



Sexual Misconduct Policy

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Table of Contents

Introduction

Regional Resources.....	11
National Resources.....	11
Emergency Removal.....	11
Administrative Leave.....	12
Resolution Process.....	12
Filing a Formal Complaint.....	12
Multi-Party or Multi-Allegation Situations.....	12
Determining Jurisdiction and Mandatory Title IX Dismissal.....	13
Discretionary Title IX Dismissal of Complaint.....	13
Notice of Dismissal.....	13
Withdrawal or Resignation While Charges are Pending.....	14
Notice of Allegations.....	14
Advisors.....	15
Alternative Resolution.....	15
Role of the Alternative Resolution Facilitator.....	16
Confidentiality.....	16
Alternative Resolution Options.....	16
Administrative Resolution.....	16
Facilitated Resolution.....	17
Formal Resolution Process.....	17
Notice of Meetings and Interviews.....	17
Request for Delay.....	17
Investigation.....	17
General Rules of Investigations.....	17
Ongoing Notice.....	18
Review of Evidence.....	18
Investigative Report.....	19

Hearing Procedures.....	21
Questioning Procedure.....	21
Hearing Recording & Transcript.....	22
Determination Regarding Responsibility.....	22
Standard of Proof.....	22
Considerations for Evaluating Testimony and Evidence.....	22
Written Determination Regarding Responsibility.....	23
Timeline of Determination Regarding Responsibility.....	24
Sanctions.....	24
Appeals.....	24
Retaliation.....	25
Appendix I: Rules of Decorum for Resolution Process Hearings.....	28
Acknowledgement.....	31

Introduction

Title IX

Title IX of the Educational Amendments of 1972

or employee of one College and the Respondent is a student or employee of the other College, the Complainant is a student or employee of one College and the location of the alleged Sexual Misconduct is the other College, or if other facts and circumstances set forth in a Formal Complaint in the investigation of such Formal Complaint suggest the need for joint administration of the Resolution Process.

Sexual Misconduct Policy

Bryn Mawr College is committed to ensuring that all members of the College community have a learning and working environment that is free from sexual misconduct. For purposes of this policy, the College defines **Sexual Misconduct** as acts described in one or both of the following broad categories:

1. **Title IX Sexual Harassment**, in accordance with the U.S. Department of Education Final Rule, includes any conduct on the basis of sex that is alleged to have occurred in a College Education Program or Activity, and is alleged to have been perpetrated against a person in the United States. The conduct alleged, if true, must satisfy one or more of the following conditions:
 - a. A College employee conditions the provision of an aid, benefit, or service on an individual's participation in a College Program or Activity;
 - b. Unwelcome conduct that a reasonable person would determine to be so severe, pervasive, and objectively offensive that it creates a hostile environment in a College Program or Activity;
 - c. **Sexual Assault**, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), meaning any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent (such as incapacitation, age, family relationship to the other party, or intellectual or other disability). Sexual Assault can be committed by or against individuals of any sex or gender and can occur between individuals of the same sex/gender or different sexes/genders. As required by the Title IX Final Rule, the College will rely on the following definitions of Sexual Assault:
 - i.

victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;

iii. sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or

iv. sexual intercourse with a person who is under the statutory age of consent.

d. **Dating Violence**, as definedn 34 U.S.C. § 12291(a)(1)), meaningany act of violence

- c. Sexual exploitation, defined as occurring when a person abuses or exploits another person for financial gain or advantage, or any other illegitimate purpose, or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses

Examples of sexual exploitation include:

- o Knowingly or recklessly observing or attempting to observe consensual sexual activity in a place where that person would have a reasonable expectation of privacy, or recording, and/or distributing (including streaming) of images, photography, video, or audio recordings of such activity without the consent;
- o prostituting another individual;
- o

Effective Date

This Sexual Misconduct Policy is effective on August 14, 2020 and will apply to Formal Complaints of Sexual Misconduct brought on or after August 14, 2020. Formal Complaints brought prior to August 14, 2020 will be investigated and adjudicated according to previous College policies.

Non-Discrimination in Application

The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about this Policy or processes set forth herein should contact the Title IX Coordinator at TitleIX@ocrcas.ed.gov or contact information available <https://ocrcas.ed.gov/contact>.

Disability Accommodations

This Policy does not alter a College's obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations that do not fundamentally alter the Resolution Process for disclosed disabilities to the Title IX Coordinator at any point before or during the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other College programs and activities.

Alcohol and Drug Use Amnesty

The health and safety of every student is of utmost importance. The College recognizes students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time Sexual Misconduct occurs may be hesitant to report such incidents due to fear of potential consequences

Complainant

A Complainant is any individual who has reported being or is alleged to be the victim of conduct that could constitute Sexual Misconduct as defined under the Policy.

Confidential Resource

A Confidential Resource is a College employee who is not required to report notice of sexual harassment to the Title IX Coordinator. Confidentiality refers to the ability of identified confidential resources to report crimes and violations to law enforcement or College officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. Lists of Confidential Resources are available on the [Lawr College](#) webpage.

Consent

Consent to engage in sexual activity must be informed, knowing and voluntary; consent must exist from the beginning to end of each instance of sexual activity and for each form of sexual contact. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. Consent is active, not passive.

Guidance for Consent:

- x Prior to initiating a sexual encounter, one is expected to obtain consent to each act of sexual activity prior to initiating such activity. Consent to one form of sexual activity does not constitute consent to engage in all forms of sexual activity.
- x Either party may withdraw consent at any time. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.
- x Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance or an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.
- x When consent is requested orally, absence of any explicit oral response constitutes lack of consent. An oral response must be affirmative, unambiguous, and voluntary.
- x If at any time during the sexual activity, any confusion or ambiguity arises as to the willingness of the other individual to proceed, both parties should stop and clarify orally the willingness to continue before continuing such activity.
- x Individuals with a previous or current intimate relationship do not automatically give either initial or continued consent to sexual activity. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates willingness to engage in each sexual activity.
- x Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.

- x Consent is not effective if it results from the use or threat of physical force, intimidation, or free will to choose whether or not to have sexual contact.
- x An individual who is physically incapacitated from alcohol or other drug consumption (voluntarily or involuntarily) or is asleep, unconscious, unaware, or otherwise physically helpless is considered unable to give consent.
- x In the Commonwealth of Pennsylvania, the age of majority is 18. Under state law, consent cannot be given by minors under the age of 13 and can only be given by a minor under the age of 16, if the other party is less than four (4) years older than the minor

Education Program or Activity includes:

- x Any Bryn Mawr College on-campus premises
- x Any off-campus premises over which the College has substantial control over the Respondent and the context in which the Sexual Misconduct occurred. This includes buildings or property owned or controlled by a recognized student organization.
- x Any activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of College programs and activities over which the College has substantial control.

Formal Complaint

A Formal Complaint is a document including an electronic submission filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint or a document signed by the Title IX Coordinator, alleging Sexual Misconduct against a Respondent within the College's Education Program or Activity and requesting initiation of the Grievance & Resolution procedures consistent with this Sexual Misconduct Policy to investigate the allegation of Sexual Misconduct

Hearing Panel

The Hearing Panel is the group of individuals appointed by the College with authority to determine responsibility and sanctioning (if applicable) for violation of this Sexual Misconduct Policy.

Investigator

The Investigator is the individual or individuals appointed by the College to gather evidence related to the allegation of Sexual Misconduct. The Investigator(s) will provide an investigative report summarizing all relevant evidence for review by both Complainant and Respondent

Privacy

References made to privacy mean the actions of College employees, who cannot guarantee confidentiality, to maintain privacy to the greatest extent possible. Information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee who is responsible for tracking patterns and spotting systemic issues. The College will limit disclosure as much as practicable, even if the Title IX Coordinator determines that a request for confidentiality cannot be honored.

Anonymous Reports

An individual may make a report of Sexual Misconduct to the Title IX Coordinator, and if preferred,
PD\ GR VR ZLWKRXW GLVFORVLQJ RQH¶V QDPH XVLQJ WKH RQ

[Bryn Mawr Online Reporting Form](#)

Program and Activity, protect the safety of all parties and the

610-526-5375

Regional Resources

- x **Victims Services Center of Montgomery County**
888-521-0983
www.victimservicescenter.org
- x **7 KH & ULP H 9 LFWLP V ¶ & HQWHU RI & KHVWHU & RXQW **
610-692-7273
www.cvcofcc.org
- x **Delaware County Women Against Rape**
610-566-4342
www.delcowar.org
- x **Network of Victim Assistance (Bucks County)**
1-800-675-6900
www.novabucks.org
- x **Berks Women in Crisis (Berks County)**
610-372-9540
www.berkswomenincrisis.org
- x **Women Against Abuse (Philadelphia)**
866-723-3014
www.womenagainstabuse.org
- x **Women Organized Against Rape (Philadelphia)**
215-985-3333
www.woar.org

National Resources

x

Respondents, and all involved witnesses. The decision to consolidate Formal Complaints is not subject to appeal.

Determining Jurisdiction and Mandatory Title IX Dismissal

The Resolution Process will apply to a Formal Complaint if, in the reasonable determination of the Title IX Coordinator, the alleged conduct fits the definition of Sexual Misconduct as defined in Policy, i.e., **6-BASED MISCONDUCT** as defined herein. In addition, a Complainant filing a Formal Complaint of Title IX Sexual Harassment must be participating, or attempting to participate, in the **CO-EDUCATION** Programs and Activities at the time the Formal Complaint is filed in order for the Formal Complaint to be considered Title IX Sexual Harassment for purposes of the Resolution Process. If the Complainant is not participating or attempting to participate in a College Education Program or Activity, the College will dismiss the Complaint for Title IX purposes and treat the Formal Complaint as one of Other **BASED** Misconduct.

If the alleged conduct does not meet these definitions, the Title IX Coordinator will in consultation with the Dean of the Undergraduate College (for student-related Complaints) or the Director of Human Resources (for employee-related Complaints) determine the appropriate process for resolution.

Discretionary Title IX Dismissal of Complaint

The Title IX Coordinator may, in their discretion, dismiss a Formal Complaint brought under the Sexual Misconduct Policy or any specific allegations raised within that Formal Complaint, at any time during the Investigation or Hearing, if:

- x A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint, or any allegations raised in the Formal Complaint;
- x The respondent is no longer enrolled or employed by Bryn Mawr College,

Any evidence subject to inspection and review will be available at ~~Heary~~ ~~ing~~, including for purposes of questioning

The Parties and their Advisors must sign an agreement not to

- x The College may still proceed with the hearing in the absence of a Party and may reach a Determination Regarding Responsibility in their absence, including through any evidence gathered.
- x For example, an oral or written statement constituting part or all of Sexual Misconduct may be submitted to questioning about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under a Formal Complaint.
- x The decision maker cannot draw an inference about Determination Regarding Responsibility based solely on a Party's failure to answer questions.
- x Advisors shall be subject to the Rules of Decorum and may be removed at the discretion of the Hearing Panel upon violation of those Rules.

The Hearing Panel

- x The Hearing Panel will consist of three (3) trained decision makers: a Panel Chair and two Panel members. The Panel Chair may be a College administrator or an outside consultant contracted by the College. Panel members will be appointed administrators or faculty members.
- x No member of the Hearing Panel will also have served as the Title IX Coordinator, Title IX Investigator, Advisor to or Witness for any Party in the case.
- x No member of the Hearing Panel may serve on the Appeals body in the case.
- x No member of the Hearing Panel will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against Parties to the case.
- x The Hearing Panel will be trained on topics including how to serve impartially, issues of relevance, how to apply the rape shield protections provided to Complainants, and any technology to be used at the hearing.
- x The Parties will have an opportunity to raise any objections regarding actual or perceived conflicts of interest or bias at the commencement of the hearing.

Advisors

- x The Parties have the right to select an Advisor of their choice, who may be, but does not have to be, an attorney.
- x The Parties' Advisors may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the Party, except for the purpose of questioning during a hearing where appropriate. (See [Questioning Procedure #1](#))
- x If a Party does not select an Advisor, the College will select an Advisor to serve in this role at the hearing at no fee or charge to the Party.
- x The Advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against Parties to the case.
- x If a Party does not attend the hearing the Party's Advisor may appear and ask questions on their behalf.

Before any question is answered, the Panel Chair will determine if the question is relevant. Panel Chair U H W D L Q V W K H G L V F U H W L R Q W R G H W H U P L Q H Z K U D S W O N F R Q V W that are duplicative of those already asked may be deemed irrelevant if they have been asked and answered.

If a Party does not submit to questioning during Procedure #1, the Hearing Panel cannot rely on any prior statements made by that Party in reaching a Determination Regarding Responsibility, but may reach a Determination Regarding Responsibility based on evidence that does not constitute a
3 V W D W H P H Q W ' E \ W K D W 3 D U W \

Procedure #2

For all other Hearings Parties and not their Advisors must conduct any questioning of Witnesses. With respect to questioning of the other party, the Panel will conduct the questioning based on written questions submitted by the Party. Panel Chair will only ask the written questions submitted
E \ W K H R W K H U S D U W \ L I W K H \ G H W H U P L Q H L Q W K H L U G L V F U H questions will not be asked at the hearing.

Hearing Recording & Transcript

All Hearings will be recorded, and a transcript will be available to Parties for inspection and review. Requests to review the recording and/or transcript must be made in writing to the Title IX Coordinator. Prior to obtaining access to a hearing transcript, the Parties and their Advisors must sign an Agreement not to disseminate any of the testimony heard or evidence obtained. He/she shall not disseminate any of the testi

Conversely, credibility judgments will not rest on whether Party or Witness is truthful or not, whether the testimony is complete or incomplete, or if the Party or Witness is displaying stress or anxiety.

Decisionmakers will afford the highest weight relative to other testimony to first-hand testimony by Parties and Witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a Witness

6. The College's procedures and the permitted reasons for Complainant and Respondent to appeal the Determination G H V F U L E H G E H O R Z L Q 3 \$ S S H D O '

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, Determination Regarding Responsibility will be issued by the College within ten (10) business days of the completion of the Hearing

The Determination becomes final either on the date that the College provides the Parties with the result of any Appeal if such Appeal L V I L O H G F R Q V L V W H Q W Z L W K W K H p e a r s F H G X U below, or if an Appeal is not filed, the date on which the opportunity to file an Appeal expires.

Sanctions

When a Respondent accepts or is found responsible for violating Sexual Misconduct Policy, factors considered when determining a sanction/responsive action may include, but are not limited to:

- x The nature of, severity of, and circumstances surrounding the violation(s)
- x 7 K H 5 H V S R Q G H Q W ¶ V F R Q G X F W K L V W R U \
- x Previous allegations against or allegations involving similar conduct by the Respondent
- x The impact on the Parties
- x Any other information deemed relevant by the Hearing Panel

The sanctions will be implemented as soon as feasible, either upon the outcome of an Appeal or the expiration of the Appeal window. Possible sanctions described in Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by external

days of being notified of the Dismissal of a Formal Complaint Determination Regarding Responsibility indicating the grounds for the Appeal

The grounds for Appeal are limited to:

- x Procedural irregularity that affected the outcome of the matter (failure to follow the College's own procedures)
- x New evidence that was not reasonably available at the time the Determination Regarding Responsibility or dismissal was made, that could affect the outcome of the matter.
- x The Title IX Coordinator, Investigator(s), or decision maker(s) had a conflict of interest or bias for or against an individual Party, or for or against Complainants or Respondents in general, that affected the outcome of the matter.

The submission of an Appeal stays any sanctions for the pendency of the Appeal. Supportive Measures and remote learning opportunities remain available during the pendency of the Appeal.

If a Party

Appendix I: Rules of Decorum for Resolution Process Hearings

Purpose of the Rules of Decorum

Title IX Hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education with HSDUW, with regard to Title IX in the Final Rule³ SXUSRVHIXOO\ GHVLJQHG WKHV allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or Hearing 3DQHO & KDLU IURP TXHVWLRQLQJ ZLWQHVVHV LQ DQ DEXVLYH Reg. 30026, 30319 (May 19, 2020). The Department has deter

5. TheAdvisor

Relevant Questions Asked in Violation of the Rules of Decorum

Should an Advisor ask a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning in to the Witness or Party? **V S H U V R Q D O V S W I D N O T B E W K H T X** If deemed irrelevant by the Hearing Panel Chair simply because of the manner in which it was delivered. Under that circumstance, the Hearing Panel Chair will notify the Advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be asked in a respectful, non-abusive manner by the Advisor (or a replacement Advisor, should the Advisor be removed for violation of the Rules).

Acknowledgement

Policy adapted from the Model Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations