

Office of Title IX

207 Hayes Hall
Bowling Green, Ohio 43403
P: 419-372-8476
bgsu.edu/titleix
titleix@bgsu.edu

Title IX Sexual Harassment Grievance Procedures

BGSU has adopted these Title IX Sexual Harassment Grievance Procedures (“Grievance Procedures”) that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator. These procedures are authorized by the university’s Title IX Sexual Harassment Policy (3341-2-41) (the “Policy”). Unless noted otherwise, all terms have the same definition(s) as used in the Policy.

- (A) BGSU will use the processes described below to resolve allegations of Sexual Harassment, including Sexual Assault, Stalking, Dating Violence, and Domestic Violence as defined in the Policy. If the formal complaint alleges Sex Discrimination it will be resolved under the processes outlined in the university’s Non-Discrimination in Employment and Education Policy (3341-5-41), unless the complaint also alleges Sexual Harassment, Sexual Assault, Stalking, Dating Violence, and/or Domestic Violence, in which case the procedures outlined below will be utilized. Allegations of retaliation or violation of supportive measures may be resolved using these procedures or the Code of Student Conduct or other appropriate policy.
- (B) BGSU uses two processes to resolve formal complaints under the Policy. Formal resolution is by an investigation that will result in a hearing (unless the formal complaint is dismissed) and possible sanctions and may involve an appeal. Informal resolution is by mediated or restorative methods and may be offered by the university or requested by the complainant or respondent at any time after the formal complaint is filed, unless the formal complaint alleges Prohibited Conduct by an employee against a student, in which case, the formal resolution will be used.
- (C) BGSU will treat complainants and respondents equitably.
- (D) BGSU requires that the Title IX Coordinator, investigator, or decision maker not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
- (E) BGSU presumes that the respondent is not responsible for the alleged conduct until a determination is made at the conclusion of the Formal Resolution procedures.

- (F) BGSU will take reasonable steps to protect the privacy of the parties and witnesses during its Title IX Sexual Harassment Grievance Procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in these Title IX Sexual Harassment Grievance Procedures. The parties cannot engage in retaliation, including against the other party, peers, or witnesses.
- (G) BGSU will objectively evaluate all evidence that is relevant and not otherwise impermissible—including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness.
- (H) The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by BGSU to determine whether one or the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:
 - (1) Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
 - (2) A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless BGSU obtains that party's or witness's voluntary, written consent for use in its Grievance Procedures; and
 - (3) Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.
- (I) Formal Resolution

The following procedures are for all alleged violations of the Policy.

- (1) Reporting

- (a) The Policy outlines which individuals are mandatory reporters, and who must immediately report information about suspected Prohibited Conduct to the Title IX Coordinator.
 - (b) Beyond mandatory reporters, BGSU strongly encourages prompt reporting of conduct that may violate the Title IX Sexual Harassment Policy (3341-2-41). Anyone may make a report, including but not limited to, a student, an employee, a visitor, or a third party. A person may choose to make a report to the university, to law enforcement, or to both.
 - (c) An individual may make a report directly to the Title IX Coordinator in 207 Hayes Hall by email to titleix@bgsu.edu, by regular mail, by telephone at 419-372-8476, or in person at the Office of Title IX. An online report form may be found at <https://www.bgsu.edu/reportit>.
- (2) Intake and Formal Complaint
 - (a) Promptly after learning of a report of Prohibited Conduct, the Title IX Coordinator will contact the complainant confidentially to discuss the availability of supportive measures with or without the filing of a formal complaint. The Title IX Coordinator will consider the complainant's wishes with respect to supportive measures and will implement supportive measures in accord with the Title IX Sexual Harassment Policy.
 - (b) The Title IX Coordinator will also explain to the complainant the process for filing a formal complaint. If the conduct reported to the Title IX Coordinator does not appear to be Prohibited Conduct within the scope of this policy, any information gathered during the intake process may be reported to the Office of the Dean of Students or other appropriate entities and the complainant may be referred there without affecting the complainant's right to choose to file a formal complaint.
 - (c) A formal complaint is a document filed by a complainant alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. The formal complaint must state that, at the time of its filing, the complainant is participating in or attempting to participate in a BGSU education program or activity. The document may be a paper or electronic submission that contains the complainant's physical or digital signature or otherwise indicates that the complainant is the person filing the formal complaint. A complainant may file a formal complaint with the Title IX Coordinator in person, by mail, by e-mail to titleix@bgsu.edu, or through the BGSU online reporting form found on the BGSU website, or by visiting the Title IX web page.

- (d) A complainant may also choose not to file a formal complaint. If so, BGSU will provide supportive measures but not investigate unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.
 - (e) The Title IX Coordinator may determine that, despite a complainant's request, a formal complaint is required to ensure the complainant's health and safety or that of the university community. If the Title IX Coordinator makes and documents that determination, the Title IX Coordinator may then sign and file a formal complaint. Signing and filing a formal complaint does not make the Title IX Coordinator a complainant or a party during the resolution process: the Title IX Coordinator must continue to comply with requirements for Title IX personnel to be free from a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
 - (f) 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.
- (3) Supportive Measures
- (a) Supportive measures are 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 BGSU's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or BGSU's educational environment. BGSU provides supportive measures after the Office of the Dean of Students or Title IX Office receives notice of Prohibited Conduct but before any outcome has been decided. These measures typically are kept in place until the matter is resolved but may be extended when warranted.
 - (b) 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.

- (c) The Title IX Coordinator or designee is responsible for coordinating the effective implementation of supportive measures. A complainant or respondent may meet with the Title IX Coordinator to discuss the adequacy or need for supportive measures.
 - (d) BGSU will 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 BGSU to provide the supportive measures.
 - (e) Implementation of supportive measures does not mean or suggest that BGSU has made any decision about the merits of the report.
- (4) Emergency Removal and Administrative Leave

(a) Emergency Removal

BGSU may remove a respondent from any BGSU education program or activity on an emergency basis, provided that BGSU first undertakes 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 justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This section does not limit BGSU's ability to suspend a respondent under Ohio Rev. Code § 3345.22 or other applicable law.

(b) Administrative Leave

BGSU may place a non-student employee respondent on administrative leave during the pendency of the university resolution procedure described here and any subsequent processes.

(5) Notice of Allegations

After receiving a formal complaint, the Title IX Coordinator or designee will provide written notice to all known parties. The notice will include the following:

- (a) Information about the formal resolution process, the informal resolution process, and where to find the Policy and these Procedures.
- (b) Information about the allegations, including identities of the parties involved in the incident, if known; the conduct allegedly constituting Prohibited Conduct; and the date and location of the alleged incident, if known; this information must be provided in sufficient time to allow the respondent to prepare a response before any initial interview.

- (c) A statement that the respondent is presumed not responsible for the alleged Prohibited Conduct and that a determination regarding responsibility is made at the conclusion of the formal resolution process.
- (d) A statement that each party may have an advisor of their choice, who may be, but is not required to be, an attorney.
- (e) A statement that each party and their advisor may inspect and review any evidence obtained as part of the investigation that is directly related to the allegation raised in the formal complaint.
- (f) A statement advising the parties of any provision in this Policy, the Code of Student Conduct, or any other university policy, that prohibits knowingly making false statements or knowingly submitting false information during the formal resolution process.

(6) Revised Notice

During the course of the investigation, the university may decide to investigate allegations about the complainant or respondent that were not included in the notice originally provided. If that occurs, BGSU will provide notice of the additional allegations to the parties whose identities are known.

(7) Dismissal of Complaint

- (a) The Title IX Coordinator may dismiss the formal complaint, or any allegations in the formal complaint, if at any time during the investigation or hearing any of the following occur: the complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in it; the respondent ceases to be enrolled at or employed by the university; or specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.
- (b) If it is determined that the conduct alleged in the formal complaint would not constitute Prohibited Conduct even if proved, did not occur in a BGSU education program or activity, or did not occur against a person in the United States, then the university will dismiss the formal complaint with regard to that conduct for purpose of this Policy.
- (c) A dismissal from these Grievance Procedures will not preclude action under another applicable university policy or code of conduct. For example, if the alleged conduct by a student would constitute a violation of the Code of Student Conduct, the matter will be referred to the Office of the Dean of Students. If the alleged conduct by a university employee could violate any

other university policies, the matter will be referred to the other appropriate authority.

- (d) If the formal complaint or any allegations are being dismissed from these Grievance Procedures, but are being referred to another department for assessment, the written notice will simultaneously be sent to the parties advising them of this action and the reasons for it. This notice will also be provided to the appropriate department to institute their assessment process regarding the complaint or allegations.
- (e) If the formal complaint or any allegations are dismissed from these Grievance Procedures and are not being referred to another department for review, the Title IX Coordinator will promptly and simultaneously send written notice to the parties advising them of the dismissal and the reasons for it.

(8) Investigation

- (a) An investigation must give the complainant and respondent a full, equal, and fair opportunity to be heard and to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The investigation will be thorough and impartial.
- (b) The Title IX Coordinator will assign one or more investigators to each investigation. An investigator will be a trained BGSU staff member or an external investigator.
 - (i) Each person serving as an investigator must be impartial and have no conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.
 - (ii) An investigator may be assisted by one or more secondary investigators.
 - (iii) A complainant or respondent who is concerned that the designated investigator cannot conduct a fair and unbiased review may report those concerns to the Title IX Coordinator. The Title IX Coordinator will assess the circumstances and decide whether to designate a different investigator.
 - (iv) The investigator's role is to gather facts, not to function as an advocate for a complainant or respondent. But upon request, an investigator may identify campus support resources for the complainant and respondent.

- (c) BGSU will give the parties an equal opportunity to submit or identify relevant information and gather relevant information. That information may include documents, images, written or electronic communications or data, and medical records (with the person's consent). BGSU will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- (d) Before any interview or other meeting, BGSU will give written notice to the party whose participation is invited or expected. That notice will state the date, time, location, participants, and purpose of the interviews or other meetings, and will be given with sufficient time for the party to prepare to participate.
- (e) BGSU will provide the parties with a preliminary investigation report that will include a summary of their statements, witness statements, and all evidence collected and give them an opportunity to comment.
- (f) Although the parties may provide materials to the investigator, it is the university's duty to gather relevant information that is reasonably available, including witness information and interviews that are not identified by the parties.
- (g) BGSU presumes that a report of Prohibited Conduct is made in good faith. A finding that the conduct does not violate this Policy, or that there is not enough evidence to conclude that an incident occurred as reported, does not mean that a report was made in bad faith.
- (h) **Presumption of Non-Responsibility and Standard of Proof**
 - (i) Each investigation and hearing is a neutral, fact-gathering process in which the respondent is presumed not to be responsible. The presumption is overcome only if, after a hearing as provided, the appropriate decision maker finds that the respondent violated the Policy by a preponderance of the evidence.
 - (ii) For purposes of the Policy and these Procedures, a preponderance of the evidence means that, based on all the reliable, relevant evidence and reasonable inferences from that evidence, the respondent is more likely than not in violation of the Policy. This standard is to be used for all formal complaints of sexual harassment (including where employees are respondents).
- (i) The parties and any witnesses may choose whether or not to participate in the investigation. If a complainant or respondent declines to participate, the university may continue to investigate the reported conduct and, to the

extent consistent with due process, issue findings based on the evidence that is available.

- (j) BGSU expects the complainant, respondent, witnesses, and all others to provide truthful information in any proceedings under the Policy and these Procedures. Knowingly providing a materially false statement or other information may result in disciplinary action under the Code of Student Conduct or other applicable policies.
- (k) The respondent may decide to accept responsibility for the Prohibited Conduct at any time. If so, then with the voluntary agreement of the complainant, the Title IX Coordinator will determine the next steps in order to reach a final determination.
- (l) Advisors
 - (i) The complainant and respondent may each have one advisor of their choice throughout the formal resolution process. The advisor may be, but is not required to be, an attorney. The university will not be responsible for professional fees of any advisor.
 - (ii) The role of the advisor is narrow in scope: the advisor may attend any interview or meeting connected with the formal resolution process to provide support and guidance, but the advisor may not actively participate in interviews or meetings and may not serve as a proxy for the parties. The advisor may attend the hearing and may directly ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. An advisor may not be a witness or have any other role in the process except as stated in the Policy and these Procedures.
 - (iii) An investigative interview or meeting or hearing will not be postponed to accommodate the schedule of a party's chosen advisor and may proceed without the party's advisor. If a party's chosen advisor is not present at the hearing, BGSU will choose an advisor for that party (without fee or charge) to conduct cross-examination on behalf of that party.
- (m) Relevant Information
 - (i) The investigator is responsible for gathering relevant information to the extent reasonably possible. That information may include documents, images, written or electronic communications or data, and medical records (with the person's consent).

- (ii) The complainant and respondent, however, will be asked to identify witnesses and provide other relevant information as soon as possible to aid prompt investigation and resolution.
 - (iii) The investigator will review all information identified or provided by the parties. For purposes of the preliminary and final reports, the investigator will determine the relevance and probative value of all information developed or received during the investigation. The investigator will provide all relevant information to the parties for their review and comment.
 - (iv) The university cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the university obtains that party's voluntary, written consent to do so for the Formal Resolution procedures. In those instances, the investigator will summarize relevant information from those records in the preliminary report. Each party will be allowed to review the preliminary report and the relevant portions of the records.
 - (v) When specialized expertise is needed, the investigator may seek authorization from the Title IX Coordinator to consult experts who have no connection to the reported incident.
- (n) The Respondent's Prior or Subsequent Conduct
 - (i) A respondent's prior or subsequent conduct will not be used to prove that the respondent had the character to engage in the alleged conduct.
 - (ii) Prior or subsequent conduct may be considered for other purposes, such as determining preparation or plan, intent, knowledge, or the respondent's motive for taking an action. To that extent, evidence of a pattern of substantially similar Prohibited Conduct by the respondent (regardless of any other finding of a Policy violation) may be deemed relevant to the matter under investigation.
 - (iii) If the investigator determines that a respondent's prior or subsequent conduct is relevant, both parties will be informed in writing.
- (o) Prior Sexual Contact between the Parties

- (i) Prior sexual contact between a complainant and a respondent is generally not relevant. It will be considered only in limited circumstances. For example, if the question of whether consent was given through mutually understandable actions, information about prior sexual contact may assist the investigator and decision makers to better understand the manner and nature of the parties' sexual communication. To that extent, the information may be relevant in determining whether consent was sought and given during the investigation.
 - (ii) If the investigator determines that the parties' prior sexual contact is relevant, both parties will be informed in writing.
- (p) Witnesses
 - (i) The investigator will provide each identified witness the opportunity to discuss the investigation process and participate in an interview. After the interview, the investigator will provide each witness a summary of their statement from the preliminary investigation report for their review and comment.
 - (ii) The investigator will provide a written summary of each witness's interview to the complainant and the respondent for their review and comment. The summary will identify the witness by name and by their relationship to each other person and the university. This information will be provided in the preliminary investigation report.
 - (iii) The investigator may also identify, and interview witnesses other than those identified by the parties.
- (q) Coordination with Law Enforcement
 - (i) If the university learns of a concurrent criminal investigation, the Title IX Coordinator or designee will inform the criminal investigator that a university investigation is in progress; inquire into the status of the criminal investigation and determine whether law enforcement officials will make any evidence available to the university.
 - (ii) Upon request, BGSU may agree to defer part or all of its investigation until law enforcement evidence gathering is complete.
 - (iii) To the extent consistent with the law enforcement request, the investigator will communicate with the parties about resources and support, procedural options and anticipated timing, and any interim

measures deemed necessary for the safety and well-being of the affected individuals.

- (iv) Because the standards for a criminal proceeding differ from the standards for a violation of the Policy, BGSU will not base its decision solely on law enforcement reports or actions. BGSU will take immediate and appropriate action in response to a report of Prohibited Conduct, even if a law enforcement action is pending. If BGSU finds that Prohibited Conduct has occurred, it will take appropriate action even if a law enforcement action is pending or dismissed.

(r) Time for Completion of Investigation

- (i) The period from the start of an investigation, which begins with the investigator's notice to the respondent, to a final investigation report typically should not exceed ninety business days.
- (ii) In some situations, however, this target may not be achievable. For example, additional time may be needed to ensure the integrity and completeness of the investigation (particularly in complex cases involving multiple witnesses or large volumes of information); the absence of a party or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or for other well-supported reasons.
- (iii) If the university determines that the ninety-day period must be exceeded, both parties will be informed in writing.

(s) Preliminary Report

- (i) After interviewing the complainant and the respondent, completing witness interviews, and gathering relevant information, the investigator will prepare a preliminary report.
- (ii) When available, the preliminary report will include a summary of the complainant's statement, a summary of the respondent's statement, and a summary of the statements from each available witness, and a copy of the other relevant information obtained during the investigation and/or a written summary of it. The preliminary report will not contain any findings.
- (iii) The investigator will provide the preliminary report to the complainant, the respondent, and their respective advisors (if any) for review and comment. In addition, the investigator will provide the parties and their advisors any evidence obtained as part of the

investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the university does not intend to rely on in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the final investigation report.

- (iv) The preliminary report and evidence will be provided electronically or in hard copy. Each party will have ten business days from the date the preliminary report is shared to submit a written response, which the investigator will consider before completing the final investigation report.
- (v) If a party identifies new relevant information, the investigator will address any relevant issues identified and pursue additional investigative steps as needed. The investigator will include those matters in a revised preliminary report and give the parties two business days to review and comment on it before writing the final report.

(9) Final Investigation Report

- (a) After all review and comment periods have ended, the investigator will write a final investigation report. The final investigation report will fairly summarize the relevant evidence and include the investigator's findings and a summary of the investigator's rationale for those findings.
- (b) The investigator will submit the final investigation report to the Title IX Coordinator for review. The final investigation report with other relevant materials will then move forward for adjudication or dismissal.
- (c) The Title IX Coordinator or designee will simultaneously provide a copy of the final investigation report to the complainant and respondent and their respective advisors (if any) at least ten business days before a scheduled hearing for their review. The notice will include a scheduled meeting to prepare each party with information about next steps. Information about appeals will be provided at designated points in the process.

(10) Live Hearing

- (a) In the absence of a dismissal, an informal resolution, or a respondent accepting responsibility, a live hearing will be conducted to determine responsibility.
- (b) Hearings are held before a decision maker.

(c) Prehearing Procedures

- (i) If a decision maker has direct, firsthand knowledge of the case, is personally acquainted with the complainant or respondent, has any other conflict or for other good cause as determined by the Title IX Coordinator, that individual will be recused and replaced.
- (ii) The decision maker will set a hearing date, which cannot occur sooner than ten business days after the final investigation report was sent to each party and advisor.
- (iii) At least five business days before the hearing date, the decision maker will give written notice to the complainant and the respondent and their respective advisors (if any). The written notice will specify the hearing date and the name and job title of the decision maker. It will also specify a date by which the complainant and respondent must each submit a list of witnesses, provide copies of any documents the party intends to present (including any written impact or mitigation statements), identify any advisor who will attend the hearing, and submit a written explanation seeking to disqualify the decision maker for a bias or conflict of interest.
- (iv) The investigator is also permitted to submit a list of witnesses that were interviewed during the investigation and that they want present at the hearing.
- (v) If the university chooses to have legal counsel present the case to the decision maker, the written notice will include that information. If so, the respondent may also present their case through legal counsel.
- (vi) At least three business days before the hearing, the decision maker will provide a hearing packet to the investigator, the complainant, and the respondent and their advisors that includes a list of all witnesses and copies of all documents.

(d) Hearing Procedures

- (i) The live hearing will be conducted with any or all parties, witnesses, and other participants appearing virtually, with technology enabling participants simultaneously to see and hear each other.
- (ii) The hearing will be audio-recorded. The recording is university property and shall be an education record of a student complainant

and a student respondent. The university will make the recording available to the parties for inspection and review upon request.

- (iii) The decision maker will exercise control over the proceedings. The decision maker is also permitted to ask questions of the parties or witnesses during the hearing.
- (iv) Formal rules of evidence will not apply.
- (v) The decision maker may only consider relevant evidence. Prior conduct history of any party or witness may be considered if relevant.
- (vi) Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- (vii) During the hearing, each party may refer to any relevant evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint (including the evidence upon which the university does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained for a party or other source), including purposes of cross-examination.
- (viii) The decision maker will determine whether evidence is relevant.
- (ix) The decision maker and the investigator may ask questions directly to each witness. Each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. This cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. If a party does not have an advisor present at the live hearing, the university will provide an advisor of the university's choice to conduct cross-examination on behalf of that party.
- (x) The decision maker may disallow any question that seeks information that is not relevant. Before a complainant, respondent, or witness answers a cross-examination or other question, the

decision maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

- (xi) Each witness will be excluded from the hearing while another witness speaks before the decision maker.
- (xii) No witness may be compelled to answer a question. In general, if a party or witness does not submit to cross-examination at the live hearing, the decision maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The only exception to this rule is if the respondent admitted to engaging in the Prohibited Conduct. The respondent may choose to speak on their own behalf or remain silent. The decision maker 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.
- (xiii) The decision maker will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- (xiv) The decision maker will consider the Prohibited Conduct presented in the final investigation report. While presuming that the respondent is not responsible, the decision maker will deliberate on the evidence presented at the hearing. The decision maker will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and will not base its credibility determinations on a person's status as a complainant, respondent, or witness.
- (xv) Written impact or mitigation statements, if any, will be requested during hearing preparation but not considered until after a responsibility determination is made.
- (xvi) If the decision maker determines that a preponderance of the evidence compels the conclusion that the respondent engaged in an act of Prohibited Conduct, it will find the respondent to be responsible.

(11) Hearing Outcome and Sanctions

- (a) Student Respondent Outcome

- (i) If the decision maker finds a student respondent to be responsible for Prohibited Conduct (or other offenses), the decision maker will review any written impact or mitigation statements and determine sanctions. The purposes of sanctioning are to end Prohibited Conduct (or other offenses); restore or preserve equal access to the university's education program or activity; and promote the goals and objectives of the Policy in a manner that supports the university's educational mission and its duty under Title IX. Sanctions may also be designed to promote safety, deter similar behavior, and promote university values.
 - (ii) Once the decision maker has made a finding as to each instance of Prohibited Conduct (or other offense) under consideration, and determined sanctions for a student respondent, it will set forth its outcome together with an explanation of the reasoning in a written determination and will submit it simultaneously to the parties within five business days of the conclusion of the hearing.
- (b) Employee Respondent Outcome
 - (i) If the decision maker finds an employee respondent to be responsible for Prohibited Conduct, the decision maker will review any written impact or mitigation statements and determine sanctions. The purposes of sanctioning are to end Prohibited Conduct (or other offenses); restore or preserve equal access to the university's education program or activity; and promote the goals and objectives of the Policy in a manner that supports the university's educational mission and its duty under Title IX. Sanctions may be designed to promote safety, deter similar behavior, and promote university values.
 - (ii) Once the decision maker has made a finding as to each instance of Prohibited Conduct (or other offense) under consideration for an employee respondent, it will set forth its outcome together with an explanation of the decision maker's reasoning in a written determination and will submit it simultaneously to the parties within five business days of the conclusion of the hearing.
 - (iii) The decision maker will also provide a copy of the written determination to the employee's supervisor and the Office of Human Resources (for classified and administrative staff employees) or the Office of the Provost (for members of the faculty). Any further proceedings will take place in accordance with university policies and procedures and any applicable collective bargaining agreement, and any disciplinary sanction will be imposed by the appropriate decisional authority.

- (c) The written determination of the outcome from the decision maker will include the following:
 - (i) Identification of the allegations potentially constituting Prohibited Conduct (or other offense);
 - (ii) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - (iii) Findings of fact supporting the determination;
 - (iv) Conclusions regarding the application of the Policy to the facts and a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
 - (v) Any disciplinary sanctions the decision maker imposes on the student respondent, and whether remedies designed to restore or preserve equal access to a BGSU education program or activity will be provided by the university to the complainant; and
 - (vi) The procedures and permissible bases for the complainant and respondent to appeal.
- (d) The decision maker will simultaneously provide a copy of the written determination to the complainant and respondent.
- (e) Potential Sanctions for Student Respondents
 - (i) Expulsion: Permanent separation of the student from the university and a permanent notation is placed on the student's transcript. The student is permanently prohibited from being present on all university owned or controlled property.
 - (ii) Suspension: Separation of the student from the university for a defined period of time, after which the student is eligible to return, and a permanent notation is placed on the student's transcript. While on suspension, the student is prohibited from being present on all university owned or controlled property. Conditions for readmission may be specified.
 - (iii) Withholding or Revoking a Degree: The university may withhold conferring a degree or revoke a conferred degree due to a finding of

Prohibited Conduct when the student would have been suspended or expelled for the finding had the Title IX process been completed prior to the awarding of the degree.

- (iv) University Conduct Probation: University conduct probation is for a designated period of time and includes the probability of more severe sanctions, including suspension or expulsion, if the student, recognized student organization, or student group is found in violation of any university policies while on university conduct probation.
 - (v) No Contact Directive: Restriction from entering specific campus areas and/or from all forms of contact with designated persons.
 - (vi) Removal, suspension, or transfer from designated university courses or activities for a specified period.
 - (vii) Reasonable restitution to pay for or replace lost or damaged property.
 - (viii) University Housing Change: Placement in another room or housing unit or removal from university housing, which may be temporary or permanent.
 - (ix) Educational Sanctions: Work assignments, service to the university, classes, workshops, papers, or other related educational assignments.
 - (x) Employment Restriction: The prohibition of or limitation on university employment.
 - (xi) Additional Sanctions: Additional sanctions as defined in the Code of Student Conduct § R may be imposed.
- (f) Potential Sanctions for Employee Respondents
- (i) Warning – Verbal or Written
 - (ii) Performance Improvement Plan
 - (iii) Enhanced supervision, observation, or review
 - (iv) Required training or education

- (v) Probation
- (vi) Denial of pay or pay grade increase
- (vii) Loss of job responsibilities
- (viii) Demotion
- (ix) Transfer or reassignment
- (x) Delay of progress toward tenure
- (xi) Restriction of stipends or professional development resources
- (xii) Suspension with pay
- (xiii) Suspension without pay
- (xiv) Termination
- (xv) Other actions as deemed appropriate

(12) Appeals

(a) Basis for an Appeal

The complainant and respondent each may appeal from a determination regarding responsibility and from the dismissal of a formal complaint or any allegations in it, on the following bases:

- (i) Procedural irregularity that affected the outcome of the matter.
- (ii) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- (iii) The Title IX Coordinator, investigator(s), or decision maker had a conflict of interest.
- (iv) Bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(b) Procedure on Appeal

(i) Appeal of a Dismissal

- (a) Either party may appeal the dismissal of the formal complaint or any of its allegations, by providing a written notice of appeal to the Title IX Coordinator within five business days of the date the written notice of the dismissal is provided. The Title IX Coordinator will appoint an appellate officer to review and consider the appeal.
- (b) The notice of appeal shall consist of a plain, concise, and complete written statement outlining the basis for appeal and all relevant information supporting the appeal. Page limits may be imposed for all appeal statements.
- (c) The appellate officer will simultaneously provide the notice of appeal to the other party, who will have three business days to respond to that officer in writing. All appeal documents from each party will be considered together in the appeal. If an appeal contains new evidence that was not available at the time of the hearing, the new evidence will be provided to the other party along with notice of appeal.
- (d) The appellate officer will conduct the review of the appeal of a dismissal.
- (e) The scope of the review will be limited to the grounds for appeal that the appealing party identified in their appeal statement.
- (f) The appellate officer will consider only the following documents: the Title IX Coordinator's written notice to the parties advising them of the dismissal and the reasons for it and the parties' written appeal submissions.
- (g) The appellate officer may affirm the dismissal or reject it and send the matter back for further action. The decision of the appellate officer will be written and will describe the result of the appeal and the rationale for the result. The decision is final and unreviewable.

(ii) Appeal of the Hearing Determination

- (a) When a hearing determination has been made against a respondent, both parties may appeal the decision maker's written determination by providing written notice to the Title IX Coordinator. within five business days of the date the

decision maker's written determination is provided to the parties. The Title IX Coordinator will appoint an appellate officer to review and consider the appeal.

- (b) A notice of appeal shall consist of a plain, concise, and complete statement outlining the basis for appeal and all relevant information supporting the appeal.
- (c) The appellate officer will simultaneously provide notice of appeal to the other party, who will have three business days to respond to that officer in writing. All appeal documents from each party will be considered together in the appeal. If an appeal contains new evidence that was not available at the time of the hearing, the new evidence will be provided to the other party along with notice of appeal.
- (d) The appellate officer will seek to complete the review within ten business days after receiving all appeal documents.
- (e) The appellate officer will conduct the review of the appeal of the single-decision maker's written determination.
- (f) The scope of the review will be limited to the grounds for appeal that the appealing party identified in their appeal statement. The appeal is not a rehearing.
- (g) The appellate officer will consider only the following documents: the decision maker's written determination, the recording of the hearing, the parties' written appeal submissions, the sanctioning determination, and any impact or mitigation statements.
- (h) In deciding each issue on appeal, the appellate officer may do any of the following:
 - (i) Affirm the decision that was appealed;
 - (ii) Reject the decision that was appealed and send the matter back to the decision maker for further action; or
 - (iii) Modify the sanction.

In an appeal of a notice of sanctions, if the sanctions are clearly inappropriate or disproportionate, the appellate officer will impose appropriate sanctions

and provide a written explanation of the reasons for the action.

- (i) The appellate officer will seek to complete the review within ten business days after receiving all the appeal documents.
- (j) The decision of the appellate officer will be written and will describe the result of the appeal and the rationale for the result. The decision is final and unreviewable.
- (k) The appellate officer will simultaneously provide the decision to the parties.

(J) Informal Resolution

- (1) At any time prior to determining whether sex discrimination occurred, the Title IX Coordinator may offer to a complainant or student respondent an informal resolution process. BGSU will not offer informal resolution to resolve a complaint when such a process would conflict with Federal, State, or local law.
- (2) Informal resolution is entirely voluntary, and no party is required to participate in an informal resolution.
- (3) In providing an informal resolution process, the Title IX Coordinator will take other appropriate prompt and effective steps to ensure sexual harassment does not continue or recur within the recipient's education program or activity.
- (4) The Title IX Coordinator has discretion to determine whether it is appropriate to offer an informal resolution process and may decline to offer informal resolution despite the wishes of one or more parties.
- (5) Parties must voluntarily consent to participating in an informal resolution process. The Title IX Coordinator may not require or pressure individuals to participate.
- (6) A complainant or respondent may request an Informal Resolution process by notifying the Title IX Coordinator and by completing the Informal Resolution signature form.
- (7) Before the initiation of this Informal Resolution Process, BGSU will explain in writing to the parties:
 - (a) The allegations;
 - (b) The requirements of this Informal Resolution Process;

- (c) That any party has the right to withdraw from this Informal Resolution Process and initiate or resume the Formal Grievance Procedures at any time before agreeing to a resolution;
 - (d) That if the parties agree to a resolution at the end of this Informal Resolution Process, they cannot initiate or resume the Formal Grievance Procedures arising from the same allegations;
 - (e) The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on parties; and
 - (f) What information BGSU will maintain and whether and how BGSU could disclose such information for use in the Formal Grievance procedures if such procedures are initiated or resumed.
- (8) Elements of the Informal Resolution Process
- (a) The Informal Resolution Facilitator will hold an initial process meeting with each party to discuss the Informal Resolution process and to communicate the parties their rights under the applicable University policies.
 - (b) The Informal Resolution Facilitator will ask the parties to submit written requests that provide details regarding the remedies that they are seeking. The Informal Resolution Facilitator may meet again with the complainant and respondent to discuss the written requests.
 - (c) The Informal Resolution Facilitator will share the written requests with the other party and will meet separately with both parties to identify and facilitate areas of agreement.
 - (d) Any agreements reached as part of the Informal Resolution process must be approved by the Title IX Coordinator. If the Title IX Coordinator determines at any time prior to the signing of the Informal Resolution agreement that the Informal Resolution process is no longer appropriate, the Title IX Coordinator may terminate the process and refer the matter back to a Formal Resolution Process.
 - (e) Upon signing the Informal Resolution agreement, the complainant and respondent are bound by its terms and cannot elect for a formal resolution process under applicable University policies based on the conduct alleged in the underlying complaint. Failure to comply with the signed agreement may result in disciplinary action for either party.
 - (f) If the complainant or respondent's circumstances change significantly, they may request a supplemental agreement; the Title IX Coordinator will

determine whether it is appropriate to proceed. For example, if there are changes to a complainant or respondent's academic program that may conflict with a term of an agreement, the party can raise the concern to the Title IX Coordinator for their assessment as to whether a supplemental agreement may be appropriate.

- (g) There will be no disciplinary action, including but not limited to, suspension or expulsion, taken against a respondent under the Informal Resolution Process, and the resolution will not appear on the respondent's transcript, disciplinary, or employment record at the university.

(9) Remedies of the Informal Resolution Process

Depending on the nature and circumstances of the particular situation, the following, though not an exhaustive list, may be outcomes of an Informal Resolution agreement:

- (a) Voluntary restrictions from participation in particular registered student organizations or campus events;
- (b) Changes to on-campus housing, subject to availability;
- (c) Changes to patronage of specific dining facilities;
- (d) Participation in educational offerings on topics, including, but not limited to: consent and communication, the use of alcohol or other drugs, healthy interpersonal relationships, stress management, and wellbeing;
- (e) Provision to the respondent to read an "impact statement" written by the complainant (describing the impact(s) that the respondent's alleged conduct had on the complainant);
- (f) A no contact directive;
- (g) Other measures deemed appropriate by the Title IX Coordinator.

(10) Outcomes for Informal Resolution

- (a) Agreement reached. Once both parties and the Title IX Coordinator sign an Informal Resolution agreement, the agreement is final, the parties are bound by its terms, and the allegations addressed by the agreement are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the University, except as otherwise provided in the agreement itself, absent a showing that a party induced the agreement

by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to the University.

- (b) No Agreement Reached. The Informal Resolution process may be discontinued at any time by either the Title IX Coordinator (or designee), the complainant, or the respondent. If the Informal Resolution process is discontinued for any reason or if the parties fail to reach a mutually agreeable outcome for the alleged conduct, the complainant may request to re-engage an investigation and formal grievance procedures under the University's Title IX Sexual Discrimination Policy. If an Informal Resolution process is terminated, the Informal Resolution process will no longer be made available as a remedy to resolve the complaint. The University shall not use party admissions or other information learned during the Informal Resolution Process in any pending or subsequent formal process relating to the same allegations.

(11) Timeline for Informal Resolution

BGSU will attempt to complete the Informal Resolution Process within 30 calendar days of receiving the written request. However, BGSU at its discretion, may extend this timeframe for good cause. Agreements reached in the Informal Resolution Process are not subject to a request for review.