

Effective Date: August 14, 2020

Revised: August 1, 2021

## PROCEDURE

### ACADEMICS, SAFETY, STUDENT LIFE

# Procedures for the Resolution of Non-Title IX Sexual Misconduct Complaints Against Students

## RESPONSIBLE OFFICE

Equal Opportunity Office

*Note: These **Procedures for the Resolution of Non-Title IX Sexual Misconduct Complaints Against Students** are effective on August 1, 2021. The new [Sexual Misconduct Policy](#) and its three corresponding Complaint Procedures (including this Procedure) apply to conduct that occurs on or after August 14, 2020. Conduct occurring on or before August 13, 2020 will be handled under the [University's Sexual Misconduct/Title IX Policy](#) and the two corresponding Complaint Procedures. The procedures to address conduct occurring on or after August 14, 2020 are currently being revised to comply with the Massachusetts [Campus Sexual Violence Act](#). These procedures will include the following requirements and rights for both Respondents and Complainants:*

- The parties will receive copies of the Sexual Misconduct Policy and Procedures applicable to their case, which will include information about available supportive measures and the process for submission and consideration of evidence that may be used during a hearing or disciplinary proceeding.*
- The parties may be accompanied by and may consult with an advisor or support person of their choice throughout the proceedings, although the availability of an advisor may not*

*significantly delay any meeting. The University will have reasonable measures to provide for the involvement of the advisor, which will be applied equally.*

- *The Respondent will receive notice of an allegation of sexual misconduct that will include the date, time, and location, if known of the alleged incident, including a specific statement of policies allegedly violated.*
- *The complaint resolution process, including the investigation and any hearing and disciplinary proceedings, will be impartial and conducted by an individual who does not have a conflict of interest or bias and who will have not less than annual training on the University's Sexual Misconduct Policy and Procedures.*
- *The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility has been made by a preponderance of the evidence at the conclusion of the applicable complaint resolution process.*
- *The parties will have equal opportunities to inspect and review evidence obtained in an investigation that is directly related to the allegations.*
- *The parties have an equal opportunity to present evidence and witnesses on their behalf during a hearing or proceeding, and each party will be provided with timely and equal access to relevant evidence that will be used during any disciplinary process conducted under the Sexual Misconduct Policy and Procedures.*
- *There may be restrictions on evidence considered by the fact finder, including evidence regarding the prior sexual history or character evidence.*
- *The parties may not personally and directly question each other during an investigation or any complaint resolution process conducted under the Sexual Misconduct Policy and Procedures.*
- *The parties will receive written notice of the results of a hearing or disciplinary proceeding not later than 7 business days after a final determination of a complaint (not including time for an appeal) unless good cause for additional time is shown, and the parties will be informed of any appeals process.*
- *If the opportunity is made available to appeal a determination based on a perceived procedural error, previously unavailable evidence that could significantly impact the outcome of the case, or a sanction that is disproportionate to the findings, both parties will be permitted to appeal decisions regarding responsibility or sanctions.*
- *The University will not disclose the identity of the parties, except as necessary to carry out disciplinary proceedings under its Sexual Misconduct Policy and Procedures or as permitted under state or federal law.*

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## I. Applicability and Scope

These Procedures will be used to investigate and resolve complaints of sexual misconduct against Boston University students (undergraduate, graduate, full-time, and part-time) if the alleged conduct does not fall within the scope of Title IX Sexual Misconduct under the University's [Sexual Misconduct Policy](#).

Complaints of Title IX Sexual Misconduct against Boston University students, faculty, staff, affiliates, and non-affiliates will be investigated and resolved using the Title IX Sexual Misconduct Procedures, if the alleged conduct falls within the scope of Title IX Sexual Misconduct under the University's [Sexual Misconduct Policy](#).

Complaints of sexual misconduct against Boston University faculty, staff, affiliates and non-affiliates that do not fall within the scope of Title IX Sexual Misconduct under the University's [Sexual Misconduct Policy](#) will be investigated and resolved using the [Procedures for the Resolution of Non-Title IX Sexual Misconduct Complaints against Faculty, Staff, Affiliates, and Non-Affiliates](#).

## II. RIGHTS OF THE COMPLAINANT AND RESPONDENT

Boston University's Procedures for the investigation, adjudication, and resolution of sexual misconduct complaints brought against students are designed to be accessible, prompt, equitable, and impartial. Throughout this process, both the complainant and respondent have the following rights:

- To be treated with respect, dignity, and sensitivity. To receive appropriate support from the University.
- Privacy to the extent possible, consistent with applicable law and University policy.
- Information about the University's [Sexual Misconduct Policy](#).
- The presence of an Adviser throughout the process.
- To participate or to decline to participate in the investigation or complaint resolution process. However, a decision not to participate in the process either in whole or in part may not prevent the University from proceeding with the information available.
- A prompt and thorough investigation of the allegations.
- Adequate time to review documents in the Office of Judicial Affairs following the investigation.
- To appeal the decision made or any sanctions imposed by the Dean of Students to a

Hearing Panel of the University Board on Student Conduct.

- To challenge a Hearing Panel member(s) for a possible conflict of interest.
- To refrain from making self-incriminating statements.
- To appeal the decision by made the Hearing Panel of the University Board on Student Conduct to the University Provost.
- Notification, in writing, of the case resolution, including the outcome of any appeals, and the final determination.
- For the complainant, to report the incident to law enforcement (including the Boston University Police or with the police department in the jurisdiction in which the sexual misconduct occurred) at any time.

Boston University will disclose information about its investigation and resolution of sexual misconduct complaints only to those who need to know the information in order to carry out their duties and responsibilities. It will inform all University personnel participating in an investigation, proceeding, or hearing that they are expected to maintain the privacy of the process. This does not prohibit either a complainant or respondent from obtaining the assistance of family members, counselors, therapists, clergy, doctors, attorneys, or other resources.

### **III. PRELIMINARY MATTERS**

#### **A. Timing of Complaints.**

If the respondent is a current Boston University student (undergraduate or graduate, full-time or part-time), there is no time limit for filing a complaint to initiate these Procedures. However, students are strongly encouraged to report sexual misconduct in a timely manner to maximize the University's ability to gather evidence, and conduct a thorough, impartial, and reliable investigation. If the respondent is a second semester senior (or in the final semester of a graduate program), the University may withhold that student's Boston University degree pending conclusion of the complaint resolution procedures.

#### **B. Effect of Criminal Proceedings.**

The filing and processing of a complaint of sexual misconduct is separate from and

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independent of any criminal investigation or proceeding. Boston University will not wait for the conclusion of any criminal investigation or proceedings to begin its own investigation although the University may delay temporarily the fact-finding component of the investigation while the police are gathering evidence. Neither law enforcement's determination as to whether or not to prosecute a respondent nor the outcome of any criminal prosecution is determinative of whether sexual misconduct occurred under the University's [Sexual Misconduct Policy](#).

## **C. Effect of a Pending Complaint on the Respondent.**

If the respondent is a current BU student, no notation will be placed on the respondent's transcript of a complaint or pending disciplinary action prior to the conclusion of the complaint resolution process. If the respondent withdraws from Boston University while a sexual misconduct complaint is pending, the respondent's transcript will reflect a withdrawal and a notation of pending disciplinary action subject to modification to reflect the outcome of the disciplinary action.

## **D. Amnesty.**

A student who files a sexual misconduct complaint, or who serves as a third party witness during the complaint resolution process, will not be subject to disciplinary action by the University for his or her own personal consumption of alcohol or other drugs at or near the time of the alleged sexual misconduct, provided that such violations did not and do not place the health or safety of any other person at risk. However, the use of alcohol or drugs does not excuse sexual misconduct and a person who has been incapacitated through the use of alcohol and drugs (or by any other means) cannot give effective consent to sexual activity. The University may initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

## **E. Adviser.**

The complainant and respondent may each choose and be accompanied to any meeting or hearing related to these Procedures by an Adviser, who may provide support during such meeting or hearing. During meetings and interviews, the Adviser may quietly confer or pass notes with the party in a non-disruptive manner. The Adviser may not intervene in a meeting or interview, or address the Investigator. Consistent with the University's obligation to promptly

resolve sexual misconduct complaints, the University reserves the right to proceed with any meeting or interview, regardless of the availability of the party's selected Adviser.

## **F. Declining to Participate.**

A complainant and/or respondent may decline to participate in the investigative or complaint resolution process. The University may continue the process without the complainant's and/or respondent's participation. In most cases, a refusal to participate in the investigative process will preclude a complainant or respondent from appealing any determination. The Dean of Students will make this determination.

## **G. Time Frame for Complaint Resolution.**

The University will seek to resolve every report of sexual misconduct within 90 calendar days after the filing of a complaint, including appeals. Time frames may vary depending on the complexity of a case, the availability of witnesses, and at certain times of the academic year (for example, during breaks, study periods or final exams). The University may extend any time frame for good cause, with a written explanation to the complainant and respondent.

## **H. Prohibition on Retaliation.**

It is illegal and a violation of the University's [Sexual Misconduct Policy](#) to retaliate against a person for filing a complaint of sexual misconduct or for cooperating in a sexual misconduct investigation. Any person who retaliates against a person for reporting sexual misconduct, filing a sexual misconduct complaint, or participating in a sexual misconduct investigation is subject to disciplinary action up to and including expulsion from the University.

## **I. Notice.**

The Office of Judicial Affairs ("OJA") will give the complainant and respondent, respectively, a written explanation of their rights and options, and any available accommodations, as soon as possible after a complaint is reported. OJA and the Dean of Students Office will also ensure that both the complainant and respondent are updated throughout the investigative process, including with timely notice of meetings where either the complainant's or the respondent's

presence may be required.

## IV. INITIATING A COMPLAINT

### A. Individual.

Any person who believes he or she has experienced sexual misconduct as defined in the University's [Sexual Misconduct Policy](#), may file a complaint against the Boston University student responsible for that conduct (the person filing a complaint is referred to as a "complainant"). A person who has information that sexual misconduct may have been committed by a University student or a participant in a University Program may also file a complaint (the person with such information is referred to as a "reporter"). A complainant or reporter may include any member of the Boston University community, including students, faculty, administrators, and staff members, visitors, applicants for employment or admission, participants in a BU program or activity, or a non-affiliate with knowledge of an incident of sexual misconduct.

### B. Administrative.

In extraordinary cases, such as situations that threaten the safety of members of the BU community, the University may initiate a complaint through the Dean of Students Office against a Boston University student. As set forth in the [Sexual Misconduct Policy](#), reports of sexual misconduct undergo a Title IX Review to determine the appropriate response and make an initial determination as to whether the conduct alleged in the complaint may violate Title IX.

## V. HOW TO FILE A COMPLAINT

A complainant or reporter may submit a paper (hard copy) or electronic [Incident Report Form](#) to the Title IX Coordinator, the Dean of Students Office, the Office of Judicial Affairs (OJA), or one of the University's Deputy Title IX Coordinators. Although the [Incident Report Form](#) should contain sufficient information to permit the respondent to understand and respond adequately

to the charges being brought, it may not reflect every detail related to the allegations in the complaint, as additional information may be discovered during the investigation.

A complainant may also call or meet with the Title IX Coordinator, the Dean of Students Office, OJA, or a Deputy Title IX Coordinator to initiate a complaint.

University Title IX Coordinator

888 Commonwealth Ave., Suite 303  
617-353-0911

Deputy Title IX Coordinators

Dean of Students Office

George Sherman Union, Second Floor  
775 Commonwealth Avenue, Boston, MA 02115  
617-353-4126

Office of Judicial Affairs

25 Buick Street, First Floor 617-358-0700

## VI. INFORMATION FOR COMPLAINANTS

After receiving a report of sexual misconduct, OJA will notify the complainant of the option to have an Adviser accompany him or her to any meeting or interview related to the complaint resolution process. OJA will also:

- Provide the complainant with information regarding the Rights of the Complainant and Respondent.
- Explain the prohibition against retaliation.
- Explain the process for investigating and resolving a sexual misconduct complaint (including the available appeal procedures).
- Instruct the complainant not to destroy any potentially relevant documentation in any format.
- Give the complainant a copy of the relevant policies.

- Explain the availability of interim measures.

## VII. SUPPORTIVE MEASURES

Upon the filing of a sexual misconduct complaint, the Title IX Coordinator, the Dean of Students, OJA, or a Title IX Coordinator will review the allegations and determine the necessity and scope of any supportive measures to prevent further acts of harassment, misconduct, or retaliation and to provide a safe educational and work environment. The range of supportive measures may include, but not be limited to:

- Moving the complainant's or respondent's residence.
- Adjusting the complainant's or respondent's work schedule, assignment, or location for University employment. Changing the complainant's academic schedule, allowing the complainant to take an incomplete in one or more courses, allowing the complainant to drop (or retake) a course without penalty, or attend class via web conference.
- Changing the complainant's transportation arrangements or providing an escort to ensure safe movement between classes and other activities.
- Allowing the complainant to withdraw from or retake a class without penalty, or extending deadlines for examinations or other assignments.
- Reassigning the complainant or the respondent to another section, if the complainant and respondent are enrolled in the same lecture, discussion class, academic team, or project group.
- Providing access to tutoring or other academic support.
- Issuing an administrative "stay-away" (no contact) order.
- Interim suspension of the respondent.

The University will maintain as confidential any accommodations or supportive measures provided to the complainant and respondent to the extent that maintaining such confidentiality would not impair the ability of the University to provide the accommodations or supportive measures.

An individual's failure to comply with restrictions imposed by supportive measures is a violation of University Policy and a basis for disciplinary action, up to and including expulsion from the University.

## VIII. WITHDRAWAL OF A COMPLAINT

Prior to the conclusion of a sexual misconduct investigation, the complainant may withdraw his or her complaint. Withdrawal of the complaint will ordinarily end the complaint investigation and resolution process. However, the University reserves the right to proceed with the complaint, even after the complainant withdraws it, in order to protect the interests and safety of the BU community.

## IX. COMPLAINANT REQUESTS FOR CONFIDENTIALITY

If the complainant is willing to participate in the review and investigation process, OJA will proceed as described in the Investigation section below.

If the complainant requests confidentiality or asks that the report of sexual misconduct not be pursued, the University will, generally before taking any further investigative steps, evaluate the complainant's request in the manner set forth in Section V(B) of the Sexual Misconduct Policy. The evaluation will be conducted by the Title IX Coordinator in consultation with a small number of University administrators as deemed necessary and appropriate under the circumstances.

Even absent a request for confidentiality, every reasonable effort will be made to protect the privacy of all parties during the investigation. Boston University will disclose information about its investigation and resolution of sexual misconduct complaints only to those who need to know the information in order to carry out their duties and responsibilities. It will inform all University personnel participating in an investigation, proceeding, or hearing that they are expected to maintain the privacy of the process. This does not prohibit either a complainant or respondent from obtaining the assistance of family members, counselors, therapists, clergy, doctors, attorneys, or other resources.

## X. RESPONDING TO A COMPLAINT

## **A. Notification of Respondent.**

The person alleged to have committed sexual misconduct is called the respondent. Unless the complainant requests and is granted confidentiality, the respondent will be notified in writing that a complaint alleging sexual misconduct has been filed against him or her. The respondent will be advised that he or she may have an Adviser accompany him or her to any meeting or interview related to the investigation and complaint resolution process.

## **B. Information for Respondent.**

Within seven (7) calendar days of receiving notice of the complaint, the respondent must arrange to meet with OJA. At that meeting, OJA will:

- Provide the respondent with information regarding the Rights of the Complainant and Respondent.
- Provide the respondent with a copy of the complaint.
- Explain the prohibition against retaliation.
- Discuss the nature of the complaint.
- Explain the rights and responsibilities of the complainant and respondent. Explain the process for investigating and resolving the complaint (including the available appeal procedures).
- Instruct the respondent not to destroy any potentially relevant documentation in any format.
- Give the respondent a copy of the relevant policies.
- Provide the respondent with a list of on-campus and off-campus support resources.

If the respondent fails to meet or cooperate with the OJA Investigator, the investigation and resolution of the complaint will proceed without input from the respondent. If interim measures have been imposed, OJA will explain the scope of those measures and the respondent's duty to comply with the interim measures.

## **C. Acceptance of Responsibility.**

After reviewing the complaint and meeting with OJA and the Dean of Students, the respondent may choose to end the complaint resolution process by accepting responsibility for the conduct alleged in the complaint. If the respondent accepts responsibility for the conduct

alleged in the complaint, the Dean of Students will determine an appropriate sanction for the respondent. If the respondent disputes the allegations of the complaint, the matter will proceed to an investigation.

At any point in the process, the respondent may accept responsibility for the conduct alleged in the complaint. In such cases, the Dean of Students may impose sanctions for violations of the [Sexual Misconduct Policy](#).

## **XI. INVESTIGATION OF A COMPLAINT**

### **A. Investigators.**

The Office of Judicial Affairs will designate two Investigators specifically trained in sexual misconduct investigations to conduct a prompt, thorough, and fair investigation.

### **B. Investigation Process.**

The investigation will include one or more interviews with the complainant, the respondent, and any witnesses. The investigation will include the gathering of physical, documentary, or other relevant and available evidence, including law enforcement reports. As part of the investigation, the University will provide an opportunity for all parties to present written statements, identify witnesses, and submit other evidence. The Dean of Students Office may require student-witnesses to cooperate with the investigation regardless of the parties' selection of witnesses.

### **C. Standard of Proof.**

In resolving complaints pursuant to the [Sexual Misconduct Policy](#), the University will use a “preponderance of the evidence,” standard, which is whether the evidence gathered and information provided during the investigation supports a finding that it is more likely than not that the respondent violated the [Sexual Misconduct Policy](#).

## D. Investigation Finding.

At the conclusion of the investigation, the Investigators will prepare a report (the “Investigative Report”) summarizing and analyzing the relevant facts determined through the investigation, with reference to any supporting documentation or statements. Before the Investigative Report is finalized, the complainant and respondent will be given the opportunity to review their own statements and, may also be provided with a written summary of other information collected during the investigation.

A complainant or respondent must submit any comments about their own statement, or on any investigation summary that might be provided, to the Investigators within five (5) calendar days after the statement or summary was provided.

Following the receipt of any comments submitted, or after the 5-day comment period has lapsed without comment, the Investigators will address any identified factual inaccuracies or misunderstandings, as appropriate. The final Investigative Report will provide a summary of the Investigators’ impressions, including context for the evidence and a recommendation, but will not make a final determination as to whether a violation of the [Sexual Misconduct Policy](#) occurred, reserving that decision (and any sanctions) for the Dean of Students. The parties will be provided with a copy of the final Investigative Report simultaneously.

## XII. RESOLUTION OF A COMPLAINT

### A. Informal Resolution.

A complainant and a respondent may choose to resolve a complaint through an informal resolution process. Informal resolution may include conflict mediation or a restorative conference with a University community member. However, informal resolution may only be used:

1. Prior to a decision by Dean of Students being issued;
2. When the Dean of Students determines this is a suitable option for resolving the

complaint, and both the complainant and respondent agree to use the process;

3. When the complaint does not involve sexual assault, as defined in Section II.B of the [Sexual Misconduct Policy](#).

Either the complainant or respondent may choose to end the informal resolution process at any time and commence or resume the formal complaint resolution process.

Because the outcome of informal resolution process is mutually developed and agreed upon by the parties, an appeal of the process and its result is not permitted. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Dean of Students for investigation by the Office of Judicial Affairs.

## **B. Dean of Students Determination of Responsibility under the University's Sexual Misconduct Policy.**

On behalf of the University, the Dean of Students shall have jurisdiction in cases of alleged misconduct by Boston University students and shall determine if a student has violated the [Sexual Misconduct Policy](#). The Office of Judicial Affairs will provide the Dean of Students with a copy of the Investigative Report within seven (7) calendar days of its completion. Within fourteen (14) calendar days after receiving the Investigative Report, the Dean of Students will make a determination as to whether the respondent(s) violated the [Sexual Misconduct Policy](#), and impose a sanction if a violation has been found.

### **1. Determination and Notice of the Outcome.**

The Dean of Students may, in his or her discretion, provide the complainant and the respondent with an opportunity to meet, accompanied by the party's Adviser. If the Dean of Students meets with one party, he or she will offer the other party the chance to meet.

The Dean of Students will provide the complainant and respondent with simultaneous, written notice of the outcome of the University's resolution of the sexual misconduct complaint (the "Letter of Determination"), the sanction, if any, that has been imposed on the respondent, and any additional steps that the University has taken to eliminate the hostile environment (if the Dean found one exists) and prevent any recurrence of any sexual misconduct. The Letter of Determination will include a description of the right to

appeal for both the complainant and the respondent.

## 2. Sanctions for Violations of the Sexual Misconduct Policy.

If the respondent is found responsible for violating the [Sexual Misconduct Policy](#), the Dean of Students will impose a sanction designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and Title IX obligations. Sanctions may also serve to promote safety or deter students from similar future behavior.

The following, individually or in combination, are potential sanctions for violations of the University's [Sexual Misconduct Policy](#). Where appropriate, the statement of the sanction includes the duration, any conditions to be observed during that period, and the conditions for termination of the sanction.

### Major Sanctions

- Expulsion from the University or a program of the University.
- Suspension from the University or a program of the University for a specific period of time.
- Deferred suspension from the University or a program of the University.
- Denial of graduation, diploma, or degree.
- Deferral of graduation, diploma, or degree for a specific period of time.
- Revocation or withdrawal of diploma or degree previously credited, awarded, or conferred.

### Other Available Sanctions

- Expulsion from a University residence.
- Suspension from a University residence for a specific period of time.
- Deferred residence expulsion (with or without relocation to a different residence location).
- Disciplinary probation. Disciplinary probation may involve counseling with faculty or administrative staff; restriction of student privileges; prohibitions against participation in University activities or events, including athletic or non-athletic activities; and prohibitions against holding office or participating in student organizations or residence, school, or college organizations or activities.

- Residence probation. Residence probation may involve periodic meetings with a member of the residence staff and/or restriction of specific residence privileges.
- Disciplinary reprimand or warning.
- Restitution. The student will reimburse the University and/or other appropriate party for damage to or loss of property or for costs or expenses incurred by the University or other party. Restitution will be made at full cost of replacement or repair, and other expenses.

Note: If the respondent is a graduate student who also serves as a teaching assistant, sanctioning decisions related to the respondent's teaching responsibilities will be made by the appropriate academic Dean.

**Remedies for Complainants.** As part of the sanctioning process, the Dean of Students, or designee, may require that existing supportive measures stay in place for a prescribed period of time. In consultations with the Title IX Coordinator and the Director of SARP, the Dean of Students may also impose new supportive measures or administrative actions such as stay-away orders, housing placement, or academic accommodations based upon the investigation and resolution of the case.

## **XIII. APPEAL TO THE UNIVERSITY BOARD ON STUDENT CONDUCT**

### **A. Grounds for Appeal.**

The complainant and respondent each have the right to appeal the Dean of Students' determination to the University Board on Student Conduct ("UBSC"). The complainant and respondent will be notified of this right and the procedures for appeal in writing. The Dean's determination will be presumed to have been reached reasonably and appropriately, by a preponderance of the evidence. Therefore, a party may appeal the Dean's determination only on the following grounds:

1. Insufficient evidence to support OJA's findings.

2. The sanction imposed is disproportionate to the violation of the Sexual Misconduct Policy.
3. The discovery of new, relevant evidence, that was unavailable to the appealing party during the investigation that could reasonably affect the outcome of the case.
4. Prejudicial bias on the part of an OJA Investigator.

To appeal to a Hearing Panel of the UBSC, the appealing party must submit a written appeal petition to the Dean of Students within ten (10) calendar days of the date of receipt of the Letter of Determination. The Dean of Students may accept a late submission under extenuating circumstances.

The Dean of Students will provide the non-appealing party with a copy of the appeal petition. The non-appealing party will have ten (10) days from receipt of the appeal petition to file a response to the appeal petition. The response must be in writing and submitted to the Dean of Students. The Dean of Students will forward the response to the petition to the appealing party upon receipt.

## **B. Content of Appeal Petition and Response.**

The appeal petition must specify the grounds for the appeal, along with the supporting rationale, including a response to the Investigative Report, if any. The appeal may also include, or make reference to, other relevant information such as the identity of new witnesses who were not reasonably discoverable during the investigation or other evidence that was not considered during OJA's investigation. Any response to the appeal petition must address the issue raised in the appeal.

Each party will have the opportunity to review any written submissions of the other party prior to the Hearing.

## **C. University Board on Student Conduct.**

The membership of the UBSC will be as follows: one-third of the members will be members of the faculty appointed by the Provost. The Provost will make his or her designation from a list of 15 nominations made by the Faculty Council. One-third of the members will be students

(undergraduate and graduate) selected by the Dean of Students. One-third of the members will be appointed by the Vice President for Enrollment & Student Affairs and may include students, faculty, or members of the administrative staff of the University. Temporary imbalances in the composition of the Board caused by the absence or withdrawal from the UBSC of any member(s) will not affect the validity of actions taken by a Hearing Panel of the UBSC.

Membership on the UBSC shall be for a term of two years except that the term for student members shall be one year. Members appointed to fill a vacancy on the Board shall serve for the duration of the term.

If, during the summer or during any other period, sufficient members of the UBSC are not available to create a Hearing Panel, the Office of the Provost, at the request of the Dean of Students, may designate individuals to serve as interim members of the UBSC for the purpose of serving on a Hearing Panel.

A member of the Dean of Students' staff will sit in ex officio, and will be responsible for the administrative functions of the UBSC, but will not participate in any Hearing. Each Hearing Panel will consist of three members of the UBSC. At least one member of each Hearing Panel will be a student and at least one member will be a member of the faculty.

**1. Training.** All UBSC members must participate in training. In addition, each year, returning UBSC members must receive refresher training. In addition to training on how the adjudicatory process works, the training will include specific instruction about how to approach students about sensitive issues that may arise in the context of sexual misconduct.

**2. Hearing Panel Selection / Conflict Checking.** The Dean of Students will appoint a Hearing Panel of three members and will appoint one of these members as the Panel Chair. The Hearing Panel will not include any person who has participated in any effort to resolve the same complaint. The Hearing Panel members will receive the names of the complainant, the respondent, and all witnesses, and must withdraw from the proceedings if their relationship to a party or witness, or other circumstances leads them to believe that they cannot judge the matter fairly.

The Dean of Students will send a notice to the complainant and respondent, providing

the names of the Hearing Panel members and informing them of their right to object to the participation of a Hearing Panel member. The objection must be in writing to the Dean of Students and received within two (2) calendar days of the date of the notice, and must state the party's reasons for believing the Hearing Panel member is incapable of fairly judging the matter.

The Dean of Students will decide whether an objection is justified, and that decision is final. When necessary, the Dean of Students will select a replacement Hearing Panel member. Parties will have an opportunity to object to any Panel member selected as a replacement.

## D. Hearing Procedures

**1. Timing and Notice.** The Dean of Students will notify the complainant and the respondent of the time and location of the Hearing and will endeavor to convene a Hearing Panel within fourteen calendar (14) days of the written appeal petition. The parties are expected to cooperate in the scheduling of the Hearing.

### 2. Pre-Hearing Procedures

**a. Pre-Hearing Review.** Prior to the Hearing, the Hearing Panel members will review all the written materials provided to them by the Dean of Students, including OJA's Investigative Report, the Dean of Students' Letter of Determination, the appeal petition and response (if any), and any other documents or evidence submitted by the parties. Based on the appeal petition and response, the Hearing Panel, in its sole discretion, will determine whether third party witnesses will be called at the Hearing and will provide the names of those witnesses to the Dean of Students, who will arrange for those witnesses to appear. The Hearing Panel may also ask to see underlying materials that were relied upon by OJA in its Investigative Report. In the absence of good cause as determined by the Chair in his or her sole discretion, parties may not introduce witnesses, documents, or other evidence at the Hearing that were not included in or referred to by the appeal petition or any response.

**b. Pre-Hearing Meeting.** Prior to the Hearing date, the Dean of Students will schedule individual meetings with the complainant and the respondent and their

respective Advisors. At the meeting, the Dean of Students will review the Hearing Panel procedures. In addition, the Dean of Students will provide the complainant and the respondent with a copy of the list of witnesses, and copies of documents or other evidence that the Hearing Panel may consider at the Hearing. The University reserves the right, through the Chair, to add witnesses to the witness lists with reasonable notice prior to the Hearing.

**c. Attendance at Hearing.** If the complainant or the respondent fails to appear at the scheduled Hearing, the Chair may postpone the proceedings or direct that the Hearing proceed and determine the appeal on the basis of the available information, provided the absent party was duly notified of the scheduled Hearing date, as outlined above.

### **3. Conduct of Hearing.**

The Chair will preside at the Hearing and may make such rulings as he or she deems necessary for the orderly conduct of the Hearing. No one other than the Hearing Panel members, the complainant and respondent, their respective Advisers, witnesses (when called), and necessary University personnel may be present in the Hearing room or rooms during the proceeding. The Dean of Students Office will work with other University personnel so that any student whose presence is required may participate in the Hearing.

In general, Hearings will proceed as follows:

- Complainant opening statement;
- Respondent opening statement;
- Questions to the complainant by the Hearing Panel;
- Questions to the respondent by the Hearing Panel;
- Witness testimony (if any) and questioning by the Hearing Panel;
- Questions to the Investigators by the Hearing Panel (if any);
- Closing statement by complainant; and
- Closing statement by respondent.

The Hearing Panel will not consider the romantic or sexual history of either the complainant or respondent, except for testimony offered by one or the other about the complainant's and respondent's shared sexual history that the Hearing Panel deems

relevant. If such information is offered by the complainant or respondent, the other has the right to respond. The existence of a prior consensual dating or sexual relationship between the complainant and respondent by itself does not support an inference of consent to sexual contact.

The Hearing Panel may set reasonable time limits for any part of the Hearing. In cases where either the complainant or respondent opts not to participate in the Hearing, the Hearing Panel may still hear from the other.

The Hearing will not follow a courtroom model, and the rules of evidence and civil or criminal procedure do not apply. The Chair has the sole discretion to commence, recess, and reconvene the Hearing, and may suspend the Hearing at any time. The Chair will make any procedural decisions during the Hearing that he or she deems necessary to safeguard the integrity and fairness of the Hearing and to avoid undue delay. The Chair will determine the admissibility, relevance, and materiality of the testimony and information offered and may exclude any testimony or evidence that he or she determines to be cumulative or irrelevant. The Hearing Panel may take notice of facts or information within the knowledge of the University community or based on University records.

Upon timely request by the complainant or respondent, the Chair may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant or respondent during the Hearing by providing separate facilities, by using a visual screen, and/or by permitting participation by telephone, videophone, closed circuit television, video conferencing, videotape, audiotape, written statement or other means, where and as determined in the sole discretion of the Chair to be appropriate.

**a. Audio Recording.** The Dean of Students will arrange for the hearing to be audio recorded, and may arrange for the preparation of any transcript of the recording that he or she deems appropriate. The complainant and respondent will have the right to access a copy of the recording without cost, or to obtain a copy of the recording at his or her expense. The Hearing Panel's post-Hearing deliberations will not be recorded.

Personal cell phones and recording devices may not be used in the Hearing room(s) to record the Hearing unless approved by the Chair in advance.

**b. Preponderance of the Evidence Standard of Review.** All decisions by the Hearing Panel will be made by majority vote and must be supported by a preponderance of evidence.

**c. Opening Statements and Questioning by the Parties.** The complainant and respondent will each have the opportunity to present an opening statement. Only the Chair and the Hearing Panel members are permitted question the individual parties and witnesses (if any). However, the complainant and the respondent may ask the Chair to pose additional questions or inquire further into specific matters by submitting these requests to the Chair in writing or orally, at the discretion of the Chair. The Chair may disallow or reframe any questions that are redundant, irrelevant, or disruptive. If, prior to the conclusion of the Hearing, the Hearing Panel determines that unresolved issues exist that would be clarified by the presentation of additional evidence, the Chair may suspend the Hearing and reconvene it in a timely manner to receive such additional information. A suspension of the Hearing may not be based on the proposed introduction of documents or other evidence that could have been presented prior to the Hearing.

**d. Respondent Testimony.** The respondent shall have the right not to answer questions during the Hearing; however, the exercise of that right shall not preclude the Hearing Panel from proceeding and evaluating the appeal on the basis of the Investigative Report, Letter of Determination, and other available information.

**e. Privacy of the Hearing.** To comply with Title IX and FERPA, and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the Hearing is not open to the public. Accordingly, documents prepared in anticipation of the Hearing (including the Investigative Report, the Letter of Determination, the appeal petition and response, documents, testimony, or other information introduced at the Hearing, and any recording or transcripts of the Hearing) may not be disclosed outside of the Hearing procedures, except as may be required or authorized by law.

#### 4. Hearing Panel Decision.

After completion of the Hearing, all persons other than the members of the Hearing Panel will be asked to leave the Hearing room. The Hearing Panel will then deliberate privately. The members of the Hearing Panel are the sole arbiters of the weight of the evidence and the credibility of the witnesses. The specification or description of a violation of the [Sexual Misconduct Policy](#) or the sanction imposed may be modified by the Hearing Panel to conform to the evidence, provided that the modification does not deprive the respondent of his or her right to respond to particular charges.

The Hearing Panel shall consider the merits of an appeal petition only on the basis of the four grounds for appeal set forth in Section XIII.A and supporting information provided in the written appeal petition, any response to the appeal petition, the record of the original decision, and any testimony elicited at the Hearing. Any decision of the Hearing Panel shall be made by majority vote. The vote itself will not be communicated to the parties.

The Hearing Panel may:

1. Affirm, modify, or reverse the Dean of Students' determination.
2. Affirm or modify (either to increase or decrease) the sanctions imposed.
3. Remand the matter to OJA for further investigation. This shall ordinarily be done in the case of new and relevant information, for an assessment of the weight and effect of the new information and a determination after consideration of the new facts.

**5. Communication of the Hearing Panel's Decision.** Within seven (7) calendar days from the conclusion of the Hearing Panel's deliberations (or such longer time as the Chair may for good cause determine), the Chair will simultaneously communicate the Hearing Panel's decision on the appeal petition to the complainant, the respondent, and the Dean of Students, and will do so in

**6. Maintenance of Records.** The Hearing audio recording, together with the documents, information and other evidence presented at the Hearing, will serve as the record of the hearing proceedings and will be maintained by the Dean of Students as part of the

respondent's disciplinary

The disciplinary files of students who have been suspended or expelled from the University are maintained in the Dean of Students Office for at least seven (7) years after the students' departure from the University.

## **XIV. APPEALS TO THE UNIVERSITY PROVOST**

### **A. Procedure for Appeal.**

The complainant and the respondent each have the right to appeal the Hearing Panel's decision to the University Provost. An appeal to the University Provost must be in writing and received by the Provost within ten (10) calendar days of receipt of the Hearing Panel's decision. The only grounds for appeal to the Provost are:

1. Procedural irregularity that affected the outcome of the Hearing.
2. The sanction is disproportionate to the violation of the [Sexual Misconduct Policy](#).
3. The discovery of new, relevant evidence that was unavailable to the appealing party prior to the Hearing Panel that could reasonably affect the outcome of the case.
4. Prejudicial bias on the part of the Hearing Panel.

The Provost will provide a copy of the appeal petition to the other party. If the non-appealing party chooses to respond to the appeal, he or she must do so in writing to the Provost within ten (10) calendar days after receiving the appeal petition.

Upon receipt of a timely appeal petition, the Dean of Students will forward to the Provost the relevant record of the matter. The University Provost will limit his or her review of Hearing Panel decisions to a review of the record of the original Hearing (including the audio recording), supporting documents, and statements made by one or both parties in the appeal petition.

The Provost will review the record and the statements submitted. The decision of the Provost will be in writing, with copies provided to the complainant, respondent, and the Dean of Students, and will be communicated within fourteen (14) calendar days after receiving the appeal petition or any response.

## **B. Impact of an Appeal Petition on Imposed Sanctions.**

The filing of an appeal petition will not operate to stay the effect of sanctions imposed. However, the appeal petition may seek a stay or modification of the sanctions pending the Provost's decision on the appeal. The Dean of Students or the University Provost, in his or her discretion, may suspend, stay, or modify sanctions imposed, subject to such conditions as either may deem appropriate.

## **C. Provost's Decision on Appeal.**

The University Provost may:

1. Affirm, modify, or reverse the Hearing Panel's decision.
2. Affirm or modify (either to increase or decrease) the sanctions imposed.
3. Remand the matter to the UBSC for a new Hearing. This shall normally be done when there is a procedural irregularity that could be corrected in a rehearing.

If the Provost remands the matter, he or she will specify whether the sanctions are to be maintained, modified, suspended, or reversed pending completion of the matter on remand.

Any act authorized by this procedure to be performed by the Provost may also be done by an authorized designee of the Provost.

The decision of the Provost will be final.

# **XV. DISCIPLINARY RECORDS, WITHDRAWAL, AND READMISSION**

## **A. Disciplinary Records.**

A sanction of expulsion or suspension from the University or a program of the University will be entered on the student's permanent record unless this provision is waived by the Dean of Students and the Provost concurs.

The University Registrar will be informed of all sanctions involving suspension or expulsion from the University or from a program of the University, and no student will be permitted to re-enroll in the University following such sanction unless he or she presents evidence to the Registrar of satisfaction of the sanction and of appropriate permission for re-enrollment.

## **B. Withdrawal and Readmission.**

If a student voluntarily withdraws from the University or a program of the University while charges against him or her are pending, or as part of a negotiated settlement of such charges, this fact will be communicated to the University Registrar and the student will not be permitted to re-enroll unless he or she presents evidence that appropriate permission for re-enrollment has been obtained. Such permission shall be granted solely at the discretion of the Dean of Students or the Provost. If the student withdrew while charges against him or her were pending, permission for readmission will be granted only after the charges have been resolved.

If permission to re-enroll is not granted, the student may petition the Provost for permission, setting forth in his or her petition the relevant facts and the basis upon which the petition is made. The decision of the Provost will be final.

Failure of a student to comply with a sanction or condition imposed or to obtain permission for re-enrollment in accordance with the above requirements may be a basis for denial of re-enrollment.

## Additional Resources Regarding This Policy

### History

These **Procedures for the Resolution of Non-Title IX Sexual Misconduct Complaints Against Students** are effective on August 14, 2020. The new [Sexual Misconduct Policy](#) and its three corresponding Complaint Procedures (including this Procedure) apply to conduct that occurs on or after August 14, 2020. Complaints filed on or before August 13, 2020 will be handled under the University's Sexual Misconduct/Title IX Policy and the two corresponding Complaint Procedures.

**Policy and Procedures Related to this Policy** - Applying to conduct that occurs on or after August 14, 2020

- **POLICY**

- [Sexual Misconduct Policy](http://id-andrea.cms-devl.bu.edu/policies/sexual-misconduct-title-ix-hr/), Available at: <http://id-andrea.cms-devl.bu.edu/policies/sexual-misconduct-title-ix-hr/>.

- **PROCEDURES**

- [Procedures for the Resolution of Non-Title IX Sexual Misconduct Complaints Against Students](http://id-andrea.cms-devl.bu.edu/policies/resolution-of-sexual-misconduct-complaints-against-students/)  
Available at: <http://id-andrea.cms-devl.bu.edu/policies/resolution-of-sexual-misconduct-complaints-against-students/>.
  - [Procedures for the Resolution of Non-Title IX Sexual Misconduct Complaints Against Faculty, Staff, Affiliates, and Non-Affiliates](http://id-andrea.cms-devl.bu.edu/policies/procedures-faculty-staff-affiliates-non-affiliates-sexual-misconduct/),  
Available at: <http://id-andrea.cms-devl.bu.edu/policies/procedures-faculty-staff-affiliates-non-affiliates-sexual-misconduct/>.
  - [Procedures for the Resolution of Title IX Sexual Misconduct Complaints Against Students, Faculty, Staff, Affiliates, and Non-Affiliates](http://id-andrea.cms-devl.bu.edu/policies/procedures-resolution-of-sexual-misconduct-complaints-against-students/)

Available at: <http://id-andrea.cms-devl.bu.edu/policies/procedures-for-the-resolution-of-title-ix-sexual-misconduct-complaints-against-students-faculty-staff-affiliates-and-non-affiliates/>.

## **The Policy and Procedures For Past Conduct - *Applying to conduct occurring on or before August 13, 2020***

- [Sexual Misconduct/Title IX Policy and Procedures](#) - Applying to conduct occurring on or before August 13, 2020

### **Forms**

- [Incident Report Form](#)

### **BU Resources**

- [Title IX Flow Chart](#)
- [Non-Title IX Flow Chart](#)
- [Sexual Misconduct Gender Based Misconduct Resource Guide](#)
- [BU Free Confidential Resources On and Off Campus](#)

### **Related BU Websites**

- Sexual Misconduct Page on Safety Website - *site includes* [Title IX Information](#) *and* [Title IX Coordinator and Deputy Coordinators Contact Information](#)
- [Equal Opportunity Office](#)
- [Sexual Misconduct Page on Safety Website](#)
- [Title IX Information](#)
- [Title IX Coordinator and Deputy Coordinators Contact Information](#)
- [Equal Opportunity Office](#)
- [Office of Judicial Affairs](#)
- [Dean of Students Office](#)
- [Office of the Provost](#)
- [Human Resources](#)
- Sexual Assault Response & Prevention Center - [SARP](#)

- Faculty & Staff Assistance Office - [FSAO](#)

## BU Memorandums and Information

- [Memorandum - Federal Changes to Title IX Regulations](#), July 6, 2020, From Dr. Jean Morrison, University Provost and Chief Academic Officer, Kenneth Elmore, Associate Provost and Dean of Students,, Ken Freeman, Vice President for Human Resources ad interim, and Maureen O'Rourke, Associate Provost for Faculty Affairs. Available at: <https://www.bu.edu/provost/2020/07/06/federal-changes-to-title-ix-regulations/>.
- [BU Readies for Title IX Changes to Sexual Misconduct Regulations](#), BU Today Article, July 7, 2020. Available at: <http://www.bu.edu/articles/2020/bu-concerned-with-title-ix-changes-to-sexual-misconduct-regulations/>.

Categories: Academics, Faculty Handbook: Human Resources, Harassment and Discrimination, Safety, Safety and Safe Environments, Sexual Misconduct, Student Life, University Policies Affecting Student Life  
Keywords: accusation, complaint procedures, non-title IX, not title IX, sexual misconduct, student sexual misconduct, Title IX