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Effective Date: August 14, 2020

Revised: August 1, 2021

**PROCEDURE**

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ACADEMICS, SAFETY, STUDENT LIFE

# Procedures for the Resolution of Non-Title IX Sexual Misconduct Complaints Against Faculty, Staff, Affiliates, and Non-Affiliates

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RESPONSIBLE OFFICE

**Equal Opportunity Office**

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

- *The parties will receive copies of the Sexual Misconduct Policy and Procedures applicable to their case, which will include information about available supportive measures and the process for submission and consideration of evidence that may be used during a hearing or disciplinary proceeding.*
- *The parties may be accompanied by and may consult with an advisor or support person of their choice throughout the proceedings, although the availability of an advisor may not significantly delay any meeting. The University will have reasonable measures to provide for the involvement of the advisor, which will be applied equally.*
- *The Respondent will receive notice of an allegation of sexual misconduct that will include the date, time, and location, if known of the alleged incident, including a specific statement of policies allegedly violated.*
- *The complaint resolution process, including the investigation and any hearing and disciplinary proceedings, will be impartial and conducted by an individual who does not have a conflict of interest or bias and who will have not less than annual training on the University's Sexual Misconduct Policy and Procedures.*
- *The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility has been made by a preponderance of the evidence at the conclusion of the applicable complaint resolution process.*
- *The parties will have equal opportunities to inspect and review evidence obtained in an investigation that is directly related to the allegations.*
- *The parties have an equal opportunity to present evidence and witnesses on their behalf during a hearing or proceeding, and each party will be provided with timely and equal access to relevant evidence that will be used during any disciplinary process conducted under the Sexual Misconduct Policy and Procedures.*
- *There may be restrictions on evidence considered by the fact finder, including evidence regarding the prior sexual history or character evidence.*
- *The parties may not personally and directly question each other during an investigation or any complaint resolution process conducted under the Sexual Misconduct Policy and Procedures.*
- *The parties will receive written notice of the results of a hearing or disciplinary proceeding not later than 7 business days after a final determination of a complaint (not including time for an appeal) unless good cause for additional time is shown, and the parties will be informed of any appeals process.*

- *If the opportunity is made available to appeal a determination based on a perceived procedural error, previously unavailable evidence that could significantly impact the outcome of the case, or a sanction that is disproportionate to the findings, both parties will be permitted to appeal decisions regarding responsibility or sanctions.*
- *The University will not disclose the identity of the parties, except as necessary to carry out disciplinary proceedings under its Sexual Misconduct Policy and Procedures or as permitted under state or federal law.*

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## I. APPLICABILITY & SCOPE

These Procedures will be used to investigate and resolve all other complaints of sexual misconduct against Boston University faculty and staff members, affiliates, and non-affiliates, as appropriate, if the alleged conduct does not fall within the scope of Title IX Sexual Misconduct under the University's [Sexual Misconduct Policy](#). For purposes of the University's [Sexual Misconduct Policy](#) and these Procedures, an "affiliate" includes, but is not limited to, visiting scholars and post-doctoral fellows who are not otherwise classified as Boston University faculty, staff, or students.

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

All other complaints of sexual misconduct against Boston University students that do not fall within the scope of Title IX Sexual Misconduct under the University's [Sexual Misconduct Policy](#) will be investigated and resolved using the [Procedures for the Resolution of Non-Title IX Sexual Misconduct Complaints against Students](#).

All other complaints of discrimination or harassment against faculty and staff members, including but not limited to those based on race, color, creed, religion, ethnic origin, age, sex, disability, and sexual orientation, will be resolved using the University's [Complaint Procedures in Cases of Alleged Unlawful Discrimination and Harassment](#).

## II. RIGHTS OF THE COMPLAINANT AND RESPONDENT

These Procedures for the investigation, adjudication, and resolution of sexual misconduct (including non-Title IX sexual harassment) complaints brought against faculty, staff, affiliates and non-affiliates are designed to be accessible, prompt, fair, and impartial. Throughout this process, both the complainant and respondent have the following rights

- To be treated with respect, dignity, and sensitivity.
- To receive appropriate support from the University.
- Privacy to the extent possible, consistent with applicable law and University policy.
- Information about the University's [Sexual Misconduct Policy](#).
- A prompt and thorough investigation of the allegations.
- Notification, in writing, of the case resolution, including the outcome of any appeals.
- To report the incident to law enforcement (including the Boston University Police or the police department in the jurisdiction in which the sexual misconduct occurred) at any time.

## III. PRELIMINARY MATTERS

## **A. Effect of Criminal Proceedings.**

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

## **B. Advisor.**

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

## **C. Declining to Participate.**

A complainant may decline to participate in the investigative or complaint resolution process. The University may continue the process without the complainant's participation.

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

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

## **E. Prohibition on Retaliation.**

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

## **F. Notice.**

The Title IX Coordinator, or designee, will give the complainant and respondent, respectively, an explanation of their rights and options, and as appropriate, any available supportive measures, as soon as possible after a complaint is reported. The Equal Opportunity Office will also ensure that both the complainant and respondent are updated throughout the investigative process, including with timely notice of meetings where either the complainant's or the respondent's presence may be required. The complainant and respondent will be simultaneously provided with written notice of the results of any investigation including whether there has been a violation of the University's [Sexual Misconduct Policy](#). The Title IX Coordinator or designee will also inform the complainant of any sanctions imposed on the respondent that directly relate to the complainant, and any other steps the University has taken to prevent recurrence of the misconduct.

## **IV. INITIATING A COMPLAINT**

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

## V. SUPPORTIVE MEASURES

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

- Adjusting the complainant's or respondent's work schedule, assignment, or location for University employment.
- Changing the complainant's academic schedule, allowing the complainant to take an incomplete in one or more courses, allowing the complainant to drop (or retake) a course without penalty, or attend class via web conference.
- Providing an escort to ensure safe movement between classes, work sites, and other activities.
- Allowing the complainant to withdraw from or retake a class without penalty, or extending deadlines for examinations or other academic or work assignments.
- Providing access to tutoring or other academic support.
- Putting the respondent on paid administrative leave until the conclusion of the investigation.
- Issuing an administrative No Contact Directive.

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

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

## VI. HOW TO FILE A COMPLAINT

A complainant or reporter may submit a paper (hard copy) or electronic [Incident Report Form](#) to the Title IX Coordinator, one of the Deputy Title IX Coordinators, Human Resources, or the Equal Opportunity Office. Although the [Incident Report Form](#) should be as specific as possible regarding the conduct that precipitated the complaint, it need not reflect every detail related to

the allegations in the complaint, as additional information may be discovered during the investigation.

A complainant may also call or meet with the Title IX Coordinator, a Deputy Title IX Coordinator, Human Resources, or the Equal Opportunity Office to initiate a complaint.

#### University Title IX Coordinator

888 Commonwealth Avenue, Suite 303, Boston, MA 02115  
617-353-0911

#### Deputy Title IX Coordinators

#### Human Resources

Charles River Campus  
25 Buick Street, Boston, MA 02115  
617-353-4044

Medical Campus  
801 Massachusetts Avenue, Suite 400, Boston, MA 02118  
617-638-4610

#### Equal Opportunity Office

888 Commonwealth Avenue, Suite 303, Boston, MA 02115  
617-358-1796

## **VII. INVESTIGATION OF A COMPLAINT**

### **A. Investigator.**

The Title IX Coordinator will designate an Investigator (ordinarily a member of the University's Equal Opportunity Office) specifically trained in sexual misconduct investigations to conduct a prompt, thorough, and fair investigation of any sexual misconduct complaint against a University faculty or staff member, affiliate, or a non-affiliate.

## **B. Investigation Process.**

The investigation may involve one or more meetings with the complainant and respondent, interviewing witnesses, reviewing other relevant evidence, requesting written statements from the parties, informing the respondent of the allegations and/or providing to that person a copy of the complainant's statement. Before any adverse determination is made, the respondent will be informed as to the nature of the complaint, and will have the opportunity to respond. The respondent will also be advised of the University's strict prohibition against retaliation.

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

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

## **D. Investigation Finding.**

At the conclusion of the investigation, the Investigator will prepare a report (the "Investigative Report") summarizing and analyzing the relevant facts determined through the investigation, with reference to any supporting documentation or statements.

The final Investigative Report will provide a summary of the Investigator's findings and determinations, including context for the evidence, and will make a determination as to whether the respondent's conduct violated the [Sexual Misconduct Policy](#). The Investigative Report will then be provided to the Dean of the respondent's School or College (if a faculty member), the Provost (if the complaint contains allegations against a Dean), or relevant Vice President or Dean (if a staff member).

After review of the Investigative Report, the Dean (with the approval of the Provost), Provost, or relevant Vice President will, if a violation of the [Sexual Misconduct Policy](#) has been found,

make a final determination as to the appropriate disciplinary sanction for the respondent's violation of the [Sexual Misconduct Policy](#). Prior to any disciplinary action, the respondent shall be afforded an appeal, as described in Section IX, below.

## **E. Preservation of Records.**

A confidential record of all complaints, including their disposition, will be maintained by the Title IX Coordinator and the Equal Opportunity Office.

## **VIII. REQUESTS FOR CONFIDENTIALITY AND PRIVACY**

Every reasonable effort will be made to protect the privacy of all parties during the investigation, consistent with and subject to the University's obligation to investigate and resolve the complaint. Complainants who prefer to discuss an incident of sexual misconduct confidentially such that an investigation will not be initiated should contact one of the confidential resources listed in Section XI of the Sexual Misconduct Policy.

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

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

## IX. APPEAL

The respondent has the right to appeal the investigative determination and the sanction imposed by the respondent's Dean, Provost, or relevant Vice President.

The University's determination as to whether the respondent's conduct violated the Sexual Misconduct Policy will be presumed to have been reached reasonably and appropriately, by a preponderance of the evidence. Therefore, an appeal is available only on the following grounds:

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

Any appeal must be in writing and should be filed with the Title IX Coordinator within ten (10) calendar days of the date of receipt of the Dean, Provost, or relevant Vice President's final decision. The Title IX Coordinator may accept a late submission under extenuating circumstances.

In the case of complaints against staff members and non-affiliates, the Title IX Coordinator will direct the appeal to the appropriate officer of the University for review and disposition. In the case of complaints against faculty, the Title IX Coordinator will consult with the University Provost to determine the appropriate officer of the University to whom the appeal should be directed.

The decision of the University officer charged with hearing the appeal will be final, subject to Section X, below.

## X. IMPOSITION OF SANCTIONS

## A. Suspension or Termination of Faculty.

Any disciplinary sanction that involves the suspension or termination of a faculty member will be conducted pursuant to the procedures outlined in the Faculty Handbook.

## B. Disciplinary Actions against Staff.

Disciplinary sanctions involving staff will be consistent with any applicable collective bargaining agreement and University policies.

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END OF POLICY TEXT

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## Additional Resources Regarding This Policy

### History

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

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

- **POLICY**

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

## • PROCEDURES

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

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

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

### Forms

- [Incident Report Form](#)

### BU Resources

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

### Related BU Websites

- Sexual Misconduct Page on Safety Website - *site includes [Title IX Information](#) and [Title IX Coordinator and Deputy Coordinators Contact Information](#)*

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

## BU Memorandums and Information

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

Categories: Academics, Faculty Handbook: Human Resources, Harassment and Discrimination, Non-Represented Staff, Safety, Safety and Safe Environments, Sexual Misconduct, Student Life, University Policies Affecting Student Life  
 Keywords: absences, bully, force, harassment, menace, menacing, non-title IX, secret, sex, sexual, sexual assault, sexual harassment, sexual misconduct, Title IX