



BETHANY COLLEGE SEXUAL MISCONDUCT POLICY & COMPLAINT RESOLUTION PROCEDURES

PROHIBITION AGAINST SEXUAL MISCONDUCT INCLUDING SEXUAL HARASSMENT, SEXUAL DISCRIMINATION, SEXUAL VIOLENCE

I. GENERAL REQUIREMENTS

A. POLICY STATEMENT

In adherence to Title IX of the Education Amendments of 1972 and its implementing regulations which prohibit sexual harassment, Bethany College (the College) is required to establish a procedure which prohibits and sets forth a review process for matters of discrimination on the basis of sex that occurs in all aspects of its educational programs and activities, as it relates to its students, its employees and including but not limited to operations, admissions, academics, athletics, housing and student services. The College is committed to providing a learning, working, and living environment that promotes personal integrity, civility, and mutual respect in an environment free of all behaviors and acts defined within this policy. Behaviors and/or conduct of sex discrimination, sexual misconduct, and sexual violence falls under this policy may be a violation of one or both Title IX and/or Title VII.

B. REQUIREMENTS OF ALL CAMPUS MEMBERS

1. *Education & Dedication to Preventative Measures:*

Because the College recognizes that the prevention of sexual misconduct, as well as domestic violence, dating violence, and stalking, is important, it offers reoccurring educational programming to a variety of groups such as: campus personnel; incoming students and new employees participating in orientation; and members of student organizations. Among other elements, such training covers relevant definitions, procedures, and sanctions; provides safe and positive options for bystander intervention; and provides risk reduction information, including recognizing warning signs of abusive behavior and how to avoid potential attacks. To learn more about education resources, please contact the Title IX Coordinator. Also see training materials posted on the College website.

2. *Responsibility of All Bethany Employees:*

All employees and students shall review this policy. Administrators, Deans, Department Chairs, and other managers who formally supervise employees shall inform employees under their direction or supervision of this policy, work with Administration for meaningful participation in education and training programs for employees and students and implement any corrective actions that are imposed as a result of findings of a violation of this policy.

3. *Prompt Response:*

When the College is aware that a member of the College Community may have been subjected to or affected by conduct that violates this policy, the College will take prompt action, including a review of the matter and, if necessary, an investigation and appropriate steps to stop and remedy the sexual misconduct. The College will act in accordance with its Complaint Resolution Procedures.

C. GUARENTEES FOR ALL CAMPUS MEMBERS

1. This policy does not restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution.

2. This policy will not deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution.
3. This policy will not restrict any other rights guaranteed against government action by the U.S. Constitution.

D. PRIVACY IN PROCESS:

1. The College will be diligent to keep reports and other information obtained through this process confidential to the extent possible.
2. To protect the privacy of the parties and the integrity of the process; parties, and witnesses involved are encouraged to limit their discussion of the matter except as necessary for a party to gather or present evidence relevant to the matter or otherwise seek resources.
3. A party or witness may be questioned about any conversations they have about the matter, and those conversations may be considered as evidence in the case, except to the extent they are protected under a legally recognized privilege.
4. Employees who are witnesses to misconduct shall not disclose information about the matter or their involvement in the case to anyone who does not have a need to know in connection with the policy process.
5. Reports and other information may be disclosed to state or federal anti-discrimination agencies for investigations or audits, and during litigation.

E. RETALIATION PROHIBITED: This College prohibits intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, participated in or refused to participate in any manner in an investigation, proceeding, or hearing under the institution's policy. Persons who believe they have been retaliated against in violation of this policy should make a complaint in the manner set forth in this section.

II. SCOPE & APPLICATION

A. SEXUAL HARASSEMENT DEFINED IN EITHER TITLE IX and/or TITLE VII IS PROHIBITED BY THIS POLICY

1. Depending on the circumstances, some alleged conduct may be evaluated under both definitions of "sexual harassment." Conduct that does not meet either definition of "sexual harassment" may also be additionally evaluated under the definition of "harassment" above if it involves conduct on a basis of another protected status.
2. This policy prohibits sex discrimination, sexual harassment, even when the complainant and alleged perpetrator are members of the same sex, and it applies regardless of national origin, immigration status, or citizenship status. Prohibitions defined within the context of sexual violence depend on definition of the Uniform Crime Report.

B. PROCEDURE: The type of harassment dictates the grievance procedure to be used, both of which are

stated herein.

- C. APPLICATION: This policy applies to administrators, faculty, and other College employees; students; applicants for employment; customers; third-party contractors; and all other persons that participate in the College's educational programs and activities, including third-party visitors on campus (the "College Community"). This policy may apply to conduct that occurs off campus, if the conduct occurs within the context of an education program or activity, or at a location owned by the College or officially recognized organization of the College.
- D. OTHER COLLEGE POLICIES/HANDBOOKS: The College has the discretion to review alleged acts of discrimination and harassment that occur outside of its education program of activity, and/or outside the procedure of Title IX. Conduct or behaviors defined herein may also violate or be prohibited by other College policies handbooks or codes of conduct that may be enforced even if conduct is initially brought to light or reviewed in the context of this policy.
- E. STATE LAW: This policy does not eradicate the College's obligation to comply with state law. This policy does comply with the Kansas Rape Shield law. In the event Title IX conflicts with state law, Title IX shall take precedent.
- F. JURISDICTION: This policy does not apply to conduct outside of the United States.
- G. CRIMINAL BEHAVIOR: If a person believes that criminal conduct has occurred, then the person should report that conduct to local law enforcement. Assistance will be given if requested in consultation with College staff. However, the Criminal Justice System and this Policy are separate procedures, and the College has no control, or role in the criminal matter, nor is the College required to provide supportive measures or an advocate for the criminal process, although it may choose to do so. Complaints/reports must be made under both procedures if a complainant wants both processes to go forward. Persons may also request a protection from abuse order from a court under the Protection from Stalking Act, K.S.A. 60-31a01, et seq.

III. SEXUAL HARASSMENT PROHIBITED BY TITLE IX

A. SEXUAL HARASSMENT PROHIBITED BY TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 PROHIBITS SEXUAL HARASSMENT DEFINED AS CONDUCT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:

1. An employee of the College conditioning educational benefits, aid or service on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo); (This unwelcome conduct constitutes sexual harassment for when "serious incidents that jeopardize equal educational access exceed the threshold and are actionable and includes not only express communications but also situations where the quid pro quo nature is implied from the circumstance.
2. Sexual assault (as defined in the Clery Act), or dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA). Sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature constitute sexual harassment when: This unwelcome conduct constitutes sexual harassment for when "serious incidents that jeopardize equal educational access exceed the threshold and are actionable.)
 - i. *Examples include but are not limited to:*
 - Rape or sexual assault: sexual intercourse (anal, oral, or vaginal) by a man or woman upon a man or woman without consent.
 - Unwilling sexual penetration (anal, vaginal, or oral) with any object or

body part that is committed by force, threat, or intimidation.
 Sexual touching with an object or body part, by a man or woman upon a man or woman, without consent.
 Sexual touching with an object or body part, by a man or woman upon a man or woman, committed by force, threat, or intimidation.
 The use of force or coercion to effect sexual intercourse or some other form of sexual contact with a person who has not given consent.
 Having sexual intercourse with a person who is unconscious because of drug or alcohol use.
 Hazing that involves penetrating a person's vagina or anus with an object
 Use of the "date rape drug" to effect sexual intercourse or some other form of sexual contact with a person.
 One partner in a romantic relationship forcing the other to have sexual intercourse without the partner's consent.
 Exceeding the scope of consent by engaging in a different form of sexual activity than a person has consented to.
 Knowingly transmitting a sexually transmitted disease such as HIV to another person through sexual activity.
 Coercing someone into having sex by threatening to expose their secrets
 Secretly videotaping sexual activity where the other party has not consented.
 Prostituting another person.

3. Unwelcome conduct on the basis of sex that a reasonable person would determine is so severe, pervasive, **and** objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity. This is known as a hostile environment. This may include not only express communications, but also situations where the quid pro quo nature of the incident is implied from the circumstances. This includes sexual violence (see definition below)

B. POLICY REFERENCE

1. Conduct and behavior described in this section (section III) throughout the Policy is collectively referred to as "Title IX Sexual Harassment."
2. All allegations of conduct based on sex, sexual orientation, or gender identity, are first evaluated and processed under this definition. There is a presumption that a respondent is not responsible for alleged Title IX Sexual Harassment unless and until a determination regarding responsibility is final.

IV. SEXUAL HARASSMENT PROHIBITED BY TITLE VII

A. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, PROHIBITS SEXUAL HARASSMENT AS A FORM OF ILLEGAL DISCRIMINATION AND WILL FOLLOW INVESTIGATION, ADMINISTRATIVE REVIEW AND GRIEVANCE PROCEDURE AS DISCUSSED BELOW:

B. SEXUAL HARASSMENT PROHIBITED BY TITLE VII IS DEFINED AS ONE OR BOTH OF THE FOLLOWING:

1. An employee of the College conditioning educational benefits, aid or service on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo); (This unwelcome conduct constitutes sexual harassment for when "serious incidents that jeopardize equal educational access exceed the threshold and are actionable and includes not only express communications but also situations where the quid pro quo nature is implied from the circumstance. (OR)
2. Unwelcome conduct on the basis of sex that a reasonable person would determine is so severe,

pervasive, **and** objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity. This is known as a hostile environment. This may include not only express communications, but also situations where the quid pro quo nature of the incident is implied from the circumstances. This includes sexual violence.

3. *Examples of Behavior Prohibited by Title VII*

Pressure for a dating, romantic, or intimate relationship.

Unwelcome touching, kissing, hugging, rubbing, or massaging.

Pressure for sexual activity.

Unnecessary references to parts of the body.

Sexual innuendos, jokes, or humor.

Making sexual gestures.

Displaying sexual graffiti, pictures, videos or posters

Using sexually explicit profanity.

Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities

E-mail and Internet use that violates this policy.

Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin

Sending sexually explicit emails or text messages.

Commenting on a person's dress in a sexual manner.

Giving unwelcome personal gifts such as flowers, chocolates, or lingerie that suggest the desire for a romantic relationship.

Commenting on a person's body, gender, sexual relationships, or sexual activities

Requesting sexual favors in return for employment, athletic, or other rewards, or threats if sexual favors are not provided.

V. REPORTING PROHIBITED BEHAVIOR:

A. WHERE DO I REPORT BEHAVIOR OF ANOTHER STUDENT?

1. *Title IX Coordinator:* The Title IX Coordinator is designated as an employee responsible for coordinating the College's efforts in complying with Title IX:
Christi Wicks, Bethany College, Wallerstedt Library Office 121, Lindsborg, KS 67456, (785) 227 3380 ext 8123; email wickscl@bethanylb.edu
2. *Deputy Coordinator:* The College has also designated the following Deputy Title IX Coordinator to assist the Title IX Coordinator:
Mandy Smith, Bethany College, Presser Hall Office 126, 335 E Swensson, Lindsborg, KS 67456; T (785) 227 3380 ext 8115; Email smithml@bethanylb.edu
3. *Department of Education:* A person may also file a complaint of sex discrimination with the United States Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or by calling 1-800-421-3481.

B. MAKING A REPORT AGAINST A BETHANY EMPLOYEE: When employees are involved and/or complaints are of sex discrimination, contact shall be made with: Mandy Smith, Bethany College, Presser Hall Office 126, 335 E Swensson, Lindsborg, KS 67456; T (785) 227 3380 ext 8115; Email smithml@bethanylb.edu

VI. DEFINITIONS OF TERMS AS USED IN THIS POLICY

Actual knowledge means notice by observation or report of sexual harassment or allegations of sexual harassment occurring in the College's education program or activities, to the College's Title IX Coordinator or to any official of the College who has authority to institute corrective measures on behalf of the College. Imputation of knowledge based solely on *respondeat superior* vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the College with actual knowledge is also the respondent.

Alumni Complainant See Complainant

Authority to Implement Corrective Measures is any official designated by the College to institute measures on the College's behalf and if known satisfies the requisite actual knowledge component to trigger a response by the College.

Education program or activity includes locations, events, or circumstances over which the College exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Bethany College.

Coercion is direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person's words or conduct cannot amount to Coercion for purposes of this policy unless they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity.

College: Bethany College or College.

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment, and who is participating or attempting to participate an education program or activity of the College at the time the report is being made. A third party may file a report but can't file a formal complaint. The Coordinator may sign a formal complaint on behalf of a complainant. A complainant who has left the College solely based on the allegation of sexual harassment and is willing and able to reenroll depending on the outcome of the allegation, is considered to be attempting to participate. Alumni complainant might be attempting to participate depending on the facts of the situation and whether or not they are a complainant requiring a review will be determined by the Title IX Coordinator.

Consent is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive. If coercion (see definition herein), intimidation, threats, and/or physical force are used, there is no consent. If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent. If a person is asleep or unconscious, there is no consent. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent. Effective consent may not exist when there is a disparity in power between the parties (e.g., faculty/student, supervisor/employee). Lack of consent is a critical factor in determining whether sexual violence has occurred.

Evidence is all available forms of information that tend to prove or disprove whether something is true.

Formal Complaint is a document signed by complainant or the Title IX Coordinator that alleges sexual harassment and meets other requirements stated herein. See section XI, 3 page 11

Incapacity is a state where a person does not appreciate the nature or fact of sexual activity due to the effect of drugs or alcohol consumption (or both) and or due to a medical condition or disability, or due to a state of unconsciousness or sleep.

Informal Resolution is the process by which the parties may agree to resolve the matter by an informal resolution that includes conflict or alternative dispute resolution procedures including but not limited to mediation, arbitration, and restorative justice.

Live Hearing: A contemporaneous process by which a fact finder (panel of 3) reviews the non-testimonial and testimonial evidence gathered by the Title IX investigator, and hears statements and questioning of each party. Not all parties may participate in person for a live hearing but may choose to participate in a virtual contemporary format.

Live Hearing Panel is a panel of 3 people who review the investigative report, listen to evidence presented in the live hearing and decide as to whether a respondent is responsible for alleged conduct.

Preponderance of the Evidence is not defined by the Department of Education, but is a standard of proof met when the evidence presented proves the allegation(s) is/are more likely than not to be true, or stated another way 51% or, 50% plus a feather.

Relevance is that evidence that tends to prove whether or not a policy violation occurred and/or a respondent is responsible.

Remedies are any outcome designed to restore or preserve equal access to the College's education program or activity. A remedy may or may not include supportive measures defined herein. Remedies may or may not include disciplinary or punitive measures that burden the Respondent.

Respondent means an individual (student, employee, or faculty) who has been alleged and/or reported to be the perpetrator of conduct that could constitute sexual harassment. The College has the discretion to move forward or dismiss a formal complaint against a respondent who is no longer enrolled or employed at the College because the College may be unable to provide a prompt and timely response if it has no disciplinary authority over all of the parties involved.

Retaliation is any intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, participated in or refused to participate in any manner in an investigation, proceeding, or hearing under the institution's policy.

Sexual Misconduct is any of the following acts:

Dating Violence: is violence committed by a person who (1) is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) Where the existence of such a relationship will be determined based on consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; and (iii.) The frequency of interaction between the persons involved in the relationship.

Fondling: 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 age or because of temporary or permanent mental or physical incapacity

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Kansas law.

Rape: Having carnal knowledge of a person, without the consent of the person, including instances where the victim is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sex organ of the other person. Attempted rape is included.

Sodomy: Oral or anal sexual intercourse with another person without their consent, including instances where the other person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sexual Assault: Behavior or actions that include rape, sodomy, sexual assault with an object, fondling, incest.

Sexual Assault with an object: 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 age or because of temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the perpetrator other than the perpetrator’s genitalia

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: • Fear for their safety or the safety of others; or • Suffer substantial emotional distress.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent as defined by Kansas law.

Supportive measures: the non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties and or the College’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The College must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures and consider who such measure will affect, and is not required to implement every request by the victim. The College shall determine what is reasonable and document such measures chosen.

VII. ROLES OF TITLE IX ADMINISTRATION:

A. Title IX Coordinator shall:

1. Receive complaints under this policy;
2. Coordinate dissemination of information and education and training programs; and assist members of the College Community in understanding that sexual misconduct is prohibited by this policy;
3. answer questions about this policy;
4. appoint investigators to conduct a formal investigation and ensure that they are trained to respond to and investigate complaints of sexual misconduct;
Ensure complaints are handled in a prompt and timely manner
5. ensure that employees and students are aware of the procedures for reporting and addressing complaints of sexual misconduct; and

6. Confirm all parties have been notified of the investigators conclusion and the right to appeal if applicable.
7. Maintain information and documentation related to the investigation in a secure manner, consistent with the College's obligations to disclose information as required by law.
8. To implement the Complaint Resolution Procedures or to designate appropriate persons for implementing the Complaint Resolution Procedures. The Coordinator may coordinate efforts to effectuate compliance and carry out responsibilities and at this time the Deputy Title IX Coordinator will assist the Title IX Coordinator in carrying out these responsibilities.

- B.** *Investigator:* An investigator shall gather evidence by conducting interviews, answer questions that may arise, maintain a neutral fact-finding role, Investigator fulfills duty to collect all relevant inculpatory and exculpatory evidence. The investigator is not responsible for fact finding but evidence gathering. Each party shall have a right to inspect all evidence 10 days prior to a live hearing. shall discharge his or her obligations under these complaint resolution procedures fairly and impartially. If the Investigating Officer determines that he or she cannot apply these procedures fairly and impartially because of the identity of a complainant, respondent, or witness, or due to any other conflict of interest, the Investigating Officer shall designate another appropriate individual to administer these procedures.
- C.** *Supporter:* This is a person chosen by a party who may attend each step of the process for the purpose of providing support to either party. This person may not address anyone at any time during the process, nor should the supporter speak about the matter so as to maintain the integrity of the process. The supporter may be asked to remove him or herself at any time, but the College will allow the party time to acquire a different support person. Only one support person at a time is permitted to participate in support of a party. The college will make reasonable efforts to accommodate schedules but will not be able to accommodate all schedules at all times.
- D.** *Advisor:* This person may participate on behalf of a party during the Title IX process. An advisor shall participate during a live hearing. An advisor may or may not be an attorney. Advisors who are also attorneys must follow the Title IX procedures set forth. See specifically, live hearing. Only one advisor may participate with a party.
- E.** *Interim Measures Panel:* Panel of people to assess an immediate threat between the parties, determine if interim measures are necessary to prevent such threat and review objections if contested.
- F.** *Hearing Panel:* A panel of three people hear the evidence and review the investigators report and make a written finding as to if the Respondent is responsible for alleged behavior.
- G.** *Presiding Panel Member:* This person will speak on behalf of the hearing panel, direct questions, control the decorum of the hearing by enforcing a three-strike rule and admonishing behaviors which are deemed aggressive, offensive or badgering to any other person in the live hearing, and/or request removal of an advisor after three strikes; and is responsible for completing the written findings of the hearing panel at the conclusion of the hearing.
- H.** *Appeal:* A process by which the matter is reviewed, available in limited situations after a live hearing.

VIII. GRIEVANCE PROCEDURE OF TITLE VII COMPLAINT:

- A.** This procedure applies to sexual discrimination or sexual harassment that is alleged between two employees or which does not rise to the level of severe and pervasive defined in Title IX:
 1. File a complaint with the HR Director of the College.

2. HR Director and complainant employee manager or supervisor shall investigate, obtain information from parties
3. HR Director and manager/supervisor may take appropriate corrective action and preventative action. This also includes a responsibility to protect against retaliation.

IX. RESOURCES FOR ANY TYPE OF COMPLAINT:

- A. The Campus Conduct Hotline (1-866-943-5787) is another available resource. It is a confidential, independent risk management service that provides a simple, anonymous way to alert the College of sexual misconduct, so that steps can be taken to prevent continuation of the sexual misconduct.
- B. If a victim desires to talk confidentially about his or her situation, (Ginny Reyes), Campus Counselor, Pihlblad Memorial Union, 785-227-3380 ext 8320 or Amy Truhe, Campus Pastor, Pearson Chapel and Welcome Center, 785-452-0969, can be contacted. They are available to assist you and will not report your circumstances to the College without your permission, unless otherwise required by law (such as when the victim is a minor). Notwithstanding, a non-identifying report may be made to the Title IX Coordinator so that the College can identify any patterns of sexual misconduct on campus and, if the conduct is a crime, it can be included in the College's annual crime statistics disclosure.

XI. GREIVANCE PROCEDURE OF TITLE IX COMPLAINT

A. GENERAL STEPS:

1. Complaint
2. Investigation
3. Review of Evidence
4. Final Report
5. Live Hearing
6. Appeal (limited application)

B. PROCEDURAL RULES & INFORMATION:

1. *Presumption*: A respondent is presumed not responsible for alleged conduct unless an affirmative determination that respondent is responsible for such allegations is made at the conclusion of the grievance process.
2. *Discretion & Student Conduct*: The College recognizes that students who have consumed alcohol when they are not 21 years of age or who have been using illegal drugs may be hesitant to participate as a party or witness or otherwise provide information about sexual misconduct allegations covered by this policy. Therefore, the College will not take disciplinary action *under its alcohol or drug policies* against a student who discloses illegal alcohol or illegal drug use in the context of providing information regarding a report of sexual misconduct alleged to have been directed against them or another person. However, the College reserves the right to require counseling, education, or other preventative measures to help prevent alcohol or drug violations in the future. The College's position on amnesty in these situations does not prevent action by police or other legal authorities against an individual who has illegally consumed alcohol or drugs. This position in no way suggests that intoxication of any degree excuses or mitigates any responsibility that is under review.
3. While the College will only discuss College can't issue a gag order or prohibit discussions. Note, the regulations specifically allow for the information protected by FERPA to be used as part of a Title IX investigation.

4. *Timelines:*
 - i. All deadlines and other time periods specified in this policy are subject to modification by the College where, in the College's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; the need to consult with the College's legal counsel; unforeseen weather events; and the like.
 - ii. Any deadline that falls on a weekend or holiday, is extended to the very next business day. For instance, day seven falls on a Saturday, the deadline is the following Monday.
 - iii. Generally, the College shall make every reasonable effort to complete the grievance process in a timely manner. This timeframe is a balance established in consideration of the College resources, ability to complete thorough review and investigation, ability to identify and avoid conflicts and also the importance of a prompt resolution for all parties.
 - iv. If such deviation occurs, the College shall notify all parties in writing by sending an email to the College email as soon within 48 hours of such delay becomes known. A copy of this email notification explaining the delay in grievance procedure shall be kept as part of the College's recordkeeping in regard to these policies.
 - v. Any delay (or continuance) requested by anyone other than the Coordinator shall be approved or determined by the Title IX Coordinator.
 - vi. If a reply or response is required pursuant to a deadline or in a notice, such right will be waived and/or consent will be deemed given at the expiration of said timeline, if a party does not reply or respond otherwise.
5. *Contacts & Communications:* Unless stated otherwise, all contacts and notices will be initiated by the Title IX Coordinator and all communications will be through Bethany email.
6. *Support/Advisor:* During the investigation process, both a complainant and a respondent may ask a support person/advisor to accompany him or her at all stages of the process. In cases involving multiple complainants or respondents, the support person/advisor cannot be another complainant or respondent. The support person/advisor does not serve as an advocate on behalf of the complainant or respondent, may not be actively involved in any proceedings, and he or she must agree to maintain the confidentiality of the process. The College reserves the right to remove or dismiss a support/person advisor who becomes disruptive of who does not abide by the limitations noted in the previous sentence. (See definitions)
7. *Rights of the Parties:*
 - i. During the investigation and resolution of a complaint, the complainant and respondent shall have equal rights. They include:
 - ii. Equal opportunity to identify and have considered witnesses and other relevant evidence. Similar and timely access to all information considered by the Investigating Officer. Equal opportunity to review any statements or evidence provided by the other party. Equal access to review and comment upon any information independently developed by the Investigating Officer.
8. *Confidentiality:* Subject to Section VI herein, all information shared with Coordinator is treated as confidential and private. Further, certain information provided to the Coordinator may need to be disclosed to other College officials but it will only be information sufficient to allow them to respond fairly and appropriately to the allegations. While the College may not

issue a gag order to prohibit discussion it does strongly encourage privacy of all involved.

9. *Complainants Participation*: A complainant's participation in an investigation is voluntary. Complainants are encouraged to participate to the extent they feel comfortable. Participation in the investigation process is voluntary meaning a complainant may decide not to participate even after the investigation has started. However, it is vital to understand that a complainant's decision not to participate at any or all stages may severely limit the College's ability to respond to the incident.
10. *Responsibility to Act*:
 - i. *Actual Knowledge Invokes College Duty to Act*: After the College has actual knowledge of alleged sexual harassment, the Title IX Coordinator shall contact the alleged victim promptly. This contact shall include information about the supportive measures offered by the College, the grievance process of the College, including how to file a formal complaint and shall include a discussion of the victim's wishes.
 1. *Identification of Potential Parties*: Title IX Coordinator shall oversee the preliminary investigation which may require attempts to identify the respondent, or victim. If after reasonable inquiry the identity of the alleged victim can't be determined, TC shall document inquiry made and considerations of other College policies and whether or not they were pursued.

C. Formal Complaint (see (XI)(A)(1)):

1. *Methods to file*: A formal complaint, may be filed in person, by mail, or by electronic mail (e-mail): the date(s) and time(s) of the alleged conduct; (2) the names of all person(s) involved in the alleged conduct, including possible witnesses; (3) all details outlining what happened; and (4) contact information for the complainant so that the College may follow up appropriately. In limited circumstances a Title IX Coordinator may sign the complaint but said signature along does not render the Coordinator the complainant.
2. *Content that constitutes formal Complaint*: For a complaint to qualify as formal, the written document that (1) contain statement(s) that allege sexual harassment as defined above (2) name a respondent or why at the time of filing the complaint the respondent can't be identified or named by the complainant*(3) request that the College investigate the allegation of sexual harassment. And that such alleged conduct occurred (4) at an activity of official event sponsored by the College (4) in the United States, (d) and, at the time of filing a formal complaint, the complainant is enrolled or participating in or attempting to participate in the education program or activity of Bethany College.
3. *Combine complaints*: The College has the discretion to combine formal complaints that arise out of the same set of facts as determined by the Coordinator.
4. *Acknowledgment of Formal Complaint*: The date the Title IX Coordinator or person with actual knowledge receives a formal complaint starts day 0 of the grievance procedure that follows. The complaint shall be acknowledged by email to complainant within 3 business days of receipt. If it is determined that an investigation shall be completed.
5. *False Statements*: While the College encourages all good faith complaints of sexual misconduct, the College has the responsibility to balance the rights of all parties. It is a violation of this policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Therefore, if the College's investigation reveals that a complaint was knowingly false, the complaint will be dismissed. Providing false statements or

submitting a false report will be subject to and addressed under the Student Code of Conduct, Employee Handbook, or other policies and standards applicable.

6. *Option to Appeal dismissal of complaint:* A complainant may appeal the College's decision to dismiss a formal complaint. Grounds exist if The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

D. **Written Notice to Parties:** The College must send written notice of any investigative interviews, meetings or hearings.

1. *Specific notice of allegations:* The Title IX Coordinator shall provide written notice of allegations and pending investigation or dismissal of formal complaint to both parties, by College email address, as soon as practical but no more than 7 business days from the date the complaint was received. Respondent shall have 10 business days, from the day after the date of written notice (email) of was sent by Coordinator to prepare a written response and/or secure an advisor. This shall be done before an interview is conducted with Respondent. Any deadline that falls on a weekend or holiday, is extended to the very next business day. For instance, day seven falls on a Saturday, the deadline is the following Monday.
2. A written notice shall include: sufficient information from the allegations that set forth the complainant, the complainants' allegations, when and where the alleged behavior occurred, a statement that the respondent is presumed not responsible until the Title IX process is resolved, written information explaining the role and right to an advisor, the right to inspect and review evidence, and the prohibition on providing knowingly false statements of information.
3. The college must send written notice of dismissals to the parties, which includes the reasons for dismissal, regardless of the whether the dismissal is mandatory or discretionary.

E. **Interim Measures**

1. *for Allegation against Student:* At any time during the investigation, interim remedies may be appropriate if there is immediate tendency toward violent behavior by any of the parties. These interim remedies may include separating the parties, placing limitations on contact between the parties, suspension, or making alternative class-placement or workplace arrangements. An interim measure may only be implemented when: (1) An analysis has been completed in consideration of safety and risk AND (2) The analysis results in a finding of an immediate threat to physical health or safety of any student or other individual arising from the alleged sexual harassment that justified removal. AND (3) the Student subject to removal is given immediate notice and opportunity to contest the removal. The analysis referenced in (1) and (2) in this section, will be completed by a multi-disciplinary team of three. Notification by phone or email will be given if interim measures are considered and the party will be given a chance to contest the interim measure.
2. *for Employee Investigation:* Employees may be placed on administrative leave and under the Title IX policy and a risk and safety assessment required for a student respondent is not required. A challenge to administrative leave would only be possible if allowed in the faculty or employee handbook.

F. **Investigation:** This is the process by which a Title IX trained neutral investigator gathers evidence testimonial and non-testimonial and facts from the parties and interviews parties and witnesses as appropriate and prepares a written report to be reviewed by the parties.

1. During the investigation, the complainant will have the opportunity to describe his or her allegations and present supporting witnesses or other evidence. The respondent will have the opportunity to respond to the allegations and present supporting witnesses or other evidence. The Investigating Officer will provide the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, and take any other appropriate action to gather information relevant to the complaint. All parties and witnesses involved in the investigation

- are expected to cooperate and provide complete and truthful information.
2. If either the complainant or respondent needs additional time to prepare or to gather their witnesses or information, they shall notify the Investigating Officer in writing explaining how much additional time is needed and why it is needed. The Investigating Officer shall respond to any such request within three (3) days.
 3. **Prior Sexual Behavior of Complainant:** During the investigation (and live hearing) questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent is responsible for the alleged conduct, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
 4. A College may not use or access a party's medical, psychological, or similar treatment records without the voluntary written consent to the party. Voluntary is the signature without force or coercion. A consent signed without an Advisor or supporter present does not make it involuntary.
 5. During the investigation process, both a complainant and a respondent may ask a support person/advisor to accompany him or her at all stages of the process. In cases involving multiple complainants or respondents, the support person/advisor cannot be another complainant or respondent. The support person/advisor does not serve as an advocate on behalf of the complainant or respondent, may not be actively involved in any proceedings, and he or she must agree to maintain the confidentiality of the process. The College reserves the right to remove or dismiss a support/person advisor who becomes disruptive of who does not abide by the limitations noted in the previous sentence. (See definitions)
- G. **Review of Evidence:** The parties with their advisor, have a right to inspect all evidence obtained by the investigator prior to the live hearing. Both parties shall have the opportunity to inspect, review and respond to the evidence obtained during the investigation that is directly related to the allegations, and at least 10 days to review and respond to the investigative report.
1. The parties are not able to copy or photograph said evidence.
 2. Questions about said evidence may lead to additional work by the investigator. Questions or concerns with the investigation should be communicated by the party or advisor to the Title IX Coordinator.
- H. **Written Report:** The college must send all the parties, and their advisors, the investigative written report that fairly summarizes the relevant evidence in electronic or hard copy format with at least 10 days to review.
- I. **Submission of Questions:** Parties shall submit questions proposed for witnesses at the Live Hearing to the Title IX Coordinator to be reviewed by the hearing panel prior to the Live Hearing.
- J. **Requirements prior to Live hearing:**
1. At least 10 days prior to a live hearing, a party must notify the College by email to the Coordinator if they intend to bring an Advisor of their choice to the hearing, or if they request the College to provide one. Within 72 hours of the party request for an Advisor, the Coordinator will reply by email to the party with a name and contact for the Advisor.
 2. At least 10 days prior to the live hearing, Attorneys may file a document, similar to an entry of appearance, by email to the Title IX Coordinator. If an Attorney submits such notice on behalf of a party, the party obligation is satisfied.
- K. **Live Hearing:** While not a court proceeding, each party will have the opportunity to present evidence, and question and cross examine witnesses at a live hearing. Each party has the option to bring a supporter as well. Statements of all witnesses and parties may be relied on by the hearing panel so long as the declarant is available for cross examination at the live hearing.
1. *Process:* 3 people, will review the report of the Investigator, preside over the hearing including the testimony of the parties and witnesses and cross examination and make decisions as necessary to maintain the decorum of the hearing. The panel members will make decisions simultaneously on the

admission or restriction of evidence. The live panel shall make a written finding at the conclusion of the hearing.

2. *Attendance*- All parties will be physically present in the same geographic locations determined by the college, OR at the College's discretion any or all of the parties, witnesses and other participants may appear virtually, so long as appearance can be simultaneous. Any virtual or remote appearance request must be made at least 5 days prior to the hearing date with the Title IX Coordinator.
3. *College May Present Evidence*: While the College is not a party to the proceeding, the College may present evidence to the decision-making panel, who must then objectively evaluate relevant evidence (both inculpatory and exculpatory) and reach a determination regarding responsibility.
4. *Advisor for Party*: An advisor, chosen or appointed by the college, will appear with each party. If a party does not have an advisor present at the live hearing, the College must provide an advisor of the college's choice who may or may not be an attorney to conduct cross examination on behalf of the party, at no charge to the party.
 - i. Even if the other party has an attorney, the college it not required to provide an attorney advisor to fulfill its obligation.
5. *Rules of Decorum*: The College may adopt rules of order or decorum to forbid badgering a witness, and may fairly deem repetition of the same question to be irrelevant.
6. *Rules of Procedure*: The College may adopt rules that decide whether the parties may offer opening or closing statements, specify a process for making objections to the relevance of questions and evidence, place reasonable time limitations on a hearing, and so forth. These rules will be shared with parties at least 20 days before the live hearing.
7. *Evidence allowed in live hearing*:
 - i. *Statement rule: Refusal to Submit to Cross Examination* If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.
 1. This applies to written statements of a witness who will not submit themselves for cross examination, and police reports SANE SART reports, or other documents and records with statements of a party or witness who will not submit to cross examination.
 - ii. *Only Relevant Evidence Allowed*: The hearing panel may only consider objective evidence that is relevant in a decision as to if the respondent is responsible for conduct alleged effectively it means any evidence that tends to make the allegations at issue more or less likely to be true
 1. During adjudication processes, questions regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
 2. A Complainant who affirmatively uses information about their own prior sexual behavior otherwise considered irrelevant if not used for a limited purpose explained herein, for the purpose of supporting the Complainant's allegations may be deemed to have waived the prohibition of use of by Respondent of this type of questioning and evidence.

3. Evidence that is duplicative or repetitive may be deemed not relevant by the hearing panel.
- iii. Questioning by Direct Examination:
 1. Definition: At the live hearing, the decisionmaker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including that challenging credibility.
 2. The College has discretion to determine whether advisors may conduct direct examination.
 - iv. Questioning by Cross Examination:
 1. Definition: The process by which a party asks the opposing party, or witness questions, after direct examination.
 2. Requirements:
 - a. Only an Advisor may conduct cross examination.
 - b. Only relevant cross-examination and other questions may be asked of a party of witness.
 - c. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant
 3. Special Rule: Cross Examination is also subject to the Statement Rule. (see above)
 - v. **Rules of Decorum:** The college retains the discretion to control the live hearing through the live panel members who will ensure the environment is not abusive, intimidating, condescending, badgering, argumentative
 - vi. **Burden of Proof:** This is the standard by which the hearing panel must review the evidence and determine whether they believe the allegations to have been proven. The standard is the Preponderance of the evidence, *meaning the evidence must show that the allegations are more likely true than not.* Stated another way, this requires proof that is more than 50%, or 50% plus a feather.
 - vii. **Finding of Responsibility:** The presiding hearing panel member must ensure that a written determination is issued to the parties at the end of the hearing. A copy of such finding must be given to the Coordinator. The written determination becomes final only after the time period to file an appeal has expired. Or it a party does file an appeal, after the appeals decision has been sent to the parties.
 - viii. **Recording:** Recipients must create an audio or audiovisual recording, or transcript, or any live hearing and make it available to the parties for inspection and review.
- L. **Informal Resolution Process:** Informal means of resolution, such as mediation, may be used in lieu of the formal investigation and determination procedure. However, informal means may only be used with the complainant's voluntary cooperation and the involvement of the Title IX Coordinator. The complainant, however, will not be required to work out the problem directly with the respondent. Moreover, the complainant may terminate any informal means being utilized at any time and invoke the formal investigation procedure. In any event, informal means, even on a voluntary basis, will not be used to resolve complaints alleging any form of sexual violence.
 - M. **Appeal:** An appeal shall be filed in writing to the Title IX Coordinator in any of the formats a complaint is accepted within 10 days from the day of the finding. The time shall start, with the day following the finding, regardless of the day of the week and whether or not it is a business day, and expire 10 consecutive days thereafter. If the 10th day falls on a weekend, the appeal will be considered received when it is received. If

electronic this will be the date and time the email is received by the Coordinator as demonstrated in the email inbox. If there is demonstration that the conflict of interest or bias has materially affected the outcome, this is an automatic ground for appeal. It shall be the responsibility of the Title IX Coordinator to address known or reported conflicts of interest or bias.

N. **Grounds for Appeal:**

1. **Who & Why:** The complainant or respondent may appeal the determination of a complaint only on the following grounds:
 - i. There is a substantial likelihood that newly discovered information, not available at the time evidence was presented to the Investigating Officer, would result in a different decision;
 - ii. There was a procedural error significant enough to call the outcome into question; Procedural irregularity could include a recipient's failure to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence.
 - iii. Bias or prejudice on the part of the Investigating Officer; or Coordinator for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter/

2. **Method of Appeal**

Appeals must be filed with the President ("Appellate Officer") within ten (10) days of receipt of the written report determining the outcome of the complaint. The appeal must be in writing, and contain the following:

- Name of the complainant;
- Name of the respondent;
- A statement of the determination of the complaint, including corrective action if any;
- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it and
- Requested action, if any.
- A copy must be sent to the other party and the Coordinator.

The appellant may request a meeting with the Appellate Officer, but the decision to grant a meeting is within the Appellate Officer's discretion. However, if a meeting is granted, then the other party will be granted a similar opportunity.

3. **Resolution of the Appeal**

The Appellate Officer will not be any of the members of the hearing panel. will resolve the appeal within fifteen (15) days of receiving it and may take any and all actions that he/she determines to be in the interest of a fair and just decision. The decision of the Appellate Officer is final. The Appellate Officer shall issue a short and plain, written statement of the resolution of the appeal. The written statement shall be provided to the complainant, respondent, and the Title IX Coordinator within three (3) days of the resolution.

For the purpose of addressing formal complaints of sexual harassment, a College's grievance process must comply with the requirements of this section. Any provisions, rules, or practices other than those required by this section that a College adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in § 106.30, must apply equally to both parties. (1) Basic requirements for grievance process. A College's grievance process must— (i) Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent. An equitable

O. **Documentation:**

Throughout all stages of the investigation, resolution, and appeal, the Investigating Officer, the Title IX Coordinator, the Deputy Title IX Coordinator and the Appellate Officer as the case may be, are responsible for maintaining documentation of the investigation and appeal, including documentation of all proceedings conducted under these complaint resolution procedures, which may include written findings of fact, emails, transcripts, and audio recordings. Live hearings shall be documented by audio recording.

- P. **Right to Amend:** College reserves the right to amend this policy at any time
- Q. **Policy in Effect:** If there is a discrepancy or a change in policy, substantive issues of an allegation are subject to the policy in place at the time of the alleged incident. All cases, regardless of the policy in place at the time of the allegation, or a change in policy, are subject to the procedural process in the current policy.
- R. **Conflict of Interest & Bias:** Any individual designated by a College as a Title IX Coordinator, investigator, decision-maker, or any person designated by a College to facilitate an informal resolution process, [must] not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The College complies with requirement to provide its Coordinator, investigator, decisions makers and/or facilitators of informal processes with training on bias, conflict of interest and impartial service. The Title IX Coordinator may serve as the Title IX investigator although the College understands the investigative process must be without conflict of interest and/or bias and should affirm this is possible in each case before the Coordinator serves as an investigator. If it is believed a conflict of interest and/or bias exists the concerned party shall notify the -objective compare to perceived- what standard will be applied. If there is demonstration that the conflict of interest of bias has materially affected the outcome, this is an automatic ground for appeal. It shall be the responsibility of the Title IX Coordinator to address known or reported conflicts of interest or bias.

- 1. *Special Procedure Concerning Complaints Against the President, the Title IX Coordinator, the Deputy Title IX Coordinator, or Other Administrators Ranked Higher than the Title IX Coordinator*

If a complaint involves alleged conduct on the part of the College's President, the College's Board of Directors will designate the Investigating Officer. Based on the information gathered by the investigation, the Board of Directors will prepare and issue the written report determining the complaint. The determination of the Board of Directors is final and not subject to appeal.

If a complaint involves alleged conduct on the part of the Title IX Coordinator, Deputy Title IX Coordinator or any administrator ranked higher than the Title IX Coordinator, the College's President will designate the Investigating Officer. Based on the information gathered by the investigation, the President will prepare and issue the written report determining the complaint. The determination of the President is final and not subject to appeal.

S. **INTERSECTION WITH OTHER PROCEDURES**

These complaint resolution procedures are the exclusive means of resolving complaints alleging violations of the Sexual Misconduct Policy. To the extent there are any inconsistencies between these complaint resolution procedures and other College grievance, complaint, or discipline procedures, these complaint resolution procedures will control the resolution of complaints alleging violations of the Sexual Misconduct Policy

A complainant who makes a claim related to sexual violence, domestic violence, dating violence, or stalking will be given a copy of the document titled "Explanation of Rights and Options After Filing a Complaint of Sexual Violence, Domestic Violence, Dating Violence, or Stalking."