

Ball State University
Sexual Harassment and Misconduct Policy
2020-2021

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

Revised 7/2014, 8/2015, 8/2016, 7/2017, 7/2019, 8/2020

Table of Contents

Contents

1. Introduction and Application	3
1.1 Introduction.....	3
1.2 Application (On- and Off-Campus).....	3
1.3 Anonymous Reports	3
1.4 Amnesty for Violations of Other Policies.....	3
2.1 Timeframe for Reporting	3
2.2 Complaints against Students.....	4
2.3 Complaints against Graduate Assistants.....	4
2.4 Complaints against Non-Affiliated Individuals.....	4
2.5 Complaints against Student Organizations.....	4
2.7 Complainant/Reported Victim is Not Affiliated with the University.....	4
2.8 Other Forms of Assistance and Reporting Options	5
3. Complaint Resolution Options, Processes and Procedures.....	5
3.1 Intake and Assessment.....	5
3.2 Determination Following Assessment	7
3.3 Academic Accommodations and Supportive Measures.....	7
3.4 Remedies-Based Resolution	8
3.5 Notice of a Complaint to the Respondent.....	8
3.6 Information Regarding Supportive Measures and Interim Suspension (<i>Code of Student Rights and Responsibilities</i> , Section 5.8).....	9
4. Investigation of Complaints.....	10
4.1 Timeframe of Investigation	10
4.2 Investigation Procedures and Protocols.....	10
4.3 Review of Investigation Report	13
4.4 Initial Determination.....	13
4.4.1 Insufficient Information to Warrant Subsequent Adjudication	13
4.4.2 Sufficient Information to Warrant Subsequent Adjudication	14
5. Adjudication of Complaints.....	14

5.1 General Procedures	14
5.2 Hearings	15
5.3 Notice of Outcome.....	16
5.4 Sanctions	17
5.5 Status of Supportive Measures and Other Accommodations Pending or Following Resolution	17
5.6 Appeals	17
Appendix 1 - Prohibited Conduct and Relevant Terms and Definitions	18
Prohibited Conduct	18
Aiding and Abetting.....	18
Harassment, Bullying, or Cyber-bullying.....	18
Harm, Threat, or Endangerment	18
Intimidation or Threats to Inhibit Reporting.....	18
Retaliation.....	19
Sexual Assault.....	19
Sexual Exploitation.....	20
Sexual Harassment.....	21
Stalking	22
Terms and Definitions	23
Coercion	23
Consent	23
Domestic violence.....	24
Dating violence	24
Force	24
Incapacitation	25
Appendix 2 - Communication with Parties, Records, Policy Modification	26
Maintenance of Records	26
Appendix 3 - Statements on Privacy and Confidentiality.....	26
Table 1—Campus Resources.....	28
Table 2—Community Resources.....	29

1. Introduction and Application

1.1 Introduction

This policy governs the University's response to complaints of sexual misconduct (which includes sexual harassment, sexual assault, other forms of sexual violence, dating violence, domestic violence, sexual exploitation, and stalking) involving any Ball State University student or student organization, when the Interim Title IX Policy is not applicable. Sexual misconduct complaints made against faculty, staff and other Parties are handled pursuant to the Interim Title IX Policy.

1.2 Application (On- and Off-Campus)

This policy and these procedures apply to students (including graduate students) and student organizations and pertain to behaviors prohibited in this Policy when:

1. The conduct occurs off-campus or outside of the context of a university education program or activity as determined by the Interim Title IX Policy.

1.3 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, a service of the University Police Department.

1.4 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.

2.1 Timeframe for Reporting

The university encourages persons—to promptly report all incidents of sexual harassment or misconduct, involving students regardless of when or where the incident occurred. Certain persons are required by Title IX to report all incidents of sexual harassment and misconduct to the TIX Coordinator. 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 will assist a complainant in contacting the appropriate law enforcement or external agency.

2.2 Complaints against Students

Any student or university employee may pursue a complaint against another student under this policy when:

- a) the conduct occurred off-campus and/or,
- b) the unwelcome conduct of a sexual nature did not meet the criteria to be handled under the Interim Title IX Policy.

In matters where a student [Respondent] is an employee (any status) of the university, interim measures to end harassment, address its effects, and prevent its recurrence realm of employment and may take place concurrent with procedures outlined in this policy.

2.3 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.

2.4 Complaints against Non-Affiliated Individuals

Complaints of sexual harassment or misconduct against an individual who is not affiliated with the university (e.g. a guest of or visitor to the university) may be filed with the University Police Department located at 200 N. McKinley Avenue [(765) 285-1111] or the law enforcement agency with jurisdiction over the incident. Students bringing complaints of sexual harassment or misconduct against an individual who is not affiliated with the university may request support and assistance from campus resources (e.g., Office of Victim Services, Counseling Center) and may request assistance from the Associate Dean of Students/Title IX Coordinator to pursue possible academic accommodations and other appropriate interim measures.

2.5 Complaints against Student Organizations

Complaints asserting that a student organization has created a hostile environment related to an incident(s) involving offenses outlined within this policy may be filed with the Office of Student Conduct [SC L4, (765) 285-5036]. Complaints will be examined on a case by case basis to determine how best to proceed consistent with other policies and to comply with federal law. Procedures for resolving complaints against a student organization and/or its members, collectively or individually, when acting as part of the organization, are outlined in the Code of Student Rights and Responsibilities, which may be found at www.bsu.edu/studentcode.

2.7 Complainant/Reported Victim is Not Affiliated with the University

Ball State's Code of Student Rights and Responsibilities, (Code), which references and is referenced by this policy, allows any individual to file a complaint or report of an incident of prohibited behavior. While the university may have different obligations to a person not affiliated with the university, the university still has a significant interest in allegations of student behavior with implications for campus safety or disruption.

The Associate Dean of Students/Title IX Coordinator or designee will conduct an initial assessment of the complaint. In the course of assessment, the university will consider the

interests of the Complainant and any health or safety concerns raised by the report in determining whether and how to proceed.

2.8 Other Forms of Assistance and Reporting Options

Information about all available resources, including confidential reporting options, can be found in Table 1 and Table 2 of this policy.

3. Complaint Resolution Options, Processes and Procedures

3.1 Intake and Assessment

A designated, trained investigator will conduct an initial assessment of the complaint under this policy. In the course of this assessment, the investigator will consider the interests of the Complainant, respond to any immediate health or safety concerns raised by the report, and consider the Complainant's expressed preference for manner of resolution. Where possible and as warranted by an assessment of the facts and circumstances, action is will be taken consistent with the Complainant's request.

During the assessment, the investigator will:

1. Assess the nature and circumstances of the allegation, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and any other Party with knowledge of the report;
2. Ascertain the Complainant's and/or Respondent's affiliation with the university;
3. Ascertain the respective ages of the parties and, if warranted, contact the appropriate child protective agency;
4. Address immediate physical safety and emotional well-being;
5. Notify the Complainant of the right to contact, or decline to contact, law enforcement and to seek a protective order;
6. Notify the Complainant of the right to seek medical treatment and explain the importance of preservation of evidence;
7. Ensure the University Police Department has been notified so that it may assess the need to issue a timely warning under the Clery Act;
8. Request the University Police Department to enter a report into the university's daily crime log;
9. Provide the Complainant with information about on and off-campus resources;
10. Notify the Complainant of the range of interim accommodations and remedies and guidelines for their implementation;
11. Ensure that students with disabilities received appropriate accommodations allowing them equal opportunity to participate in and access the provisions of this Policy; and take into account a student's verified disability when determining interim measures;

12. Provide the Complainant with an explanation of the procedural options to resolve the complaint, including remedies-based resolution and resolution through adjudication procedures; and discuss with the Complainant any concerns or barriers to participating in any university investigation and resolution under this Policy;
13. Inform the Complainant and, as appropriate, Respondent of the right to have an adviser or support person for all subsequent meetings and proceedings;
14. Assess for pattern evidence or other similar conduct by the Respondent;
15. Discuss the Complainant's expressed preference for manner of resolution, including a request that their name and other identifiable information not be shared, and any barriers to proceeding;
16. Explain the university's policy prohibiting retaliation; and
17. 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 no formal action be taken, the investigator will balance this request with the university's dual obligation to provide a safe 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. The investigator will determine, based on the available information, whether an investigation leading to possible campus disciplinary resolution 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 and, if warranted, contact the appropriate child protective agency;
 - f. Whether the Respondent has admitted to the conduct;
 - g. Whether the Respondent has demonstrated a pattern of similar conduct;
 - h. The extent of prior remedial methods taken with the Respondent;
 - i. 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
 - j. 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 enough information to determine the best course of action.

3.2 Determination Following Assessment

At the conclusion of the assessment, the investigator will determine the appropriate manner of resolution, which may include:

1. Honoring the request of the Complainant that the matter not proceed, resulting in closure of the complaint;
2. Remedies-based actions that do or do not involve disciplinary action against a Respondent;
3. The initiation of an investigation to determine if adjudication is warranted; or
4. Dismissal of the complaint.

The investigator will communicate the decision, supported by a rationale, and possible next steps to the Complainant. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution.

When the university determines to pursue investigation on its own behalf, the investigator will communicate with the Complainant regarding this determination. Within this course of action, the Complainant relinquishes further participation in the processes outlined in this policy.

When the investigator determines to dismiss the complaint, the Complainant may request a review of that decision. The request for a review should be made to the Vice President of Student Affairs' designee within five (5) business days. The request must be in writing and supported by a rationale, based upon one or more of the following reasons:

1. A substantial procedural error, omission, or bias in the assessment; or
2. New information of a substantive nature sufficient to alter a decision.

It is at the discretion of the investigator to determine which method of resolution is appropriate. The Complainant will be notified of the outcome of the review within five (5) business days.

3.3 Academic Accommodations and Supportive Measures

There are a number of immediate and supportive measures that may be provided to ensure the safety and wellbeing of all Parties, to address retaliation by any Party, and mitigate disruption of the educational focus of any Party. A request for supportive measures may be made to the investigator. The investigator will meet with the student to coordinate the implementation of appropriate supportive measures and accommodations in alignment with existing university academic policy. Appropriate accommodations and measures may be coordinated during and/or following the investigation and resolution of a complaint. Delayed reporting may affect the ability to provide requested academic accommodations and supportive measures. Appropriate accommodations and measures 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 consistent with university policy, etc.);

3. Academic support, such as tutoring, rescheduling exams or assignments, or providing alternative course completion options consistent with university policy;
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 mutual “no-contact instructions;”
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;
10. Imposing an emergency removal; and
11. Providing other remedies tailored to the Parties to achieve the goals of this policy.

3.4 Remedies-Based Resolution

Where the 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 Supportive 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 or designee, or the university. Depending on the form of remedies-based resolution used, it may be possible to maintain the Complainant’s anonymity. Depending on the circumstances and requested resolution, the Respondent may or may not be notified of the report or resolution.

Complainant participation in remedies-based resolution is voluntary, and either Party can request to end remedies-based resolution at any time. Such requests will be evaluated by the Associate Dean of Students/Title IX Coordinator.

The Associate Dean of Students/Title IX Coordinator will maintain records of all reports and conduct referred for remedies-based resolution.

3.5 Notice of a Complaint to the Respondent

A Respondent will be notified when a complaint has been filed and an investigation will be initiated. The Respondent will be provided sufficient detail of the nature of the alleged conduct and potential policy violation, opportunity to offer information, present evidence, identify

witnesses during an investigation, and all other procedural steps as outlined elsewhere in this policy.

3.6 Information Regarding Supportive Measures and Interim Suspension (*Code of Student Rights and Responsibilities, Section 5.8*)

Supportive Measures

Should there be reasonable cause, the university may find it necessary to take supportive measures before a formal decision is made in order to mitigate the effects of alleged misconduct and otherwise promote the safety of university community members. If a student fails to comply with the requirements of the supportive measure(s), the university may take further actions as it deems necessary to ensure the safety of the campus community. Supportive measures may include, but are not limited to:

1. Mutual no contact instructions;
2. Residential reassignments or removal;
3. Changes to employment assignments;
4. Changes to academic schedule;
5. Counseling;
6. Temporary delay of graduation or other academic progress;
7. Restriction on the student's presence in University buildings, on University property, at University events, and/or use of the university's online resources.

No contact instructions and other orders do not always involve actions that "threaten the safety or operations of the University community."

The dean of students or designee will make decisions on supportive measures after appropriate review. The director of Housing and Residence Life, or a designee, may initiate a residential move in cases concerning immediate safety. In the cases of alleged sexual misconduct (including but not limited to sexual harassment, sexual assault, domestic violence, dating violence, and stalking), interim housing moves will be made in consultation among the dean of students, director of housing and residence life, and the representative of the office investigating the complaint. They may also issue temporary no contact instructions under the same circumstances. The director of Housing and Residence Life, or a designee, will notify the dean of students, or a designee, in writing of any interim measures they initiate as soon as possible, but no later than the next business day. All interim measures described above will be documented in writing.

Interim Suspension

At any time after receiving a report of sexual harassment or misconduct, a student respondent may be removed from one or more of the University's education programs and activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment or misconduct justifies removal. The matter will be referred to the University's Behavioral Intervention Team (BIT) for the individualized assessment and determination.

In the event an emergency removal is imposed on a respondent, the respondent will be notified of such in writing and will have an opportunity to challenge the decision by filing a written appeal within two (2) business days with the associate vice-president of student affairs/director of housing and residence life, or designee. The associate vice-president of student affairs/director of housing and residence life, or designee will make the final decision as to whether the emergency removal will stand and inform the respondent of the decision in writing.

4. Investigation of Complaints

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

4.1 Timeframe of Investigation

Ball State endeavors to issue a determination and, if applicable, any sanctions within a reasonable number of days of written notification to the Respondent that an investigation of an alleged violation of this policy has begun. 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:

1. The complexity of the allegations, including the number of witnesses and volume of information provided by the Parties;
2. The need to ensure the integrity and completeness of an investigation;
3. Availability of the Parties and evidence;
4. The need to delay temporarily an investigation to support law enforcement's need to gather evidence in a concurrent criminal investigation;
5. Intervening closures of Ball State;
6. Any other unforeseeable circumstances.

In the event a Ball State unit determines it requires additional time 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 as applicable, the Associate Dean of Students/Title IX Coordinator or designee, notifying them of the anticipated length of the delay and the nature of the circumstances causing the delay.

4.2 Investigation Procedures and Protocols

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.

During an investigation, both the Complainant and Respondent have an equal right to:

1. Prompt, impartial, and equitable investigation of the complaint;
2. Protection under applicable privacy laws (e.g., FERPA);

3. An advisor of their choice (this person may be a friend, instructor, parent, or attorney) to 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 is not 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. The opportunity to offer information, present evidence, and identify witnesses to the investigator;
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;
7. Reasonably available interim measures and access to support, such as counseling, as described in this Policy;
8. Adaptions or accommodations because of a disability;
9. Freedom from retaliation for making a good faith report;
10. To request a formal investigation at any time;
11. Written notice of the complaint, including sufficient detail of the nature of the alleged conduct and potential violation of this policy;
12. The opportunity to fully participate in and articulate concerns or issues about the investigation or resolution of a complaint;
13. Notice of any meeting, hearing, or other proceeding at which the Party's presence is requested or expected;
14. The opportunity to challenge and request review of bias or conflict of interest on the part of the investigator, hearing officer, or any member of the Sexual Misconduct Board;
15. The opportunity to be heard, orally and/or in writing, as to the determination of a violation and the imposition of any sanction;
16. Reasonable time to prepare any response contemplated by this policy;
17. Written notice of any extension of timeframes for good cause;
18. Written notice of the outcome of any formal resolution proceedings, including the determination of a policy violation, imposition of any sanction, and the rationale for each;
19. Other rights upon intake and assessment of the complaint, as outlined elsewhere in this Policy.

The investigator will determine the appropriate scope of the investigation.

The University may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or

by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where the grievance process involves more than one complainant or more than one respondent, references in this policy to the singular “party,” “complainant,” or “respondent” include the plural, as applicable. In addition, a formal complaint of retaliation may be consolidated with a formal complaint of sexual harassment if the two formal complaints share a common nexus.

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. This may include, but not be limited to interviews conducted face-to-face or through other means, which will usually be recorded by the investigator (no other Parties may record interviews or hearings) and may include follow-up after an initial interview. 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 or subsequent conduct (including allegations or findings of responsibility) by the Respondent in determining pattern, knowledge, intent, or motive to the extent such information is relevant. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar prohibited conduct. The investigator will determine the relevance of this information and both Parties will be informed if evidence of prior or subsequent conduct is deemed 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 others and the integrity of the process.

The university may defer its fact-gathering until after the initial stages of a criminal investigation have been completed. The university will nevertheless communicate with the Complainant regarding 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 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 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.

4.3 Review of Investigation Report

At the conclusion of the investigation, the investigator will prepare a preliminary report that includes a summary of the allegations(s); the information/evidence considered; and the factual analysis and findings.

The investigator may redact information that is irrelevant, more prejudicial than informative, immaterial, or 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 notified when the preliminary report is available for their review and will be provided instructions to access the preliminary report. The preliminary report may not be shared or downloaded. The Parties will have ten (10) 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 substantial or new information by the Complainant or Respondent, which may require a second opportunity for review by the Parties, or after the ten (10) day comment period has lapsed without comment, the investigator will finalize the report and submit it to the Director of Student Conduct or designee (Director) The investigator will notify the Parties when the report has been finalized and submitted and will provide the Parties access to the final report.

4.4 Initial Determination

The Director, after consultation with the 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 ten (10) business days after this determination.

4.4.1 Insufficient Information to Warrant Subsequent Adjudication

If the Director determines that there is insufficient information to move forward to adjudication, the Director will notify the Parties as noted above. The Complainant may request a review of the Director's decision in writing to the Dean of Students within five (5) business days of receiving the notice of the decision. The request for review must be accompanied by a rationale, based upon one or more of the following reasons:

1. A substantial procedural error or bias in the investigation;
2. A substantial procedural error or bias in the Director's decision; or
3. New information of a substantive nature deemed to be sufficient to alter a decision.

The Respondent will be notified if a request is received, provided a redacted copy of the request, and be provided the opportunity to respond within five (5) business days. The Complainant will receive a redacted copy of that response but not a further opportunity to reply.

The Dean of Students may:

1. Agree with the initial determination; or

2. Return the case to investigation status.

The Dean of Students 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 Dean of Students is final.

When the matter is returned to investigation status, the Associate Dean of Students/Title IX Coordinator will weigh the factors leading to continued investigation to coordinate a fair, thorough, and impartial continuation of investigation and adjudication.

4.4.2 Sufficient Information to Warrant Subsequent Adjudication

If the Director determines that further adjudication is warranted, the Director will notify the Parties as described in Section Five--Adjudication of Complaints).

5. Adjudication of Complaints

5.1 General 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, rationale for charged violations, proposed sanctions and/or remedies, rationale for proposed sanctions, options for resolving the complaint, and a request for a meeting with the recipient. This notice will be sent to the Parties within ten (10) business days of the determination.

In cases where the charged violation involves non-consensual sexual intercourse, the Director is required to consider suspension or expulsion but may propose any lesser sanctions believed 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:

1. The nature and severity of the violation;
2. The violating student's prior conduct record (if applicable);
3. Precedent for sanctioning past, similar violations by other students;
4. Aggravating, mitigating, and/or compounding factors;
5. Remedying harm experienced by the Complainant;
6. Deterring the violating student from future, similar behavior; and
7. Remedying harm caused to the Ball State community, whether that harm be physical, emotional, operational, or reputational in nature.

The Director will request separate meetings with the Parties to review the determination and subsequent procedures including options for the Respondent to:

1. Accept responsibility for the charged violation and seek an informal resolution or
2. Contest the charged violation and request a hearing. As specified elsewhere, Parties may be accompanied at this meeting by an advisor of their choice.

If the Respondent accepts responsibility in writing and seeks an informal resolution, the Director may impose sanctions up to and including expulsion from the university;

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.

5.2 Hearings

General Procedures

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 chaired by an OSC staff member. Prior to the hearing, the SMB panel members will review the investigative report, Witness statements, and relevant documentary evidence.

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 ten (10) business days prior to the hearing.

The SMB panel will expect to hear testimony from the following persons: Complainant, Respondent, and the designated investigator(s). Parties are not required to attend the hearing but are encouraged to attend. The Director will be responsible for compiling documentation for the SMB panel's review and serve as a Complainant on behalf of the university because of its interest in the safety of all members of the university community. The Director does not provide testimony or attend the hearing.

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.]

The Director normally will arrange to convene hearings in such a manner to limit direct contact between the Complainant and Respondent but allow 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.

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.

The university may admit prior or subsequent similar conduct by the Respondent, as documented in the investigative report, as evidence in hearings on current complaints in determining pattern, knowledge, intent, or motive.

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.

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.

After conducting the hearing, the SMB panel will excuse all Parties and deliberate. Considering only the information made available to them at the hearing, the SMB panel members will determine which facts they will rely on for their decision. Using those facts, the panel members will 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.

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 sanctions it believes to be fair and proportionate to the violation(s) and their impact on the Complainant. Considerations for sanctioning are those listed above.

The Director will be responsible for finalizing the SMB panel’s finding regarding responsibility for the violation, as well as sanctions as appropriate, and notifying the Parties of the hearing’s final outcome.

Any procedural right or accommodation given to the Respondent will be extended to the Complainant and vice versa.

Any procedures for the hearing not specifically addressed above will be guided by section 5.6.4 Procedures for Conduct Hearings.

5.3 Notice of Outcome

Both the Complainant and the Respondent will be notified simultaneously in writing of the outcome of the informal resolution or hearing including any sanctions, a rationale for the decision, and a statement of the Parties’ options to appeal. 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.

5.4 Sanctions

After the final determination of a disciplinary proceeding against a student for sexual harassment or misconduct, the full range of available 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 5.7 Sanctions for a complete list of sanctions).

5.5 Status of Supportive Measures and Other Accommodations Pending or Following Resolution

The Director may continue supportive measures and accommodations for the Parties 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 and/or accommodations for the Parties, or the university community, or both are implemented.

5.6 Appeals

Students may appeal the result (finding and sanctions) of a Sexual Misconduct Board hearing decision to the next level administrator. 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 Conduct. Receipt of the appeal will be acknowledged promptly and the appeal will be forwarded to the appellate administrator for review.

The appeal must be submitted within five (5) business days from (receipt of the original decision in which to submit an appeal in writing. Per this policy, the other party will be notified of the appeal, provided the basis on which the appeal is made and a summary of the appeal, and given an opportunity to provide a response in writing within five (5) business days of notice for consideration 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 University Review Board hearing and supporting documents.

Sexual Misconduct Board hearing procedures and outcomes may be appealed on multiple bases that are limited to:

- 1 A procedural or substantive error occurred that significantly affected the outcome of the hearing, such as substantiated bias or material deviation from established procedures;
- 2 An unduly harsh sanction (appeal by the accused student) 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.

An appeal may be resolved in one of the following ways:

- 1 The original decision may be upheld;
- 2 Modified, lesser sanctions, may be imposed; or
- 3 The case may be remanded to the 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.

Appendix 1 - Prohibited Conduct and Relevant Terms and Definitions

Prohibited Conduct

The university prohibits a variety of behaviors under this policy, including but not limited to:

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 the Student 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.

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.

Harm, Threat, or Endangerment

Harm, threat, or endangerment is prohibited separately in the *Code* as follows: “causes or threatens 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 fighting, physical assault, intimidation, coercion, or impairment of any person’s freedom of movement as well as verbal or written threats of any action described above. This prohibition includes consideration of how a reasonable person similarly situated would perceive harm, threat, or endangerment.”

When these acts occur in the context of a complaint dating or domestic violence (see Terms and Definitions) or when the behavior is perpetrated on the basis of sex or gender, the conduct will be resolved under this policy.

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 Parties to the complaint, 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.

Retaliation

It is a violation of this policy to engage in retaliation, which is to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this policy or because an individual made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner under this policy. Any report or formal complaint of retaliation will be processed under this policy in the same manner as a report or formal complaint of sexual harassment, as the case may be. The University retains discretion to consolidate a formal complaint of retaliation with a formal complaint of sexual harassment for purposes of the grievance process if the two formal complaints share a common nexus.

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.

Sexual Assault

Sexual assault any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. It specifically includes the following offenses:

1. “Rape” is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
2. “Sodomy” is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

3. “Sexual Assault with an Object” is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia (e.g., a finger, bottle, or stick).
4. “Fondling” is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. For the purposes of this policy, this also includes causing a person to touch one’s own private body parts and disrobing or exposing a person without consent. Private body parts may include the breasts, genitals, buttocks, groin, mouth, or any other part of the body that is touched in a sexual manner.
5. “Incest” is non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
6. “Statutory Rape” is non-forcible sexual intercourse with a person who is under the statutory age of consent.

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, permitting others to view, 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. Non-consensual removal of a condom or other form of birth/disease control by a sex partner, sabotage to a condom or other form of birth/disease control by a sex partner without the other’s knowledge or consent, or false representation of the use of a condom or other form of birth/disease control;
5. Engaging in any form of voyeurism (e.g., “peeping”);
6. Prostituting another individual;
7. Compelling an individual to touch their own or another person’s intimate parts without consent;
8. Knowingly exposing another individual to a sexually transmitted disease or virus without that individual’s knowledge; and
9. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Sexual Harassment

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

1. An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct, (often referred to as quid pro quo harassment); or
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity (often referred to as hostile environment harassment); or
3. Sexual assault, dating violence, domestic violence, or stalking.

Sexually harassing behaviors differ in type and severity and can range from subtle verbal harassment to unwelcome physical contact. Conduct that constitutes sexual harassment in violation of this policy can potentially take many forms, including but not limited to:

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. For purposes of this policy, a hostile environment exists when there is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity. 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 the totality of the circumstances, which the University will evaluate from the perspective of a reasonable person in the Complainant's position. These circumstances could include, but are not limited to:

- a) The frequency of the speech or conduct and the context in which it occurred;
- 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 actual effect the speech or conduct had on the Complainant, including 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) The relationship between the parties (including accounting for whether one individual has power or authority over the other);
- i) Whether the speech or conduct unreasonably interfered with the Complainant's educational opportunities or performance, university-controlled living environment, or university-controlled work opportunities or performance;
- j) 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 sex, gender identity/expression, 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.

Stalking

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

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;
6. Sending/posting unwelcome and/or unsolicited messages with another username; or
7. Implicitly threatening physical conduct or any combination of these behaviors directed toward an individual person.

Terms and Definitions

For purposes of addressing complaints of sexual harassment and misconduct against or by students, the following concepts, terms, and definitions shall be used:

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.

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 their sexual interaction with someone else. An individual accused of sexual harassment or misconduct is not excused if they were 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.

Domestic violence

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Indiana, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Indiana. A respondent accused of domestic violence, if charged with a violation, will be charged with the violation Harm, Threat, or Endangerment.

Dating violence

Dating violence means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on consideration of the following factors: the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship. A respondent accused of domestic violence, if charged with a violation, will be charged with the violation Harm, Threat, or Endangerment.

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.

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 was aware or 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 knew or reasonably should have known the Complainant's level of alcohol consumption and/or level of impairment. A Respondent is not excused from responsibility under the influence of alcohol or other drugs 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.

Preponderance of the Evidence

Preponderance of the Evidence is the standard of evidence to determine if a violation of this policy has occurred. This standard of proof means people in decision-making roles must be convinced by the totality of the available, relevant evidence presented that the alleged conduct has more likely than not (greater than 50% likely) occurred in order for there to be a violation of policy.

Preponderance of Evidence means people in decision-making roles must be convinced by the evidence presented that conduct has more likely than not (greater than 50 percent likely) occurred, which constitutes a violation of this policy. Decision-making takes into account the totality of all available relevant evidence and evaluates the quality of the information gathered and not the quantity of the information provided by any party.

Appendix 2 - Communication with Parties, Records, Policy Modification

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 Conduct 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.

Maintenance of Records

The University will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in the University's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

Discretion in Application

The University retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.

Despite the University's reasonable efforts to anticipate all potential circumstances in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this policy at any time, and for any reason. The University may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

Appendix 3 - Statements on 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 is 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 is respected and safeguarded at all times. Privacy and confidentiality have distinct meanings under this policy:

Privacy: Privacy generally means that information related to a report of misconduct is 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 is handled consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA).

Confidentiality: Confidentiality means that personally identifying information shared with designated campus or community professionals cannot be revealed to any other individual without express permission of the individual. These individuals are prohibited from breaking confidentiality unless there is an imminent threat of harm to self or others, the conduct involves suspected abuse of a minor under the age of 18, or is otherwise required by law.

Revised 07/2014, 08/2015, 08/2016, 07/2017, 07/2019, 08/2020

Table 1—Campus Resources

Ball State Resources	Type	Services	Location	Contact
Office of Victim Services	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.
Counseling Center	Confidential	Comprehensive and free psychological services to students.	Lucina Hall, room 320	(765) 285-1736 or visit Lucina Hall, Room 320.
University Health Center	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
Ball State Police Department	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
Associate Dean of Students/Title IX Coordinator	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
Office of General Counsel	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>		

Table 2—Community Resources

Community Resources	Type	Services	Location	Contact
Muncie Police Department	Non-confidential	Incidents may be reported to the Muncie Police Department ; 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
Muncie PD Victim Advocates	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. http://www.munciepolice.org/victim-advocates/	300 N. High St.	(765) 747-4777
A Better Way	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). https://abetterwaymuncie.org/	Not disclosed. Call.	(765) 747-9107
Indiana University Ball Memorial Hospital	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.				