

Sexual Harassment, Sexual Assault, Sexual Misconduct, Relationship (Dating) Violence and Stalking Policy

Nondiscrimination Statement

Bethune-Cookman University (B-CU) prohibits discrimination based on sex in employment and education programs and activities both on and off campus. This policy applies to all students, employees, and volunteers; to conduct on school grounds, off-campus, and at school-sponsored activities; to conduct occurring at school-owned, leased or controlled facilities; and, through technology resources provided by or used at B-CU.

Title IX of the Education Amendments of 1972 and other laws,¹ prohibit discrimination on the basis of sex in employment and education programs and activities. Title IX protects all persons from sex discrimination, which includes sexual harassment and sexual violence. B-CU will process all sex discrimination complaints it receives, including complaints of sexual harassment and sexual violence, regardless of where the conduct occurred, to determine whether the conduct occurred in the context of an employment or education program or activity, or had continuing effects on campus. If alleged off-campus sexual harassment or sexual violence occurred in the context of an education program or activity or had continuing effects on campus, the complaint will be treated the same as a complaint involving campus conduct. This includes complaints of sexual assault or harassment by students, employees, volunteers, and third parties. B-CU will take appropriate action should the University become aware that any contractor, vendor, partner, or other affiliate engages in sex-based misconduct, up to and including termination of the business relationship or partnership.

A. Title IX Coordinators

Complaints of sexual assault, sexual harassment or other conduct prohibited under this policy and inquiries concerning the application of Title IX and its regulations should be directed to the B-CU Title IX Coordinator or the co-Coordinator listed below:

Title IX Coordinator for Faculty/Staff/Students

Arletha McSwain, PhD
Executive Director, B-CU Global Online Partnerships
640 State Street
Daytona Beach, FL 32114
Email: mcswaina@cookman.edu
Phone Number: 386-481-2094

Deputy Title IX Coordinator for Athletics

Sandra Booker
Senior Associate Director of Athletics & Senior Woman Administrator
Center for Civic Engagement
740 W International Speedway Blvd
Daytona Beach, FL 32114
Email: bookers@cookman.edu
Phone Number: 386-481-2212

¹ Title IX of the Education Amendments of 1972, as amended, and its Implementing regulations, 34 C.F.R. Part 106 ("Title IX"); the Violence Against Women Reauthorization Act of 2013 (20 U.S.C. 1092(f)) (VAWA), also known as the Campus Sexual Violence Elimination Act (Campus SaVE Act); and Title VII of the Civil Rights Act of 1964, as amended

The Title IX Coordinators' responsibilities include investigating or overseeing the investigation of all incidents of alleged sexual assault or harassment; ensuring that consistent standards and practices apply to all investigations; being available to meet with students, employees, and volunteers who believe sexual assault or harassment has occurred; and assisting campus security or law enforcement as needed. Students may also contact the U.S. Department of Education, Office for Civil Rights, (800)421-3481 or ocr@ed.gov.

B. Policy Definitions

Sex discrimination is an adverse action taken against an individual because of sex, including sexual harassment, sexual violence, domestic violence, dating violence, and stalking as prohibited by Title IX, Title IV, VAWA/Campus SAVE Act, and other laws and regulations. Both men and women can be victims of sex discrimination.

Sexual harassment is any unwelcome conduct of a sexual nature. This includes unwelcome verbal, nonverbal or physical conduct including but not limited to unwelcome sexual advances; requests for sexual favors; and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual violence, sexual advances, requests for sexual favors, and indecent exposure, where:

- a. Submission to, or rejection of, the conduct is explicitly or implicitly used as the basis for any decision affecting a student's academic status or progress, or access to benefits and services, honors, programs, or activities available at or through B-CU; *or*
- b. Such conduct is unwelcome; *or*
- c. Submission to, or rejection of, the conduct by a B-CU employee is explicitly or implicitly used as the basis for any decision affecting a term or condition of employment, or an employment decision or action; *or*
- d. Such conduct is sufficiently severe or pervasive to create a hostile educational or employment environment.

Sexual harassment also includes acts of verbal, non-verbal written, and physical aggression, intimidation or hostility based on sex or gender stereotyping, even if these acts are not sexual in nature.

Sexual Violence is a form of sexual harassment and means physical sexual acts, such as unwelcome sexual touching, sexual assault, sexual battery, rape, domestic violence, dating violence, and stalking (if based on sex), taken against an individual against his or her will

and without consent or against an individual who is incapable of giving consent due to the use of drugs or alcohol, being a minor, or an intellectual or other disability. Sexual violence includes acts of physical force, violence, threats, and intimidation, ignoring the objections of the other person, causing the other person's intoxication or incapacitation through drugs or alcohol, or taking advantage of another person's incapacitation, including voluntary drug or alcohol intoxication.

Incapacitated means the victim is temporarily incapable of appraising or controlling his/her conduct due to the influence of a narcotic, anesthetic or other substance administered without consent or due to any other act committed upon the victim without consent.²

Sexual violence can be carried out by school employees, volunteers, other students, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX. Both men and women can be victims of sexual violence.

Statutory rape is unlawful sexual intercourse with a minor under 18 years old, even if the intercourse is consensual.

Sexual Assault is a form of sexual violence and means (1) forcing or coercing an individual to engage in any non-consensual sexual contact or sexual penetration; or (2) an attempt to commit an unlawful act that places another person in reasonable apprehension of immediate, non-consensual physical contact for sexual purposes.

Sexual Battery is a form of sexual violence and means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.³

Rape⁴ is a form of sexual violence that may or may not involve force or a threat of force, coercion, violence, or immediate bodily injury, threats of future retaliation, or duress. Rape means nonconsensual sexual intercourse or sexual penetration, which, in addition to intercourse, means nonconsensual oral or anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body. Any sexual penetration is sufficient to constitute rape. Sexual acts are considered non-consensual when they involve a person who is physically incapacitated,⁶ physically helpless,⁷ incapable of giving consent because s/he is incapacitated from alcohol and/or drugs, is under 18 years old, or due to a mental or physical disability is incapable of giving consent.

Acquaintance Rape is a form of sexual violence committed by an individual known to the victim. This includes a person the victim may have just met, such as at a party, been introduced to through a friend, or met on a social networking website.

Consent means intelligent, knowing, and voluntary consent and does not include coerced submission.⁸ "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender. Once consent is withdrawn or revoked, the sexual activity must stop immediately.

- Consent must be *voluntary* and given without coercion, force, threats, or intimidation.
- Consent can be *withdrawn or revoked*. Consent to one form of sexual activity (or consent to sexual activity on another occasion. The fact that two people are or were one sexual act) does not constitute consent to other forms of sexual activity (or other sexual acts). Consent to sexual activity given on one occasion does not constitute in a dating or sexual relationship does not constitute consent to engage in sexual activity. Consent cannot be given by a person who is *incapacitated*. A person cannot give consent if s/he is unconscious or coming in and out of consciousness. Examples of incapacitation include unconsciousness, sleep and blackouts. Whether an *intoxicated* person (due to using alcohol or other drugs) is *incapacitated* depends on the extent to which the person's decision-making capacity, awareness of consequences, and ability to make fully informed judgments is impaired.

² Persons who are drugged, incapacitated, or under the age of 16 are unable to give consent.

³ § 745.011, Fla. Stat.

⁴ Rape is a form of **sexual battery**, defined under Florida law by § 745.011, Fla. Stat.

⁵ § 745.011, Fla. Stat.

⁶ "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee. § 745.011, Fla. Stat.

⁷ "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act. § 7945.011, Fla. Stat.

⁸ § 745.011, Fla. Stat.

- Being intoxicated by drugs or alcohol does not diminish a person's responsibility to obtain consent from the other party before engaging in sexual activity. Factors to be considered when determining culpability include whether the person knew, or whether a reasonable person in the accused's position should have known, that the victim could not give, did not give, or revoked, consent; was incapacitated; or was otherwise incapable of giving consent.

Domestic violence is a form of sexual violence and means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.⁹ "Family or household member" means spouse, former spouse, person related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.¹⁰

Dating violence is a form of sexual violence, and means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature.¹¹ The existence of such a relationship shall be determined based on the consideration of the following factors:

1. A dating relationship must have existed within the past 6 months;
2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

"Dating violence" does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

Stalking means a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others, or suffer substantial emotional distress. For purposes of this definition,

- i. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose.¹²
- ii. "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- iii. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.

Cyberstalking means to engaging in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.¹³

⁹ § 741.028, Fla. Stat.

¹⁰ § 794.028, Fla. Stat.

¹¹ § 784.046, Fla. Stat.

¹² § 784.048, Fla. Stat.

¹³ § 784.048, Fla. Stat.

Hostile Educational Environment. Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school.

C. Prohibited Conduct

Any conduct by an employee, student, volunteer, or third party that denies or limits the ability of a student or employee to participate in or receive the benefits, services, or opportunities of employment or any B-CU program or activity based on sex is prohibited. This includes any circumstance where:

1. An employment or educational decision or benefit is conditioned on submission to unwelcome sexual advances or conduct;
2. Submission to, or rejection of, unwelcome sexual conduct is used as a basis for denying employment or an opportunity to participate in or benefit from any school program or activity;
3. Conduct has the purpose or effect of unreasonably interfering with, denying or limiting a student's ability to participate in or benefit from any school program or activity or a term, condition or benefit of employment;
4. Conduct alters the educational environment to the degree that it adversely affects the student's ability to participate in or benefit from any school program whether or not that student is the target of the harassment;
5. There is a pattern and practice of sexual harassment;
6. A teacher, administrator, volunteer, or other person in a position of authority engages in sex discrimination or sexual harassment of a student or employee; and/or
7. A student or a group of students engages in sexual harassment of another student or students.

The following are examples of behaviors that are prohibited under this policy. This is not intended to be an exhaustive list:

8. Unwelcome sexual flirtations, advances or propositions;
9. Derogatory, vulgar or graphic written or oral statements regarding one's sexuality;
10. Unwanted touching, patting, pinching, or other attention to an individual's body;
11. Attempted or actual physical assault;
12. Any nonconsensual sexual act, including but not limited to, rape, sexual assault, sexual battery and sexual coercion;
13. Unwelcome sexual comments, innuendoes, suggestions or jokes;
14. Display of sexually suggestive pictures or objects;
15. Domestic violence, dating violence, sexual violence, and stalking, including cyberstalking;
16. Sending text messages, e-mails, or other electronic communications with nude or sexually suggestive photos, videos, or other images; and

17. Sharing or sending nude or sexually suggestive images over the Internet.

This policy specifically includes electronic communications, including but not limited to phone calls, text messages, e-mail, and communications using social media such as Instagram, Snapchat, Twitter, and Facebook.

D. Reporting sexual misconduct or filing a complaint

Where to report. Sexual assault, sexual harassment and other behavior prohibited by this policy should be reported to:

Arletha McSwain, Executive Director, B-CU Global Online Partnerships, at 386-481-2094
mcswaina@cookman.edu

Sandra Booker, Associate Director of Athletics & Senior Woman Administrator, at
386-481- 2212 or bookers@cookman.edu

A complaint or report may be verbal or written and does not need to take a particular form.

Students may also report any incident of sexual violence or sexual harassment that may create or contribute to the creation of a hostile environment to any instructor or school employee. Students, staff faculty, and volunteers may notify the head of their department or unit, their supervisor, or any member of the administration with whom they are comfortable. Any instructor or other employee receiving such a report is responsible for reporting it to the Title IX Coordinator. Failure to comply with this policy shall be grounds for disciplinary action, up to and including termination.

What to expect. AB-CU representative, typically the Title IX Coordinator, will meet with the Complainant, provide a copy of this policy, and explain:

1. The importance of seeking immediate medical attention for sexual assaults;
2. The importance of preserving evidence;
3. The right to report a crime to campus or local law enforcement;
4. The right to *not* report a crime to law enforcement or file criminal charges;
5. The right to simultaneously file both a criminal complaint with campus security or local law enforcement and an institutional Title IX complaint;
6. The right to assistance from University officials with filing a criminal complaint, if assistance is requested;
7. Internal options, including informal and formal resolution;
8. Available health care, victim advocacy, academic support, mental health, legal assistance resources and counseling services available both on and off campus, including the campus health center, the campus [counseling center](#) and sexual assault resource centers, and pastoral counselors, which can be found [here](#);
9. Even if a Complainant asks B-CU not to take any action, the University is obligated to investigate the complaint;
10. Prohibitions against retaliation;
11. Interim measures that may be put in place, including a no-contact order pending the outcome of the investigation, providing support services, changing living arrangements or course schedules, assignments, or tests, and temporary removal of the Respondent from the campus community pending the outcome of an investigation; and,

12. Options for avoiding contact with the Respondent(s), including being allowed to change academic and extracurricular activities and living, transportation, dining, and working situations as appropriate.

When implementing interim protective measures and taking steps to separate Complainants from Respondents, B-CU will attempt to minimize the burden on the Complainant.

Confidentiality. B-CU will make reasonable and appropriate efforts to preserve student Complainants' and student Respondents' privacy and to protect the confidentiality of information. B-CU will only disclose information regarding complaints under this policy on a need to know basis, primarily to persons who are responsible for its investigation and any reporting requirements.

B-CU cannot require the complaining or responding student to maintain confidentiality, as the U.S. Department of Education has stated that restricting the ability of either party to discuss the investigation (e.g., through "gag orders") is likely to deprive them of the ability to obtain and present evidence or otherwise to defend their interests.

B-CU strongly supports a complainant's interest in confidentiality in cases involving sexual violence. If a student complainant requests confidentiality, the Title IX Coordinator will determine whether B-CU can honor this request while providing a safe and nondiscriminatory environment for all students, including the student who reported the sexual violence. A request for confidentiality could preclude a meaningful investigation; therefore, B-CU will consider whether there are circumstances present that demonstrate a risk that the Respondent may commit additional acts of sexual violence or other violence. These include whether other sexual violence complaints have been received about the same Respondent; whether the Respondent has a history of arrests; whether the Respondent has records from a prior school indicating a history of violence; whether the Respondent threatened further sexual violence or other violence against the Complainant or others; and whether the sexual violence was committed by multiple perpetrators. Other factors include whether the sexual violence was perpetrated with a weapon, and the age of the student subjected to the sexual violence.

If the complainant asks that the complaint not be pursued, B-CU will take reasonable steps to investigate and respond to the complaint consistent with the request not to pursue an investigation.

Even when a student asks that a complaint not be pursued or that information be kept confidential, if necessary, B-CU will take action to protect the student. This includes providing support services and changing living arrangements or course schedules, assignments, or tests as appropriate.

E. Investigation

Complaints under this policy will be investigated by the Title IX Coordinator or a designee (referred as the "Investigator"). Other University officials may assist in gathering facts during the investigation and information from B-CU campus security or local law enforcement officials may be considered. Individualized services must be offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending. Both parties will be given the same opportunity to present relevant evidence and witnesses, including character witnesses.

If the Respondent is allowed to review the Complainant's statement, the Complainant may also review any statement by the Respondent. No other witness statements or documents will be available for review by the parties during the investigation. During the investigation, B-CU will:

- (1) Gather sufficient evidence to reach a fair, impartial determination concerning whether sexual misconduct occurred;
- (2) Determine whether a hostile environment has been created; and
- (3) Determine whether the hostile environment must be redressed.

In cases of alleged domestic violence, dating violence, sexual assault, or stalking, proceedings under this policy shall provide a prompt, fair, and impartial investigation and resolution; and be conducted by officials who receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Relevant Information for Investigation. At the outset of an investigation, the Title IX Coordinator/Investigator will notify the Respondent of the allegations against him or her and request a written response. In addition, the Title IX Coordinator/Investigator may collect and consider the following types of information:

- Statements by the Complainant and Respondent about the alleged incident(s);
- Statements by witnesses to the alleged incident(s);
- Evidence about the credibility of the alleged victim and the alleged harasser;
- Evidence that the alleged harasser has been found to have harassed other victims;
- Evidence that the alleged victim has made false allegations against other individuals;
- Evidence as to whether the alleged victim's reaction or behavior after the alleged harassment;
- Evidence as to whether the alleged victim filed a complaint or took other action to protest the conduct soon after the incident occurred; and
- Other evidence of the harassment (*e.g.*, reporting conduct to parents, counselors or friends, or medical records)
- The fact of a current or previous consensual dating or sexual relationship between the parties will not imply consent or preclude a finding of sexual violence.

Evidentiary/fact relevance determinations. The Title IX Coordinator/Investigator has broad discretion in determining whether a proffered witness or documentary information would be relevant or helpful to a determination.

Evidentiary Standard. A "preponderance of the evidence" standard will be used.

Time Frame for Investigation and Completion of Report. There is no fixed time frame under which a school must complete a sexual misconduct investigation. While the report and investigation should normally be completed within 90 calendar days after notice of a complaint, the inability to meet this time frame does not affect the legitimacy, credibility or reliability of the investigation or report. A written decision must be completed and provided to the parties at the conclusion of the investigation.

Cooperation. All faculty, staff, volunteers, and students are required to cooperate in the investigation process. Refusal to cooperate will result in disciplinary action based on failure to cooperate in an official University investigation for employees and volunteers, and disciplinary action potentially leading to dismissal.

Notice of Investigation. At the outset of an investigation, the Investigator will advise the Respondent of the allegations against him or her in writing. Once B-CU decides to open an investigation that may lead to disciplinary action against a Respondent, written notice of the allegations constituting a potential violation of the school's sexual misconduct policy should be provided to the Respondent, including sufficient details, and

sufficient time to prepare a response before any initial interview. “Sufficient details” include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident.

Opportunity to Participate. Both the Complainant and the Respondent will have the same opportunity to meet with the Investigator, to submit relevant documentary or other evidence, including character evidence, and to request that the Investigator speak with relevant witnesses and evaluate written documents and statements. The Investigator may exclude any third party (including legal counsel, family members, or character witnesses) from such meetings and interviews. In addition, the reporting and responding parties will have timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings.

Pending criminal matters. The internal investigation will proceed whether a related criminal matter is pending or not. If there is an ongoing criminal investigation, B-CU will *not* wait for the conclusion of the criminal investigation or criminal proceeding to begin its own Title IX investigation. However, B-CU may temporarily delay the fact-finding portion of a Title IX investigation while the police or other law enforcement officials are gathering evidence.

Opportunity to Respond to Report. Before a decision concerning responsibility is made or, for students, before there is a hearing, the investigation report should be provided to the Respondent and to the Complainant. Both parties must have an opportunity to respond to the findings, conclusions, and other information in the investigation report in writing before a decision of responsibility is made or, if there is a hearing, at a live hearing to determine responsibility.

F. Hearings for Student Respondents.

The student sexual misconduct hearing process will protect the safety of victims and promote accountability. When the complaint involves students, the Investigator's final report will be submitted to the Office of Student Conduct, a unit within the Division of Student Affairs and Enrollment Management, for review and determination as to proceeding with a hearing before Administrative Panel. If Student Conduct conducts a hearing, both the Complainant and Respondent will be given the opportunity to present evidence and witnesses, as well as have an advisor of their choice present, though that advisor may not participate in any of the proceedings. The Panel shall have no authority to compel the attendance of witnesses. The following applies:

1. Both parties will be given similar and timely access to information that will be used at the hearing.
2. Any conflicts of interest between a party and the fact-finder or decision-maker at a hearing must be disclosed.
3. Both parties will be given the same opportunity to present relevant evidence and witnesses, including character witnesses.
4. If the Respondent is allowed to review the Complainant's statement, the Complainant may also review the Respondent's statement.
5. The parties are prohibited from personally questioning each other at hearings.
6. If the institution allows attorneys to attend the disciplinary hearings, the attorneys for both sides must have the same opportunity to speak and participate.
7. If attorneys are allowed to attend in an advisory capacity both sides must have the same opportunity to provide advice.
8. B-CU will maintain documentation of all disciplinary hearing proceedings, including written findings of facts, transcripts, and any audio recordings.

9. The fact of a current or previous consensual dating or sexual relationship between the parties does not itself imply consent or preclude a finding of sexual violence.

The Board will then determine whether it is more likely than not that a violation of policy occurred and issue a written decision. For each violation charged, the Board's decision must include specific findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of B-CU's Title IX sexual misconduct policy. The written decision will include, but not be limited to, whether the allegations were substantiated, and if so, recommended disciplinary sanctions and remedial measures. The hearing decision will be provided to both parties, although the content of each letter may be modified subject to the limitations of FERPA and other federal or state privacy laws. In cases of alleged sexual assault, the result of the hearing and any sanction imposed will be disclosed to both parties regardless of whether the hearing concludes an assault was committed.

The Complainant and Respondent will both be notified of the hearing Board's findings in writing within the same 24-hour period. The written recommendation of the Student Conduct Committee will be relayed to the student Respondent and Complainant, with any restrictions or sanctions. If the complaint is against a faculty member or other employee, the hearing decision will be submitted to the EEO/Title IX Coordinator, who will make a recommendation concerning restrictions or sanctions to the Office of the President. The President, or the President's designee, will make the final determination as to any recommended actions or sanctions,

Any person who serves on a hearing board related to sexual misconduct will receive annual training on the University's policies and procedures related to sexual harassment and sexual violence.

G. Appeals

A student may appeal a decision of the Administrative Panel to the Associate Vice President/Dean of Students or designee. The appeal must be submitted in writing within five business days of receiving written notification of hearing outcome.

Bases for appeal. The Associate Vice President/Dean of Students or designee will convene a Disciplinary Review Committee where the student appeals based on one or more of the following:

Improper hearing procedures that materially affected the outcome of the hearing; New evidence (not available at time of original hearing) has surfaced; or Imposition of an inappropriate sanction for the offense in question.

The complainant and respondent may file an appeal. Appeals filed after the deadline will not be considered.

The Associate Vice President/Dean of Students or designee will issue a decision in writing to the accused Student and the Chief Student Conduct Officer no later than 30 days after the request for an appeal has been submitted. This deadline may be extended in the event of complex or unusual circumstances. If this deadline is extended, the Associate Vice President/Dean of Students or designee shall notify the accused of the delay in writing.

H. Sanctions and protective measures

Individualized services must be offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct. If a violation of this policy is proven by a preponderance of the evidence (*i.e.*, that it is more likely than not that sexual harassment occurred), immediate action, including protective measures, will be implemented to end the harassment and prevent its reoccurrence. For students, once a student is found responsible for a sexual misconduct violation, before

a sanction is imposed, B-CU should consider: (1) how best to enforce its Code of Conduct; (2) the impact of separating a student from his or her education; and (3) whether the proposed sanction is a proportionate response to the violation. The recommended action will depend on the degree of control the school has over the harasser and the nature, frequency and severity of the substantiated sexual harassment. In all instances, the Title IX Coordinator will follow up and communicate with the complainant at the conclusion of the investigation.

Depending on whether the alleged harasser is a student, faculty, staff member, volunteer, or third party, sanctions can include a verbal warning, written reprimand, a no-contact order, short-term or long-term suspension, expulsion, or dismissal/termination. Counseling for the Complainant and the Respondent, as well as other protective measures, will also be considered as remedial action. In addition, the following protective measures may be imposed following a final determination of rape, acquaintance rape, domestic violence, dating violence, sexual assault, or stalking:

Protective or remedial measures. Available protective and remedial measures include, but are not limited to:

- a. Providing an escort to ensure that the parties can move safely between classes and activities;
- b. Ensuring the Complainant and Respondent do not share classes or extracurricular activities;
- c. Moving the Respondent or Complainant (if the Complainant requests to be moved) to a different residence hall;
- d. Providing comprehensive, holistic victim services including medical, counseling and academic support services, such as tutoring;
- e. Arranging for the Complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty; and
- f. Reviewing any disciplinary actions taken against the Complainant to see whether there is a causal connection between the sexual violence and the misconduct that may have resulted in the Complainant being disciplined.

Any sanction imposed on the Respondent of sexual assault or harassment that relates directly to the Complainant, such as a "no contact" order, transfer to different classes or housing, or a suspension will be disclosed to the Complainant. The Complainant and Respondent will not be notified of the individual remedies offered or provided other than no-contact orders. In cases of alleged sexual violence, the result of the hearing and any sanction imposed will be disclosed to both parties regardless of whether the hearing concludes an assault was committed.

I. Informal Resolution

If the Complainant requests mediation or informal resolution, s/he will not be required to work out problems directly with the accused individual. Informal resolution processes can be used to resolve sexual misconduct cases if both parties agree. The Complainant has the right to end the informal process at any time and begin the formal stage of the complaint process.

J. Alleged student Respondent's rights under the Family Educational Rights and Privacy Act (FERPA)

Under FERPA, an alleged student Respondent may ask to inspect and review information about the allegations against him or her if the information directly relates to the Respondent and is maintained as an education record. In such a case, B -CU will either redact the Complainant's name and all identifying information before allowing the Respondent to inspect and review the sections of the complaint that relate to him or her, or notify the

Respondent of the specific information in the complaint that is about the Respondent. *See* 34 C.F.R. § 99.12(a).

K. Non-retaliation

Retaliation against a student, employee, or other individual who reports or complains about sex discrimination to an appropriate school official or participates in a report, investigation or proceeding involving a claim or allegation under this policy because he or she made a complaint, testified, or participated in an investigation or proceedings is prohibited.

L. Dissemination of policy

This policy must be distributed to:

1. Students
2. Administrators, faculty, other employees, and volunteers
3. Applicants for admission
4. Application for employment

This policy must be available:

1. On the school website
2. In hard copy at multiple campus locations
3. In both printed and electronic publications, including student, staff, and faculty handbooks, codes of conduct, and catalogs

References:

[U.S. Department of Education O & A on Campus Sexual Misconduct](#)

The [Violence Against Women Reauthorization Act of 2013](#), (VAWA), also known as the Campus Sexual Violence Elimination Act (Campus SaVE Act)

[Title IX of the Education Amendments of 1972](#), as amended

[Title VII of the Civil Rights Act of 1964](#), as amended

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended October 26, 2010 [Dear Colleague Letter](#) on harassment and bullying, issued by the U.S.

Department of Education

April 24, 2013 [Dear Colleague Letter](#) on Title IX retaliation, issued by the U.S. Department of Education

[Title IX Legal Manual](#). U.S. Department of Justice Civil Rights Division

[Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties](#)
[Office for Civil Rights Dear Colleague Letter on Sexual Harassment](#)