mailto:kslabaugh@bsu.edu). The Associate Dean of Students/Title IX Coordinator will ensure consistent application of the policy to all individuals and that the university responds promptly and equitably to eliminate harassment, prevent its recurrence, and eliminate its effects. Reports and complaints also may be directed to Deputy Title IX Coordinators (see Appendix 1). The administrative response provided by the Associate Dean of Students/Title IX Coordinator or her designee is separate from any criminal investigation.

Students can report an incident of sexual harassment or misconduct to the University Police Department by calling (765) 285-1111; Ball State police officers are available 24 hours a day, seven days a week. Incidents of sexual harassment or misconduct involving students that are reported to the University Police Department also will be referred to the Associate Dean of Students/Title IX Coordinator for follow-up and possible administrative investigation. The university places no time limits on reporting, but persons are advised that delays in reporting may cause difficulties in investigating reports.

The university is committed to ensuring that all reports alleging sexual harassment or misconduct by a student are referred for to the Associate Dean of Students/Title IX Coordinator for prompt and equitable response. Ball State employees who are not designated as a confidential resource under this policy are required to report promptly sexual harassment or misconduct of or by a student with the Associate Dean of Students/Title IX Coordinator. In addition, there are a number of university personnel who are designated as “responsible employees.” Responsible employees have the additional authority and obligation to take action to redress the harassment in addition to their reporting duties. These employees include but are not limited to vice presidents, deans and associate deans, directors, and department chairpersons. Student resident assistants also are considered responsible employees. All employees, including responsible employees, are required to forward all known details of the reports they receive (including the identity of parties, time, date, location, and description of the alleged behavior) to the Associate Dean of Students/Title IX Coordinator.

### **Timeframe for Reporting**

The university encourages persons—and requires all employees not designated as “confidential”— to promptly report all incidents of sexual harassment or misconduct, involving students regardless of when or where the incident occurred. There is no time limit for reporting. Regardless of when the incident occurred, the university will provide support and assistance, and will respond consistent with the procedural options available at the time of the report. Even when a matter does not fall under the jurisdiction of the university, university employees will act to provide support and assist a complainant in contacting the appropriate law enforcement or external agency.

### **Anonymous Reports**

Persons who wish to submit anonymous reports (which are examined to determine Clery Act timely warning and crime reporting requirements) can do so at [www.bsu.edu/silentwitness](http://www.bsu.edu/silentwitness), a service of the University Police Department.

### **Amnesty for Violations of Other Policies**

Ball State strongly encourages reporting of sexual harassment or misconduct but also recognizes that these incidents can occur in conjunction with other policy violations, such as underage drinking or illicit drug use. The university’s priority is to address sexual harassment and misconduct. Therefore, individual students, including but not limited to the complainant and respondent, who provide information regarding incidents of sexual harassment and misconduct will not be disciplined for behavior (a) that violated the university’s alcohol or drug policies and (b) that is connected with the reported incident of possible sexual harassment or misconduct. However, in circumstances where students engaged in behavior that placed any person’s (including their own) safety or health at risk, the university may provide those individuals appropriate educational or therapeutic support.

### **Academic Accommodations and Interim Measures**

When a student reports an incident of sexual harassment or misconduct to the university, there are a number of immediate and interim measures that can be provided—in addition to the emergency and other support services detailed in Appendix 2—to ensure the safety and well-



being of all parties and prevent retaliation by any party. The university will provide appropriate interim measures and accommodations regardless of the chosen course of action under this policy. A request for interim measures may be made to the Associate Dean of Students/Title IX Coordinator. The Associate Dean of Students/Title IX Coordinator will work to ensure the implementation of appropriate interim steps and coordinate the university's response with the appropriate offices on campus. Additional measures can be taken during and/or following the investigation and resolution of a complaint.

These include but are not limited to:

1. Housing relocation (for students living in university housing);
2. Alternative instructional or on-campus work arrangements (e.g., changing academic schedule, withdrawing from a class or retaking a class without penalty, etc.);
3. Academic support, such as tutoring, rescheduling exams or assignments, or providing alternative course completion options;
4. Access to counseling services;
5. Providing information about available medical services;
6. Providing information to parties about visa and immigration assistance, and other available victim services; and
7. Issuing written, administrative "no-contact instruction"
8. Limiting a party's access to certain university facilities or activities pending resolution of the matter;
9. Assisting a party in identifying options regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court; and
10. Imposing an interim suspension (see below).
11. Providing any other remedy that can be tailored to the parties to achieve the goals of this policy.

### **Interim Suspension**

The following information about interim suspension is excerpted from section 6.5.3 of the *Code* and is provided here for convenience:

Under certain circumstances, a student accused of a violation of the *Code of Student Rights and Responsibilities* may be subject to interim suspension from the university prior to a...hearing. During the interim suspension, the student is subject to trespass from university property and facilities and is denied access to all classes, activities and privileges for which the student might be eligible. Interim suspension shall be imposed only when:

- a. A student is deemed to be a threat to the safety and well-being of the university community or property, or
- b. A student's presence is deemed to pose a substantial threat of disruption to the university's educational process.

The decision to suspend on an interim basis shall be made by the Vice President for Student Affairs and Enrollment Services/Dean of Students or her designee. The student will be notified in writing of this action and the reasons for the interim suspension. The notice will provide the student an opportunity for a hearing with another of the Vice President's designees within three business days at which the student may show cause why his or her continued presence on the campus does not constitute a threat [and at which they may contest whether a violation of the *Code* took place]. The interim suspension may continue until the entire disciplinary process including appeal, is completed. Every effort will be made to complete the disciplinary process in a timely manner so as to limit the interim suspension to the shortest time possible.

## **Title IX Review and Investigation**

### **Overview of Procedural Options**

Upon receipt of a report of a behavior prohibited by this policy, the Associate Dean of Students/Title IX Coordinator will notify University police if required to comply with the Clery Act and assign a Title IX investigator to conduct an initial Title IX assessment. The goals of this assessment are to determine if the complaint falls under this policy and provide an integrated and coordinated response. The assessment will consider the nature of the report, the safety of the individual and of the campus community, the complainant's expressed preference for resolution, and the necessity for any interim remedies or accommodations to protect the safety of the complainant or the community.

Each resolution process is guided by the principles of fairness and respect for all parties. The resolution process outlined in this policy to resolve complaints is designed to protect the rights of both the complainant and the respondent. Resources are available for both parties (see previous section on Academic Accommodations and Interim Measures). In addition, both parties may use an advisor of their choice throughout the investigation and resolution of the complaint.

### **Title IX Assessment**

A designated, trained Title IX investigator will conduct an initial Title IX assessment. In the course of this assessment, the investigator will consider the interest of the complainant and the complainant's expressed preference for manner of resolution. Where possible and as warranted by an assessment of the facts and circumstances, action will be taken consistent with the complainant's request.

During the assessment, the investigator will:

1. Assess the nature and circumstances of the allegation;
2. Address immediate physical safety and emotional well-being;
3. Notify the complainant of the right to contact, or decline to contact, law enforcement and seek medical treatment;
4. Notify the complainant of the importance of preservation of evidence;
5. Ensure the University Police Department has been notified so that it may assess the need to issue a timely warning under the Clery Act;

6. Request the University Police Department to enter a report into the university's daily crime log;
7. Provide the complainant with information about on and off-campus resources;
8. Notify the complainant of the range of interim accommodations and remedies;
9. Provide the complainant with an explanation of the procedural options to resolve the complaint, including remedies-based resolution and resolution through adjudication procedures;
10. Inform the complainant and as appropriate, respondent of the right to have an adviser or support person for all subsequent meetings and proceedings;
11. Assess for pattern evidence or other similar conduct by respondent;
12. Discuss the complainant's expressed preference for manner of resolution and any barriers to proceeding;
13. Explain the university's policy prohibiting retaliation; and
14. Assess complainant's request not to proceed: The university will seek action consistent with the complainant's request where possible. Where a complainant makes a report but requests that a name or other identifiable information not be shared with the respondent or that no formal action be taken, the Associate Dean of Students/Title IX Coordinator will balance this request with the university's dual obligation to provide a safe and non-discriminatory environment for all Ball State community members and to ensure fundamental fairness through due process which requires notice and an opportunity to respond before action is taken against a respondent. In the event that a complainant does not wish to proceed with an investigation or adjudication, the Associate Dean of Students/Title IX Coordinator will determine, based on the available information, including any investigative report, whether the investigation or judicial resolution proceedings should nonetheless go forward. In making this determination, the university will consider, among other factors:
  - a. Whether the complainant has requested confidentiality;
  - b. Whether the complainant wants to participate in an investigation or conduct hearing;
  - c. The severity and impact of the conduct;
  - d. Whether the reported misconduct was perpetrated with a weapon;
  - e. The respective ages of the parties;
  - f. Whether the complainant is a minor under the age of 18;
  - g. Whether the respondent has admitted to the conduct;
  - h. Whether the respondent has demonstrated a pattern of similar conduct;
  - i. The extent of prior remedial methods taken with the respondent;
  - j. The rights of the respondent to receive notice and relevant information before disciplinary action is initiated;

- k. Whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group; and
- l. The existence of independent evidence.

The initial review will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made and the university has sufficient information to determine the best course of action.

The university will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so effectively may be limited based on the nature of the request by the complainant. The university will assess any barriers to proceeding, including retaliation, and will inform the complainant that Title IX prohibits retaliation and the university will take strong responsive action to protect the complainant. Where the university is unable to take action consistent with the request of the complainant, the Associate Dean of Students/Title IX Coordinator or designee will communicate with the complainant about the university's chosen course of action, which may include the university choosing to pursue action against a respondent on its own behalf. Alternatively, the course of action may also include steps to limit the effects of the alleged misconduct and prevent its recurrence that do not involve formal disciplinary action against a respondent or revealing the identity of the complainant.

At the conclusion of the Title IX assessment, and in consultation with the complainant, the investigator will recommend the appropriate manner of resolution, which may include:

1. Remedies-based actions that do not involve disciplinary action against a respondent;
2. The initiation of an investigation to determine if adjudication is warranted; or
3. Dismissal of the complaint.

The Title IX investigator will communicate the decision and next steps to the complainant; that communication will be kept on file. Depending on the circumstances and requested resolution, the respondent may or may not be notified of the report or resolution. A respondent will be notified when the university seeks action that would impact a respondent, such as protective measures that restrict the respondent's movement on campus, the initiation of an investigation, or the decision to involve the respondent in remedies-based resolution.

The complainant may appeal the decision of the investigator in writing to the Associate Dean of Students/Title IX Coordinator within three (3) business days of receiving the notice of the Title IX investigator's decision. It is at the discretion of the Associate Dean of Students/Title IX Coordinator to determine which method of resolution is appropriate. Any individual wishing to explore alternative dispute resolution methods is encouraged to discuss these options with the Associate Dean of Students/Title IX Coordinator.

### **Remedies-Based Resolution**

A remedies-based resolution is designed to resolve a complaint without or in addition to taking disciplinary action. Where the Title IX assessment concludes that a remedies-based resolution may be appropriate, the university will take immediate and corrective action through the imposition of individual and community remedies designed to maximize the complainant's access to the educational, extracurricular, and employment activities at the university and to eliminate a

hostile environment. Examples of protective remedies are provided in the earlier section *Academic Accommodations and Interim Measures*. Other potential remedies include increased monitoring, supervision, or security at activities or locations where the alleged misconduct occurred; targeted or broad-based educational programming or training; supported direct confrontation of the respondent; and/or indirect action by the Associate Dean of Students/Title IX Coordinator, her designee or the university. Depending on the form of remedies-based resolution used, it may be possible to maintain the complainant's anonymity.

The university will offer the opportunity for informal resolution between parties when appropriate, but will not compel parties to engage in mediation or to directly confront each other. Mediation, even if voluntary, will not be used in cases involving sexual assault. The decision to pursue remedies-based resolution will be made when the university has sufficient information about the nature and scope of the conduct, which may occur at any time. Participation in remedies-based resolution is voluntary, and either party can request to end remedies-based resolution at any time.

The Title IX Coordinator will maintain records of all reports and conduct referred for the remedies-based resolution.

### **Timeframe for Completing an Investigation**

Ball State will resolve allegations of sexual harassment and misconduct in a reasonable, prompt, and equitable manner.

Ball State endeavors to issue a determination and, if applicable, any sanctions within sixty (60) days of written notification to the respondent that an investigation of an alleged violation of this policy has begun. However, all timeframes expressed in this policy and its procedures are meant to be guidelines and not rigid requirements.

Factors that may affect the length of time necessary to resolve completely an allegation of sexual harassment and misconduct include, but are not limited to:

- a. The complexity of the allegations, including the number of witnesses and volume of information provided by the parties;
- b. The need to ensure the integrity and completeness of an investigation
- c. Availability of the parties and evidence;
- d. The reluctance of the complainant to file a complaint;
- e. The need to delay temporarily an investigation to support law enforcement's need to gather evidence in a concurrent criminal investigation;
- f. Intervening closures of Ball State;
- g. Any other unforeseeable circumstances.

In the event a Ball State unit determines it requires additional time beyond the time frames set forth in this policy or its procedures to fully and properly carry out its responsibilities under this policy or its procedures, it will provide simultaneous written notice to the complainant, the respondent, and the Title IX Coordinator or designee, notifying them of the:

- a) Anticipated length of the delay; and
- b) General nature of the circumstances causing the delay.

## **Investigation Procedures and Protocols**

Where the Title IX assessment concludes that further investigation and disciplinary action may be appropriate, the Associate Dean of Students/Title IX Coordinator will initiate an investigation by designating one or more investigators who have specific training and experience investigating allegations of sexual harassment, sexual violence, stalking, and intimate partner violence. Any investigator chosen to conduct an investigation must be impartial and free of any actual conflict of interest.

Briefly, during an investigation, both the complainant and respondent have an equal right to:

1. Protection under applicable privacy laws (e.g., FERPA);
2. Be informed of the university's student conduct process;
3. Have an advisor of their choice (this person may be a friend, instructor, parent, or attorney) accompany and assist them during interviews, meetings or hearings. An advisor serves as a non-participant who is present to assist the party or parties by taking notes, providing emotional support and reassurance, organizing documentation, or consulting directly with the party in a way that does not disrupt or delay the meeting. The advisor cannot be a fact witness or provide any statements as part of any process under these procedures. The advisor will not be allowed to provide testimony or statements on behalf of the individual they are assisting. Additionally the university's representatives will communicate only with the complainant or respondent and consider only the complainant and respondent's schedules when providing timelines for responses;
4. Receive reports of the investigation's status;
5. Present witnesses and evidence they believe to be relevant to the investigator; and
6. Review the investigator's report, request additional information (e.g., a witness) be considered, and be given an opportunity to provide a written response.

The investigator will conduct the investigation in a manner appropriate given the case's circumstances. The investigator will coordinate the gathering of information from the complainant, the respondent, and any other individuals who may have information relevant to the complaint. Information gathering from parties may take the form of face-to-face interviews or through other means, will usually be recorded by the investigator (no other parties may record interviews or hearings), and may include follow-up after an initial interview. Initial interviews with the complainant and respondent are typically conducted face-to-face. The investigator will also gather and review any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate. Technical rules of evidence regarding handling and preservation of information, such as are applied in a criminal proceeding, are not used in the university's administrative investigations.

The complainant and respondent will have an equal opportunity to be heard, to submit information and corroborating evidence, and to identify witnesses who may have relevant information. Witnesses must have information relevant to the incident; speaking solely about an individual's character will not be permitted. In gathering the facts, the investigator may consider prior allegations of, or findings of responsibility for, similar conduct by the respondent to the extent such information is relevant.

While the parties are not restricted from discussing and sharing information relating to their complaints with others that may support them or assist them, the university expects that the parties will respect the privacy of other parties and the integrity of the process.

The university may defer its Title IX fact-gathering until after the initial stages of a criminal investigation have been completed. The university will nevertheless communicate with the complainant regarding Title IX rights, procedural options and the implementation of interim measures to assure the safety and well-being of all affected individuals. The university will promptly resume its Title IX fact-gathering as soon as law enforcement has released the case for review following the initial criminal investigation.

Information gathered during the review or investigation will be used to evaluate the responsibility of the respondent, provide for the safety of the complainant and the university campus community, and take appropriate measures designed to end the misconduct, prevent its recurrence, and address its effects.

The Associate Dean of Students/Title IX Coordinator or her designee will document each report or request for assistance in resolving a report under this policy and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

### **Review of Investigation Report**

At the conclusion of the investigation, the investigator will prepare a written report that summarizes the information gathered and synthesizes the areas of agreement and disagreement between the parties and any supporting information or accounts. In preparing the report, the investigator will review all facts gathered to determine whether the information is relevant and material to the determination of responsibility given the nature of the allegation. In general, the investigator may redact information that is irrelevant, more prejudicial than informative, or immaterial. The investigator may also redact statements of personal opinion, rather than direct observations or reasonable inferences from the facts, and statements as to general reputation for any character trait, including honesty.

The parties will be given the opportunity to review a preliminary report. The parties will have three (3) business days to offer comment, clarify information, suggest additional witnesses or identify other relevant information or evidence to support a thorough and sufficient investigation.

Upon receipt of any additional information by the complainant or respondent, or after the three (3) day comment period has lapsed without comment, the investigator will finalize the report and submit it to the parties and the Director of Student Rights and Community Standards or his designee (Director).

### **Initial Determination**

The Director, in consultation with the Title IX investigator(s), will make a determination, using the preponderance of the evidence, as to whether further adjudication is warranted. Both parties will be notified within five (5) business days after this determination.

### **Insufficient Information to Warrant Subsequent Adjudication**

If the Director determines that there is insufficient information to move forward to the adjudication phase of the investigation, the Director will notify the parties as noted above. The complainant will have the opportunity to seek review by the Associate Dean of Students/Title IX Coordinator or designee by submitting a written request (including a rationale) for additional review within three (3) business days. The respondent will be notified if a request is received and have the opportunity to respond within three (3) business days. The Associate Dean of Students/Title IX Coordinator or designee may:

- (1) agree with the initial determination,
- (2) reverse the finding and refer the case for adjudication, or
- (3) request the parties provide additional information as appropriate.

The Associate Dean of Students/Title IX Coordinator or designee will render a decision in writing to both parties within ten (10) business days of receipt of the request for review. The decision of the Associate Dean of Students/Title IX Coordinator or designee is final.

### **Sufficient Information to Warrant Subsequent Adjudication**

If the Director determines that further adjudication is warranted, the Director will notify the parties as described below.

### **University Adjudication Procedures**

Where there is a determination that a policy violation occurred, and further adjudication is warranted, adjudication will be governed by the Ball State *Code of Student Rights and Responsibilities* and as modified below.

Following the determination, the Director will prepare a determination notice. The notice will include charged violations, recommended sanctions and/or remedies, options for resolving the complaint, and a request for a meeting with the recipient. This notice will be sent to the parties within five (5) business days of the determination.

The Director will request separate meetings with the parties to review the determination and subsequent procedures including options for the respondent to (a) accept responsibility for the charged violation and seek an informal resolution or (b) contest the charged violation and request a hearing.

1. As specified elsewhere, parties may be accompanied at this meeting by an advisor of their choice;
2. If the respondent accepts responsibility in writing and seeks an informal resolution, the Director may impose sanctions up to and including suspension but not expulsion from the university;
3. If the respondent requests a hearing, the Director will convene the Sexual Misconduct Board to conduct a hearing and determine if a violation has occurred. The determination in the hearing will be made using a preponderance of evidence standard.



## Hearings

1. The Sexual Misconduct Board (SMB) is comprised of faculty and professional employees who undergo annual, comprehensive, and specialized training in order to hear sexual harassment or misconduct cases. For a hearing, three SMB members will comprise a hearing panel; one member will serve as a chairperson. Prior to the hearing, the SMB panel members will review the investigative report, witness statements, and relevant documentary evidence.
2. The parties will be notified in writing of: the date, time, and location of the hearing; their opportunity to attend and participate; their rights at the hearing; the names of the panelists; and information on how to raise issues about potential conflicts of interest on the part of any panelist. The notice will be delivered by university email no less than five (5) business days prior to the hearing.

Alleged violations of related conduct (other than sexual harassment or misconduct) that may have been committed by the respondent as part of the same incident may be addressed in the same adjudication procedure. The decision to do so will be at the sole discretion of the Director. The inclusion of related matters, however, will not delay the prompt resolution of a report of sexual harassment or misconduct.

3. Normally, the SMB panel will expect to hear testimony from the following persons: complainant, respondent, and the designated investigator(s). The Director will be responsible for compiling documentation for the SMB panel's review and will present his determination.
4. The parties' rights at the hearing include being present at the entire hearing, presenting evidence and testimony, being allowed equal and timely access to information to be presented at the hearing, and being allowed the presence of an advisor of their choice. [The role of the advisor is to consult directly with the relevant party. The advisor may not disrupt or delay the meeting, act as a fact witness or provide any statements.]
5. The Director normally will make arrangements to convene hearings in such a manner to limit direct contact between the complainant and respondent but allows effective participation by both parties (e.g., conducting the hearing in separate rooms connected by teleconferencing). The Director will consider but retain the final decision regarding an arrangement where all parties are in the same room for the hearing if requested by either party and if both parties agree to such an arrangement.
6. The complainant and respondent may ask questions of each other by submitting those questions in writing to the hearing chairperson (direct or face-to-face "cross-examination" is not permitted). The chairperson may exercise discretion to limit questioning in order to manage the hearing effectively.
7. In order to meet Ball State's obligations to investigate and address patterns of sexual harassment and misconduct, the university may admit previous accusations of sexual harassment or misconduct and violations of law and policy regarding sexual harassment misconduct as evidence in hearings on current complaints.

8. Questioning or presentation of evidence about the complainant's prior sexual conduct with anyone other than the alleged perpetrator will be prohibited, unless the information is relevant to explain a physical finding or motive.
9. While evidence of a prior consensual dating or sexual relationship between the parties may be presented, the SMB and the parties are advised that the prior relationship by itself does not imply consent or preclude a finding of sexual harassment or misconduct.
10. After conducting the hearing, the SMB panel will excuse all parties and deliberate with a professional staff member designated by the Student Rights and Community Standards office to serve as advisor and secretary to the panel. The SMB panel members will determine which facts they will rely on for their decision and then determine (a) that the respondent is responsible for a violation of the sexual harassment and misconduct policy or (b) that there is insufficient information to find the respondent responsible for a violation of this policy. If the SMB panel finds the respondent responsible for violating the sexual harassment and misconduct policy, it will make a recommendation for sanctioning to the Director. The panel's decision, rationale, and recommended sanctions (including rationale) if appropriate will be delivered to the Director in writing within two (2) business days of the decision.
11. In cases where a student is found responsible for non-consensual sexual intercourse, the SMB panel is required to consider suspension or expulsion but may recommend any lesser sanctions it believes to be fair and proportionate to the violation and its impact on the complainant. Considerations for sanctioning include but are not limited to the following:
  - a. The nature and severity of the violation;
  - b. The violating student's prior conduct record (if applicable);
  - c. Precedent for sanctioning past, similar violations by other students; and
  - d. Remedying harm experienced by the complainant;
  - e. Deterring the violating student from future, similar behavior; and
  - f. Remedying harm caused to the Ball State community, whether that harm be physical, emotional, operational, or reputational in nature.
12. The Director will be responsible for finalizing the board's finding regarding responsibility for the violation as well as sanctions as appropriate, and notifying the parties of the hearing's final outcome.
13. Any procedural right or accommodation given to the respondent will be extended to the complainant and vice versa.
14. Any procedures for the hearing not specifically addressed above will be guided by section 6.5.5 *Procedures for Disciplinary Hearings* of the Code.

### **Notice of Outcome**

Both the complainant and the respondent will be notified simultaneously in writing of the outcome of the informal resolution or hearing (that is, whether the sexual harassment and

misconduct policy was found to have been violated) including a rationale for the decision and a statement of the parties' options to appeal. The respondent also will be notified of all sanctions that have been imposed. In cases of sexual assault, the complainant will be notified of the same information; in cases of sexual misconduct violations less than assault, the complainant will be notified of the outcome and sanctions imposed against the respondent that are related directly to the complainant. Both the complainant and the respondent will also receive simultaneous written notification of any changes to the outcome before it becomes final and will be informed when the outcome is final.

Ball State neither encourages nor discourages the subsequent disclosure of the written notification by either party. Ball State will not require any party to abide by a nondisclosure agreement, in writing or otherwise, that would prevent subsequent disclosure of information related to the outcome of the proceedings.

### **Sanctions, Remedies, and Other Accommodations**

After the final determination of a disciplinary proceeding against a student for sexual harassment or misconduct, sanctions may be imposed including, but not limited to: disciplinary probation, mandated assessments, other educational sanctions, suspension, and expulsion (see the Ball State *Code of Student Rights and Responsibilities* section 6.6 *Sanctions* for a complete list of sanctions). The Director may also continue remedies and accommodations for the complainant already in place (e.g., continued restrictions on contact by the respondent or altered living, instructional, or work arrangements) and work with the Associate Dean of Students/Title IX Coordinator to ensure additional needed remedies for the complainant, or the university community, or both are implemented.

### **Appeals**

Either party may appeal the outcome of the proceedings. In cases where the respondent has accepted responsibility and sought an informal resolution in lieu of a formal hearing, the respondent and complainant may only appeal on the basis of the severity/insufficiency of sanctions (see 2 below). Appeals must be submitted in writing to the Office of Student Rights and Community Standards; receipt will be acknowledged promptly and the appeal will be forwarded to the appellate administrator for review. Sexual Misconduct Board panel hearing procedures and outcomes may be appealed on multiple bases that are limited to:

1. Substantial procedural error that unreasonably impaired the student or the hearing body;
2. An unduly harsh sanction (appeal by the respondent) or an insufficient sanction (appeal by the complainant);
3. New information of a substantive nature sufficient to alter a decision, because such information and/or facts were not known to the person appealing at the time of the original hearing; and
4. Information of substantial bias on the part of the disciplinary body hearing the case.

The appeal must clearly designate which of the above bases are being referenced and provide a rationale for each basis referenced.

The appealing party has five (5) business days from receipt of the original decision in which to submit an appeal in writing. The other party will be notified of the appeal, provided a redacted copy of the appeal, and given an opportunity to provide a response in writing for consideration by the appellate administrator within five (5) business days of notice. The appellant will be provided a redacted copy of the other party's response; however, no further information from either party will be accepted or considered by the appellate administrator.

Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the hearing and supporting documents.

Appeals may be resolved in one of the following ways:

1. The original decision may be upheld.
2. Modified sanctions, either greater or lesser, may be imposed.
3. The case may be remanded to the Sexual Misconduct Board reconstituted with new members to allow reconsideration of the original determination and/or sanctions.

The appellate decision shall be final and not subject to any further appeal.

### **Communication with Parties**

University-issued email is the primary means of communication used by the university. The Associate Dean of Students/Title IX Coordinator, designated investigators, and the Director of Student Rights and Community Standards may deliver notice to parties by one or more of the following methods:

1. In person by the designated university administrator;
2. Mailed to the local or permanent address of the individual as indicated in official university records; or
3. Emailed to the individual's university-issued email account.

Notices sent via email will be presumed to have been received by parties. In all other circumstances (e.g., voicemail, letters), the party is expected to confirm receipt of the communication to the Associate Dean of Students/Title IX Coordinator, designated investigators, or Director within three (3) business days.

### **Ball State's Clery Act/Annual Security Report Obligations**

Ball State is obligated to report the incidence of certain crimes that occur on and around Ball State property to the public and the U.S. Department of Education in an annual security report. Information from these incidents—when reported to Ball State police, the Associate Dean of Students/Title IX Coordinator, other responsible employees, and Campus Security Authorities—is included in an aggregated statistical report that does not disclose any information that identifies complainants. The report includes the number of certain criminal offenses that have been reported on or near campus. The information contained in the annual security report tracks the number of reportable offenses occurring at designated locations but does not include the names or any other identifying information about the persons involved in the incident. Information about reported incidents of sexual misconduct is also examined to determine if timely warnings must be issued to Ball State community members. Likewise, timely warnings do not include any information that identifies complainants. More information about Ball State's

Clery Act/Annual Security Report obligations, including crime reports and information about campus security authorities, can be found at [www.bsu.edu/fireandsafetyreports](http://www.bsu.edu/fireandsafetyreports).

### **Prevention and Education**

Ball State employs a comprehensive, harm reduction approach to prevention of sexual harassment, sexual violence, stalking and intimate partner violence as well as related alcohol abuse and other drug use. All new students to the university will be provided an educational program that addresses sexual assault, consent, the role of alcohol and other drugs, stalking, intimate partner violence, risk reduction, and effective bystander intervention. The program also will introduce Ball State's policies on sexual harassment and misconduct, alcohol, and other drugs.

In addition to the program described above, a number of offices (e.g., Office of Victim Services, Counseling Center, University Police Department, and the Office of Health, Alcohol and Drug Education) provide regular programming for residence halls, classrooms, and student organizations. Programming is designed to meet the needs of the audience and campus wide social marketing campaigns are utilized annually. Targeted programming occurs during specific awareness campaigns such as National Collegiate Alcohol Awareness Week and Sexual Assault Awareness Month.

### **Training**

All new Ball State employees will be trained on policies, prevention, response, and reporting obligations regarding sexual harassment and misconduct. Training will be coordinated by University Human Resources.

Faculty and staff members who are designated responsible employees, Title IX coordinators and designated investigators, members of the University Police Department, victim advocates, faculty, and staff members involved with adjudicating sexual harassment or misconduct cases are provided annual, comprehensive, and specific training on to how to respond appropriately to reports of sexual harassment, sexual violence, stalking, or intimate partner violence. Training also addresses reporting obligations, the extent to which they may keep reports confidential, how to identify and respond to sexual violence, bystander intervention, victimization and re-victimization, trauma-informed support, and to whom reports must be made.

### **Maintenance of Records**

The university will maintain records of sexual harassment and misconduct complaints, including audio recordings of hearings, in a manner and for a period of time that complies with federal law including Title IX and the Clery Campus Safety and Security Act.

### **Policy and Implementation Modifications**

This policy may be modified as needed, with published notice, and minor deviations may be made with notice to the parties in any complaint, when the deviation will not substantially affect the fairness of the process or the outcome of the complaint. Further, to the extent that any of the provisions of this policy are found to be inconsistent with state or federal law or regulations, those laws and regulations will be applied.

Revised 07/2014, 08/2015, 08/2016, 07/2017

## Appendix 1

The following persons have been designated as Deputy Title IX Coordinators for specific areas or functions and may receive reports and complaints:

Dr. Tiffany Peters  
Assistant Dean of Students  
Student Affairs and Enrollment Services  
(765) 285-1545  
[tmpeters@bsu.edu](mailto:tmpeters@bsu.edu)

Mr. John Bowers  
Director of Institutional Equity and Internal Investigations  
Office of General Counsel  
(765) 285-5162  
[jwbowers@bsu.edu](mailto:jwbowers@bsu.edu)

Dr. Karin Lee  
Senior Associate Athletic Director/Senior Woman Administrator  
Ball State Athletics  
(765) 285-5127  
[kalee2@bsu.edu](mailto:kalee2@bsu.edu)

Ms. Dawn Miller  
Principal and Chairperson and Title IX Coordinator  
Burriss Laboratory School  
(765) 285-8600  
[demiller4@bsu.edu](mailto:demiller4@bsu.edu)

Dr. Vickie Barton  
Executive Director  
Indiana Academy for Science, Mathematics, and Humanities  
(765) 285-8126  
[vbarton@bsu.edu](mailto:vbarton@bsu.edu)

## **Appendix 2—Resources for Assistance**

A first step for any complainant or third party witness may be choosing how to proceed following an incident of sexual harassment, sexual violence, stalking, or intimate partner violence. The university provides two distinct institutional resources:

**Confidential Resources**, which do not involve notifying the university of the incident unless the complainant requests such action; and

**Reporting Options**, which provide notice of the incident to the university and begin the Title IX assessment and resolution of the report.

It is also important to note that emergency medical and campus safety/law enforcement assistance are available both on and off campus, and all individuals are encouraged to contact law enforcement and seek medical treatment as soon as possible following an incident which poses a threat to safety or physical well-being.

The university is committed to treating all members of the community with dignity, care, and respect. Any individual affected by sexual harassment, sexual violence, stalking, or intimate partner violence, whether as a complainant, a respondent, or a third party, will have equal access to support consistent with their needs and available university resources.

The following sections outlines assistance from advocates, medical professionals, mental health professionals, law enforcement, and university officials that may be accessed immediately or on an ongoing basis. Assistance is further noted as to its location—on or off campus—and whether or not the agency is a confidential resource or a reporting option.

See the next page for specific resources:

<b>Ball State Resources</b>	<b>Type</b>	<b>Services</b>	<b>Location</b>	<b>Contact</b>
<b>Office of Victim Services</b>	Confidential	24-hour free victim advocacy; ongoing support.	Health Center, room 205	(765) 285-7844. After hours, call the Ball State University Police dispatch at (765) 285-1111 and request the on-call victim advocate be paged.
<b>Counseling Center</b>	Confidential	Comprehensive and free psychological services to students.	Lucina Hall, room 320	(765) 285-1736 or visit Lucina Hall, Room 320.
<b>University Health Center</b>	Confidential	Medical care, treatment for injuries, assistance, and support. If requested, forensic examinations (rape kits) will be referred, and transportation provided to IU-BMH, but this examination is not a requirement for students to receive comprehensive care at the Health Center	1500 Neely Ave.	(765) 285-8431
<b>Ball State Police Department</b>	Non-confidential	Incidents reported to the University Police Department will be investigated, as requested, and will be referred to the Associate Dean of Students/Title IX Coordinator for follow-up and administrative response.	200 N. McKinley Ave.	(765) 285-1111
<b>Associate Dean of Students/Title IX Coordinator</b>	Non-confidential	Responds to reports of sex or gender-based discrimination, sexual harassment or misconduct by or against a student, employee, or others. All complaints receive prompt, equitable, and comprehensive response.	Administration Building, room 238	(765) 285-1545
<b>Office of General Counsel</b>	Non-confidential	Responds to reports of unlawful harassment and discrimination by an employee or other persons encountered on campus.	Administration Building, room 216	(765) 285-5162
		<i>Community resources off-campus are found on the next page</i>		



<b>Community Resources</b>	<b>Type</b>	<b>Services</b>	<b>Location</b>	<b>Contact</b>
<b>Muncie Police Department</b>	Non-confidential	Incidents reported to the Muncie Police Department will be investigated; depending on caller location, a call to 911 may result in the dispatch of BSU police.	300 N. High St.	911 or (765) 747-4838
<b>Muncie PD Victim Advocates</b>	Confidential in many circumstances	MPD victim advocates are professionals trained to support victims of crime. Advocates offer victims information, emotional support, and help finding resources and filling out paperwork. Sometimes, advocates go to court with victims. <a href="http://www.munciepolice.org/victim-advocates/">http://www.munciepolice.org/victim-advocates/</a>		
<b>A Better Way</b>	Confidential	A Delaware County/Muncie advocacy service and shelter for victims of domestic violence and sexual assault; a 24-hour crisis line for persons in any type of crisis; a participating member of the Delaware County Sexual Assault Response Team (SART). <a href="https://abetterwaymuncie.org/">https://abetterwaymuncie.org/</a>	806 W. Jackson St.	(765) 747-9107
<b>Indiana University Ball Memorial Hospital</b>	Confidential	Comprehensive, emergency medical care; specially trained sexual assault team available 24 hours every day. Forensic exams (rape kits) are provided. Under Indiana law, the tests and procedures here are free of charge if treatment is sought within 96 hours of the assault. ER staff may ask if the patient wishes to speak to the police; this decision is up to the patient. Persons undergoing an exam do not have to report to the police for the rape kit to be completed. However, patients should know they can make a statement to a police officer at this time and request that a criminal investigation be deferred. A person may file a police report up to a year after the rape kit is completed, which allows time to consider options and preferences, while still having critical information, as well as physical evidence, collected and preserved.	2401 W. University Ave.	911 or (765) 747-3241. ER staff will inform Ball State students of OVS support and contact the OVS upon request.

**Other community resources may be available depending on circumstances.**