

Title IX Policy - Sexual Misconduct

I. PURPOSE AND SCOPE OF POLICY

1. Statement of Institutional Values

Sexual misconduct of any form is a violation of a person's rights, dignity and integrity. An act of sexual misconduct represents a fundamental failure to recognize and respect the intrinsic worth and dignity of another. Acts of sexual misconduct are harmful and illegal and will not be tolerated at Bryan University (BU). Such acts corrupt the integrity of the educational process, are contrary to the mission and values of Bryan University and are against BU policy. All members of Bryan University should be free from sexual misconduct in the classroom, the social and recreational environment, as well as the workplace. BU seeks to foster a climate free from sexual misconduct through coordinated education and a prevention program, the promulgation of clear and effective policies, as well as investigative and grievance procedures that are prompt, equitable, and accessible to all. In response to any reported sexual misconduct, BU will take all appropriate steps to eliminate the misconduct, prevent its recurrence and address its effects. Creating a safe campus environment is the responsibility of all members of Bryan University, both individually and collectively. In order to achieve equitable results, BU will carefully review and/or investigate all reports with an earnest intent to understand the perspective and experiences of each individual involved, and provide for fair and impartial evaluation and resolution.

2. Sexual Assault Prevention, Risk Reduction, and Awareness Programs

BU engages in comprehensive, intentional and integrated programming intended to respond to and prevent sexual assault, domestic violence, dating violence and stalking that:

- Is culturally relevant, inclusive of diverse communities and identities, sustainable, responds to community needs.
- Considers environmental risk and protective factors as they occur to the individual, relationship, institutional, community, and societal levels. Educational programming consists of primary prevention and awareness programs for students and employees that:
 - Identify sexual assault, domestic violence, dating violence, and stalking as prohibited conduct.
 - Define using definitions provided by the Department of Education, state law, and/or Code of Conduct, what behavior and actions constitute consent to sexual activity in the state of Missouri/Arkansas and explain consent.
 - Provide a description of safe and positive options for bystander intervention. Bystander intervention means safe, effective, and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of harm, including sexual assault, domestic violence, dating violence, or stalking. Bystander intervention includes recognizing situations of potential harm, evaluating the situations and options, and deciding what intervention is appropriate.
 - Describe risk-reduction options. Risk reduction means options designed to decrease perpetration and bystander interaction and to increase empowerment for victims in

order to promote safety and to help individuals and communities address conditions that facilitate violence.

- Raise awareness of the prohibitive behavior and/or consent and healthy relationships. Awareness programs are those programs that raise awareness of the various offenses, behaviors, and/or prosocial behaviors in regards to prevalence, statistics, normative information, options, resources, services, or other areas of interest/or concern.
- Encourage primary prevention. Primary prevention programs are designed to prevent an offense from occurring. Such programs include information regarding consent, healthy relationships, and positive prosocial behavior.
- BU's ongoing prevention awareness continues the ongoing goal of preventing and raising awareness of sexual assault, domestic violence, dating violence, and stalking; BU's has developed an annual educational campaign consisting of presentations that include distribution of educational material to students and employees.

3. Purpose of the Policy

The purpose of this policy is to provide Bryan University with a clearly articulated set of behavioral standards, common understandings of definitions and key concepts, and descriptions of prohibited conduct. The policy applies to BU, including students, faculty, and staff. It is intended to protect and guide students, faculty and staff who have been affected by sexual misconduct, whether as a complainant, a respondent, or a third party. When used in the policy, a complainant refers to the individual who believes that he/she/they have been the subject of sexual misconduct. A respondent refers to the individual who has been accused of sexual misconduct. A third party refers to parents, guardians, or any other participant in the process, including a witness to the incident or an individual who makes a report on behalf of someone else. A report refers to any incident or concern regarding sexual misconduct that is reported to BU. A formal complaint is an allegation of sexual misconduct filed against a faculty or staff member or student that initiates the appropriate disciplinary process. It is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator under the Final Rule, and by any additional method the school designates. In addition to defining sexual harassment and the forms of sexual misconduct that violate the standards of our community, this policy will also:

- Identify resources and support for all members of Bryan University;
- Identify the Title IX Coordinator and their role;
- Provide information about where BU students and/or employees can obtain support or access to resources in a confidential manner;
- Provide information about how BU students and/or employees can make a report on-campus and off-campus, and;
- Provide information about how a report against a BU student and/or employee will be

investigated, evaluated and resolved.

4. Scope

As stated above, this policy applies to all members of BU, including students, employees, visitors and independent contractors. When used in the policy, “employees” generally refer to both staff and faculty members. Vendors, independent contractors, visitors and others who conduct business with BU or on BU property are also expected to comply with this policy. All BU members are responsible for their actions and behavior, whether the conduct occurs on or off campus. BU may address sexual misconduct that occurs off campus under its institutional misconduct policy when such behavior has an actual or potential adverse impact on any member of the BU community. Members of the BU community have a responsibility to adhere to University policies and local, state and federal law. However, Title IX jurisdiction is limited to conduct that occurs within the United States and within BU’s education program of activity, meaning locations, events, or circumstances over which BU has substantial control over both the respondent and the context of the conduct, or buildings owned or controlled by recognized student organizations. Any individual may make a report alleging a violation of this policy. BU will provide resource options and respond promptly and equitably to all allegations of sexual misconduct. BU will engage in a Title IX review when the reported conduct falls within Title IX jurisdiction, and will use its broader institutional misconduct procedures for conduct that falls outside of Title IX’s scope. BU is committed to maintaining fairness for all parties and to balancing the needs and interests of the individuals involved with the safety of the community as a whole.

5. Coordination with Non-Discrimination Policy

Bryan University (BU) recognizes harassment related to an individual's sex, can occur in conjunction with misconduct related to an individual's race, color, ethnicity, national origin, religion, age, military or veteran status or disability. Targeting individuals on the basis of these characteristics is also a violation of BU’s community standards. Under these circumstances, BU will coordinate the investigation and resolution efforts to address harassment related to the targeted individual's sex together with the conduct related to the targeted individual's race, color, ethnicity, national origin, religion, age, military or veteran status or disability.

II. NOTICE OF NON-DISCRIMINATION

BU is committed to establishing and maintaining an environment free from all forms of harassment and discrimination for all BU community members. BU does not discriminate on the basis of race, color, ethnicity, national origin, age, sex, physical or mental disability, religion, military or veteran status or any other protected class. BU does not discriminate on the basis of sex in its educational, extracurricular or other programs or in the context of employment. Sexual misconduct, including sexual harassment as defined by this policy, is a form of sex discrimination that unjustly deprives a person of equal treatment. It is prohibited under Title IX of the Educational Amendments of 1972, a federal law that provides that: No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964. This policy prohibits sexual misconduct against all BU members of any gender or sexual orientation. This policy prohibits gender-based harassment that does not involve conduct of a sexual nature.

III. BU STATEMENT OF PRIVACY

Bryan University is committed to maintaining the privacy of all individuals involved in a report of sexual misconduct. In

any Title IX review of an allegation of sexual misconduct, every effort will be made to protect the privacy and interests of the individuals involved in a manner consistent with the need for a thorough review of the allegation. Such a review is essential to protecting the safety of the complainant, the respondent, and the campus community, and to maintaining an environment free from sexual discrimination. At all times, the privacy of the parties will be respected and safeguarded.

Information related to a report of misconduct will be shared only with those BU employees who "need to know" in order to assist in the investigation and/or resolution of the complaint. All BU employees who are involved in the Title IX review process have received specific training regarding the safeguarding of private information. Students and employees wishing to obtain confidential assistance through on-campus or off-campus resources without making a report to BU may do so by speaking with professionals who are obligated by law to maintain confidentiality. When BU has received a report of sexual misconduct and the complainant requests that his/her identity remain confidential, or that BU not pursue an investigation, BU will balance this request with its responsibility to provide a safe and non-discriminatory environment for all BU members. BU will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. At all times, BU will seek to respect the request of the complainant, and where it cannot do so, BU will consult with the complainant and keep him/her/them informed about the chosen course of action. If a report of misconduct discloses an immediate threat to Bryan University, BU may issue a timely notice of the conduct to the community to protect the health or safety of the broader campus community. This notice will not contain any biographical or other identifying information. Immediately threatening circumstances include, but are not limited to, recently reported incidents of sexual misconduct that include the use of force, a weapon, or other circumstances that represent a serious and ongoing threat to BU students, faculty, administrators, staff or visitors. All resolution proceedings are conducted in compliance with the requirements of FERPA, the Clery Act, Title IX and BU policy. No information shall be released from such proceedings except as required or permitted by law and BU policy.

IV. PROHIBITED CONDUCT AND DEFINITIONS

Bryan University (BU) prohibits sexual misconduct. Sexual misconduct is a broad term that includes, but is not limited to sexual harassment, sexual violence, sexual exploitation, stalking, cyber-stalking, bullying and cyber-bullying, aiding or facilitating the commission of a violation, and retaliation. Consistent with the values of an educational and employment environment free from harassment based on sex, BU also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex stereo-typing, even if those acts do not involve conduct of a sexual nature.

1. Definition of Sexual Harassment

For Title IX purposes, "sexual harassment" means conduct on the basis of sex that satisfies one or more of the following:

- Quid pro quo harassment: An employee of the University conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
- Hostile environment harassment: Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity
- Clery/VAWA offenses: Sexual assault, dating violence, domestic violence, or stalking as defined by the Clery Act and the Violence Against Women Act are independently actionable under Title IX.

2. Forms of Prohibited Sexual Harassment

Sexual harassment is prohibited. In some cases, sexual harassment is obvious and may involve an overt action, a threat or reprisal. In other instances, sexual harassment is subtle and indirect, with a coercive aspect that is unstated. Sexual harassment can take many forms:

- It can occur between equals (e.g. student to student, staff to staff, faculty member to faculty member, visitor/contracted employee to staff) or between persons of unequal power status (e.g. supervisor to subordinate, faculty member to student)/ Although sexual harassment often occurs in the context of an exploitation of power by the individual with the greater power, a person who appears to have less power in a relationship can also commit sexual harassment (e.g. student harassing a faculty member).
- It can be committed by an individual or may be a result of the collective actions of an organization or group.
- It can be committed against an individual, an organization or a group.
- It can be committed by an acquaintance, a stranger, or someone with whom the complainant has a personal, intimate or sexual relationship.
- It can occur by or against an individual of any sex.
- It does NOT have to include intent to harm, be directed at a specific target, or involve repeat incidents. (For Title IX hostile-environment claims, conduct must be severe, pervasive, and objectively offensive; Clery/VAWA offenses, such as sexual assault, dating violence, domestic violence, or stalking are independently actionable under Title IX.)
- It can occur in the school's education program or activity, against a person in the program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. Examples of behavior that might be considered misconduct include, but are not limited to:
 - Unwanted or inappropriate sexual innuendo, propositions, sexual attention or suggestive comments and gestures, humor and jokes about sex or gender-specific traits; sexual slurs or derogatory language directed at another person's sexuality or gender; insults and threats based on sex; and other oral, written or electronic communications of a sexual nature that an individual communicates is unwanted and unwelcome;
 - Written graffiti or the display or distribution of sexually explicit drawings, pictures or written materials; sexually charged name-calling; sexual rumors or ratings of sexual activity/performance; the circulation, display, or creation of emails or web sites of a sexual nature.
 - Non-academic display or circulation of written materials or pictures degrading to an individual(s) or gender group (it is expected that instructors will offer appropriate warning regarding the introduction of explicit and triggering materials in the classroom);
 - Inappropriate or unwelcome physical contact or suggestive body language, such as touching, patting, pinching, hugging, kissing, or brushing against an individual's body;

- Undue and unwanted attention, such as repeated inappropriate flirting, inappropriate or repetitive compliments about clothing or physical attributes, staring, or making sexually oriented gestures;
- Physical coercion or pressure of an individual to engage in sexual activity or punishment for a refusal to respond or comply with sexual advances;
- Change of academic or employment responsibilities (increase in difficulty or decrease of responsibility) based on sex;;
- Use of a position of power or authority to: (1) threaten or punish, either directly or by implication, for refusing to tolerate harassment, for refusing to submit to sexual activity, or for reporting harassment; or (2) promise rewards in return for sexual favors.
- Sexual assault;
- Abusive, disruptive or harassing behavior, verbal or physical, which endangers another's mental or physical health, including but not limited to threats, acts of violence, or assault based on gender and/or in the context of intimate partner violence.
- Demeaning verbal or other expressive behavior of a sexual or gendered nature in instructional settings; and
- Acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex or sex-stereotyping. Harassment for exhibiting what is perceived as a stereotypical characteristic for one's sex, or for failing to conform to stereotypical notions of masculinity and femininity.,

3. Additional Forms of Prohibited Sexual Misconduct

Sexual misconduct may vary in its severity and consists of a range of behaviors. The following descriptions represent sexual behaviors that violate BU's community standards and a person's rights, dignity and integrity.

- **Sexual Violence:** Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. This includes rape, sexual assault, battery and sexual coercion. Sexual violence may involve individuals who are known to one another or have an intimate and/or sexual relationship, or may involve individuals no known to one another. Examples include, but are not limited to:
 - Having or attempting to have sexual intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with a body part or object, or oral copulation by mouth-to-genital contact.
 - Having or attempting to have sexual contact with another individual without consent. Sexual contact includes kissing, touching intimate parts of another, causing the other to touch one's intimate parts, or disrobing of another without permission. Intimate parts may include breasts, genitals, buttocks, mouth or any other part of the body that is touched in a sexual manner.
- **Sexual Exploitation:** An act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses. Sexual exploitation may involve individuals who are known to one another, have an intimate or sexual

relationship, and/or may involve individuals not known to one another. Examples include, but are not limited to:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
 - Non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
 - Prostituting another individual;
 - Knowingly exposing another individual to a sexually transmitted disease or virus without his or her knowledge; and
 - Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.
- **Stalking:** A course of conduct involving more than one instance of unwanted attention, harassment, physical or verbal contact, or any other course of conduct directed at an individual that could be reasonably regarded as likely to alarm or place that individual in fear of harm or injury, including physical, emotional, or psychological harm. This includes cyber-stalking, a particular form of stalking in electronic media such as the Internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact are used to pursue, harass or make unwelcome contact with another person. Stalking and cyber-stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.
- **Aiding or Facilitating:** Aids, facilitates, promotes or encourages the commission of a violation under this policy. Aiding or facilitating may also include failing to take action to prevent an imminent act when it is reasonably prudent and safe to do so. Taking action may include direct intervention, calling campus security or local law enforcement, or seeking assistance from a person with authority.
- **Retaliation:** Acts or attempts to retaliate or seek retribution against the complainant, respondent or an individual or group of individuals involved in the investigation and/or resolution of an allegation of sexual misconduct is prohibited.
- No school or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing.
 - Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
 - The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.
 - Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination that schools must adopt and publish.

- The exercise of rights protected under the First Amendment does not constitute retaliation.

4. Statement on Consent, Coercion, Incapacitation, and Alcohol

Consent engaging in sexual activity must be knowing and voluntary.

Consent to engage in sexual activity must exist from the beginning to end of each instance of sexual activity, and for each form of sexual contact. Consent to one form of sexual contact does not constitute consent to all forms of sexual contact. For example, an individual may agree to kiss but choose not to engage in touching of the intimate parts or sexual intercourse. An individual should obtain consent before moving from one act to another. Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent. In the absence of an outward demonstration, consent does not exist. If, at any time, it is reasonably apparent that either party is hesitant, confused or uncertain, both parties should stop and obtain mutual verbal consent before continuing sexual activity. A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates willingness to engage in sexual activity each time such activity occurs. Consent may be withdrawn by either party at any time. Withdrawal of consent must also 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. In the state of Missouri and Arkansas, consent can never be given by minors under the age of 17. Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual contact.

Coercion includes the use of pressure and/or oppressive behavior, including express or implied threats of harm, severe and/or pervasive emotional intimidation, which places an individual in fear of immediate or future harm or physical injury or causes a person to engage in unwelcome sexual activity. A person's words or conduct amount to coercion if they wrongfully impair the other's freedom of will and ability to choose whether or not to engage in sexual activity. An individual who is incapacitated is not able to make rational, reasonable judgments and therefore, is incapable of giving consent.

Incapacitation is the inability, temporarily or permanently, to give consent, because the individual is mentally and/or physically helpless due to drug or alcohol consumption, either voluntarily or involuntarily, or the individual is unconscious, asleep or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if he/she/they demonstrate that they are unaware of where they are, how they got there, or why or how they became engaged in sexual interaction.

Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, lack of awareness of circumstances or surroundings, or the inability to communicate for any reason. An individual may experience a blackout state in which he/she/they appear to be giving consent, but do not actually have conscious awareness or the ability to consent. It is especially important, therefore, that anyone engaging in

sexual activity be aware of the other person's level of intoxication. The relevant standard that will be applied is whether the respondent knew, or a sober reasonable person in the same position should have known, that the other party was incapacitated and therefore could consent to sexual activity. BU considers sexual contact while under the influence of alcohol to be risky behavior. Alcohol impairs a person's decision-making capacity, awareness of the consequences, and ability to make informed judgments. Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not excuse one from the responsibility to obtain consent.

5. Consensual Relationships

Amorous, dating, or sexual relationships that might be appropriate in other circumstances have inherent dangers when they occur between a faculty member, supervisor, or other member of the BU community and any person for whom he or she has a professional responsibility. These dangers can include: that a student or employee may feel coerced into an unwanted relationship because he or she fears that refusal to enter into the relationship will adversely affect his or her education or employment; that conflicts of interest may arise when a faculty member, supervisor, or other member of BU is required to evaluate the work or make personnel or academic decisions with respect to an individual with whom he or she is having a romantic relationship; that students or employees may perceive that a fellow student or co-worker who is involved in a romantic relationship will receive an unfair advantage; and that if the relationship ends in a way that is not amicable, either or both of the parties may wish to take action to injure the other party. Faculty members, supervisors, and other members of the BU community who have professional responsibility for other individuals, accordingly, should be aware that any romantic or sexual involvement with a student or employee for whom they have such a responsibility may raise questions as to the mutuality of the relationship and may lead to charges of sexual harassment. For the reasons stated above, such relationships are strongly discouraged. For purposes of this policy, an individual is a "responsible employee" when they have responsibility for another individual at BU by performing functions including, but not limited to: teaching, counseling, grading, advising, evaluating, hiring, supervising, or making decisions or recommendations that confer with benefits such as promotions, financial aid awards or other remuneration, or that may impact upon other academic or employment opportunities.

V. RESOURCES

1. Overview

Bryan University is committed to treating all individuals with dignity, care and respect. Any individual affected by sexual misconduct, whether a complainant, respondent or a third party, will have equal access to supportive measures and counseling services through BU. Bryan University recognizes that any individual involved in an incident of sexual misconduct may have questions and we encourage BU community members to seek the support of campus and community resources. BU can provide guidance in making decisions, obtaining information about valuable resources and assisting either party in the event that a report and/or resolution is pursued. Individuals are encouraged to use all available resources, regardless of whether the incident occurred recently or in the past. Complainants, respondents and third parties can expect:

- The opportunity to meet with the Title IX Coordinator to answer questions regarding BU's complaint processes for students and employees.
- Notice of confidential resources, including both health care and mental health counseling services,

on campus and in the local community.

- Notice of the option to pursue law enforcement action and to be assisted by BU officials in accessing and communicating with law enforcement authorities. This notice will include a discussion of the importance of preservation of evidence.
- The opportunity to request that BU take the steps to prevent unnecessary or unwelcome contact or communication with another member of the BU community.
- The right to be free from retaliation. Any concerns of retaliatory behavior should be immediately reported to the Title IX Coordinator.

2. Confidential & Community Resources and Support

Bryan University encourages all BU community members to report an incident of sexual misconduct. BU recognizes, however, that there are many barriers to reporting, both individual and societal, and not every individual will choose to make a formal report with BU or with local law enforcement. For those individuals who are not prepared to make a report, there are several confidential resources available for students, faculty and staff. Individuals seeking to talk to someone about an incident of sexual misconduct in a confidential manner without making a report to BU or triggering any investigation or action by BU may utilize the following resources. These resources hold a statutorily protected confidentiality that prohibits the release of an individual's information without that individual's express consent (except under limited circumstances that pose an imminent danger to the individual or others.) The following off-campus resources are confidential:

- Springfield (Online) Campus:
 - Harmony House Hotline: 417-837-7700 or 800-831-6863, www.myharmonyhouse.org
 - Victim Center – Rape and Crime: 417-863-7273 or 471-864-7233, www.thevictimcenter.org
 - Family Violence Center: 417-837-7700 or 800-831-6863, www.myharmonyhouse.org
 - Rape, Abuse, and Incest National Network: 1-800-656-HOPE, www.rainn.org

3. Campus Resources

In addition to the confidential resources listed above, all BU community members have access to a variety of resources provided by BU that can provide crisis intervention services, counseling, academic support and medical services. While not bound by confidentiality, these resources will nevertheless maintain the privacy of an individual's information within the limited circle of those involved in the Title IX resolution process.

Title IX Coordinator – Scott DeBoer, 417-429-2575, sdeboer@bryanu.edu

VI. REPORTING

Under Title IX, notice to the University's Title IX Coordinator or to an official with authority to institute corrective measures constitutes actual knowledge and triggers the University's response obligations. BU requires designated responsible employees to share reports of sexual misconduct with the Title IX Coordinator, as outlined in University policy. All community members, even those who are not obligated by this policy, are strongly encouraged to report information regarding any incident of sexual misconduct to the Title IX Coordinator. The Title IX Coordinator will ensure that the BU responds to all reports in a timely, effective and consistent manner. The following departments may assist the Title IX Coordinator; Human Resources, as applicable, the Executive Director of the campus, as applicable and the President. The team is charged with the review, investigation and resolution of all reports to ensure consistent

responsiveness and the integrated provision of interim measures to support the individuals involved and to protect the campus community. It is only through this consistent and informed response that we create culture of accountability and break the culture of silence. The Title IX Coordinator is positioned to provide seamless support, assess campus safety and effectively respond to allegations of sexual misconduct. BU will promptly and thoroughly investigate and respond to all reports of sexual misconduct. BU will respond to all reports in an integrated, consistent manner that treats each individual with dignity and respect. BU will approach each report with an earnest intent to understand the perspective and experiences of each individual involved in order to ensure fair and impartial evaluation and resolution. BU is committed to providing a variety of welcoming and accessible means so that all instances of sexual misconduct will be reported. BU also recognizes that the decision whether or not to report sexual misconduct is personal, and that there are many barriers to reporting, both individual and societal. Not every individual will be prepared to make a report to BU or to law enforcement, and individuals are not expected or required to pursue a specific course of action. An incident does not have to occur on campus to be reported to BU.. An individual does not have to decide whether or not to request disciplinary action at the time the report is made. BU recognizes that choosing to make a report, and deciding how to proceed after making the report, can be a process that unfolds over time. BU will respect an individual's autonomy in making these important decisions and provide support that will assist each individual in making that determination. As outlined in the Resources section of this policy, there are confidential community resources available to individuals not wishing to make a report to BU. Information shared with these resources will not be reported to BU. As outlined in the Statement of Privacy, BU respects the privacy interests of students, faculty and staff. All information reported will be shared only with those employees who assist in the investigation and/or resolution of the complaint.

1. Emergency/Immediate Reporting Options

BU encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual misconduct. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response. BU may assist any community member to get to a safe place and may provide transportation to the hospital, coordination of law enforcement and information about BU's resources and complaint processes. A medical provider can provide emergency and/or follow-up medical services, and the ability to discuss any health concerns related to the incident in a confidential medical setting may bring peace of mind. The medical exam has two goals: first, and foremost, to diagnose and treat the full extent of any injury or physical effect; and second, to properly collect and preserve evidence. There is a limited window of time (typically 72 - 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence. Taking the step to gather evidence immediately does not commit an individual to any course of action. The decision to seek medical attention and gather any evidence will remain confidential and preserve the full range of options to seek resolution through BU's complaint processes or through the pursuit of criminal action.

2. Campus Reporting Options

BU recognizes that a student or employee may choose to report sexual misconduct to any trusted employee of BU. For example, a student may choose to confide in a faculty member, who is considered a "responsible employee" and who must report the incident under this policy. An employee may choose to confide in a supervisor, also considered a "responsible employee." Under Title IX, notice to the Title IX Coordinator or to an official with authority to institute corrective measures constitutes actual knowledge and triggers the University's response obligations. BU designates certain responsible employees who are required under University policy to share reports of sexual misconduct with the Title IX Coordinator. The Title IX Coordinator is specifically charged with investigating and responding to allegations of sexual misconduct.

Please refer to the University catalog for the Title IX Coordinator contact.

3. Anonymous Reporting

Any individual may make an anonymous report concerning an act of sexual misconduct. An individual may report the incident without disclosing his/her name, identifying the respondent or requesting any action. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator. Depending on the level of information available about the incident or the individuals involved, however, BU's ability to respond to an anonymous report may be limited.

4. False and Malicious Accusations

Members of the BU community who make false and malicious complaints of sexual misconduct, as opposed to complaints which, even if erroneous, are made in good faith, will be subject to disciplinary action.

5. Time Frame for Reporting

Individuals are encouraged to report sexual misconduct immediately in order to maximize BU's ability to respond promptly and equitably. BU does not, however, limit the timeframe for reporting. BU will not be able to pursue disciplinary action against an individual who is no longer affiliated with the institution.

6. Coordination with Law Enforcement

BU encourages complainants to pursue criminal action for incidents of sexual misconduct that may also be crimes under Missouri/Arkansas law. In every case of sexual violence, BU, through the Title IX Coordinator, will notify the local law enforcement of the allegations. BU will also assist a complainant in making a criminal report and will cooperate with law enforcement agencies if a complainant decides to pursue the criminal process to the extent permitted by law. However, a complainant may also choose not to pursue criminal action, and under most circumstances, the local law enforcement agency will not force the complainant to pursue charges if he/she/they are not willing to do so. BU's policy, definitions and burden of proof may differ from Missouri/Arkansas criminal law. A complainant may seek resolution through BU's complaint process, may pursue criminal action, may choose one but not the other, or may choose both. Neither law enforcement's determination whether or not to prosecute the respondent, nor the outcome of any criminal prosecution, are determinative of whether sexual misconduct under this policy has occurred. Proceedings under BU's Sexual Misconduct Policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus.

VII. INTERIM MEASURES

Upon receipt of a report, BU will provide interim support and reasonable protective measures to prevent further acts of misconduct, and to provide a safe educational and work environment. BU will determine the necessity and scope of any interim measures. Even when a complainant or respondent does not specifically request that protective action be taken, BU may choose to impose interim measures at its discretion to ensure the safety of any individual, the BU community or the integrity of the review process. All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. BU will take immediate and responsive action to enforce measures previously ordered or implemented. BU may impose any remedy that can be tailored to the involved parties

to achieve the goals of this policy, even if not specifically listed here. The range of interim measures may include:

- **No Contact Order:** A complainant or respondent may request, or BU may impose, communication and contact restrictions to prevent further potentially harmful interaction. These communication and contact restrictions generally preclude in person, telephone, electronic or third party communications. In some cases, an individual may also wish to consider an Abuse Prevention Order or Harassment Protection Order from the local courts. This is a civil proceeding independent of BU. If a court order is issued, BU will, to the extent possible, assist the protected person in benefitting from the restrictions imposed by the court and will also facilitate on-campus compliance with the order.
- **Academic or Employment Modifications:** A complainant or respondent may request an academic or employment accommodation after a report of sexual misconduct. An individual who requests assistance in changing their academic situation after an incident of sexual misconduct will receive appropriate and reasonably available accommodations. These may include:
 - Academic accommodations include changes in class schedule, taking an incomplete, dropping a course without penalty, attending a class online or other alternative means available or extending deadlines for assignments;
 - Change in work schedule or assignment;
 - Providing an escort to ensure safe movement between classes and activities.
- **Emotional Support:** BU will provide referral services to off-campus agencies.
- **Interim Support:** Where the report of sexual misconduct poses an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, BU may place an individual(s) on interim suspension or impose leave for an employee. Pending resolution of the complaint, the individual(s) may be denied access to the campus. When interim suspension or leave is imposed, BU will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

VIII. TITLE IX REVIEW

1. Role of the Title IX Coordinator

The President of Bryan University has appointed one Title IX Coordinator. The role as the Title IX Coordinator includes overseeing BU's centralized review, investigation and resolution for reports of sexual misconduct. They also coordinate BU's compliance with Title IX. The Title IX Coordinator is supported by the Executive Directors at each campus. The Title IX Coordinator can be contacted by telephone, email or in person during regular office hours. Please refer to the University catalog for specific contact information.

- The duties and responsibilities of the Title IX Coordinator include training, education, and the oversight of procedures that promptly and equitably eliminate sexual harassment, prevent its reoccurrence and address its effects on individuals and the BU community. The Title IX Coordinator must comply with all the mandatory response obligations by promptly contacting the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.
- Follow a grievance process that complies with the Title IX Final Rule before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.
- Must not restrict rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, as a way of responding in a non-deliberately indifferent manner.
- Overseeing the investigation and resolution of all reports of sexual misconduct;

- Meeting with any individual, whether a complainant, respondent or third party to discuss interim measures, resources and procedural options on and off campus;
- Ensuring prompt and equitable resolutions that comply with all requirements and timeframes specified in the complaint process;
- Conducting on-going and annual tracking and monitoring of sexual misconduct allegations on campus; and,
- Coordinating all training, education and prevention efforts.

The University will make all Title IX training materials for the Title IX Coordinator, investigators, decision makers, and any person who facilitates informal resolution publicly available on its website.

2. Initial Assessment

Bryan University will address all reports of sexual misconduct; however, the University will conduct a Title IX review only when the reported conduct falls within Title IX jurisdiction. The Title IX Coordinator will oversee the Title IX review process. In every report of sexual misconduct, BU, through the Title IX Coordinator will make an initial assessment of any risk or harm to individuals or to the campus community and will take the steps necessary to address those risks. These steps will include the interim measures to provide for the safety of the individual and the campus community.

3. Investigation

The Title IX Coordinator may determine if an investigation of the report of sexual misconduct should be conducted. This determination is based on a variety of factors, such as the complainant's wish to pursue disciplinary action, the risk posed to an individual or the campus community by not proceeding, and the nature of the allegation. The Title IX Coordinator may designate an investigator of its choosing. The University bears the burden of proof and of gathering evidence; the burden does not rest on the parties. The University will presume the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made. Any investigator used by BU, whether internal or external, must have specific training and experience investigating allegations of sexual misconduct. The investigator will coordinate the gathering of information from the complainant, respondent and any other individuals who may have information relevant to the determination. Both parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and to present inculpatory and exculpatory evidence, and the University will objectively evaluate all relevant evidence. The University will not restrict the ability of either party to discuss the allegations or to gather and present relevant evidence, and each party may be accompanied by an advisor of their choice at any meeting or proceeding. The investigator cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party's voluntary, written consent to do so. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. In gathering such information, the investigator will comply with all applicable laws and BU policies. Before completing the investigative report, the University will send to each party and the party's advisor, if any, all evidence obtained as part of the investigation that is directly related to the allegations, in electronic format or hard copy, and the parties will have at least 10 days to inspect, review, and submit a written response, which the investigator will consider prior to completion of the report. The University will then provide each party and the party's advisor, if any, with the investigative report that fairly summarizes relevant evidence at least 10 days prior to any hearing or other time of determination regarding responsibility for their review and written response.

The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect. Information gathered during the investigation will be used to evaluate the responsibility of the respondent, provide for the safety of the individual and BU's campus community, and impose the remedies as necessary to address the effects of the alleged conduct. Any investigative report will serve as the foundation for all related resolution processes.

4. Hearings

For postsecondary institution recipients, the school's grievance process must provide for a live hearing:

- At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- At the request of either party, the recipient must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party answering questions.
- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the school's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
- If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- Schools must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

5. Standard of Evidence

Title IX Final Rule requires the University's grievance process to state whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard. The same standard of evidence must be applied evenly to proceedings against students and employees, including faculty. Bryan University uses the clear and convincing standard, and applies the same standard to all Title IX proceedings involving students and employees, including faculty.

6. Appeals

A school must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations there in, on the following bases: procedural irregularity that

affected the outcome of the matter; 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; and/or the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter. The appeal decision maker will not be the same person as the decision-maker, the investigator, or the Title IX Coordinator. Upon receipt of an appeal, the University will notify the other party in writing and provide both parties and equal opportunity to submit a written statement in support of, or challenging, the outcome. The University will issue a written decision describing the result of the appeal and the rationale for the result, and will provide the written decision simultaneously to both parties.

7. Informal Resolution

Title IX retains a school's discretion to choose to offer informal resolution options, if both parties give voluntary, informed, written consent.

The University may offer or facilitate an informal resolution process only after a formal complaint has been filed.

- A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints.
- At any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution and resume the grievance process with respect to the formal complaint.
- Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
- Before beginning any informal resolution, the University will provide the parties written notice disclosing the allegations, the requirements of the informal resolution process (including the circumstances under which it precludes resuming a formal complaint arising from the same allegations), and any records that will be maintained or could be shared.

8. Time Frame for Resolution

The investigation and resolution (including appeal) of all reports will generally be completed within sixty (60) to ninety (90) working days. Extenuating circumstances including the complexity and severity of a complaint may arise that require the complaint process to extend beyond that. In general, a complainant and respondent can expect to receive periodic updates as to the status of the review or investigation. In the event that the investigation and resolution exceed this time frame, BU will notify all parties of the need for additional time and best efforts will be made to complete the process in a timely manner.

9. Applicability of Procedures

These procedures are applicable to all BU campuses. BU reserves the right to modify this policy or the procedures at any time. The procedures are intended to provide guidance to the Executive Directors for implementing BU's sexual misconduct policy; these procedures do not create any rights or privileges on the part of any others.