



## **SEXUAL MISCONDUCT POLICY**

Revised January 9, 2025<sup>1</sup>

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<sup>1</sup> This Sexual Misconduct Policy was revised January 9, 2025 following the federal court decision in *State of Tennessee v. Cardona*, No. 2: 24-072-DCR (E.D. Ky. Jan. 9, 2025), which vacated the Title IX regulations effective August 1, 2024.

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## I. INTRODUCTION

### A. Statement of Policy

Bay Path University<sup>2</sup> (the “University”) is committed to maintaining a safe and respectful learning, living, and working environment for all members of the University community free from gender-based discrimination and Sexual Misconduct (as defined in this Policy) including, but not limited to, Sexual Harassment, Sexual Assault, Sexual Exploitation, Relationship Violence, and Stalking.

Sexual Misconduct is antithetical to the mission and values of the University and will not be tolerated. The University will respond to reports and formal complaints of Sexual Misconduct (as defined in this Policy) and will take prompt action to eliminate such conduct, prevent its recurrence, and remedy the adverse effects of such conduct in the University’s programs and activities.

A Student, Employee or Third Party determined by the University to have violated this Policy will be subject to sanctions, up to and including the termination of their relationship with the University, withdrawal of the privilege to enter upon University property, and/or to participate in University sanctioned or supported activities and events.

### B. Applicability

This Sexual Misconduct Policy (“Policy”) applies to all members of the University community including students enrolled for credit or non-credit-bearing coursework; University Board members, employees, including full-time and part-time faculty, staff, and administrators; as well as third parties such as contractors, vendors, visitors, and guests (collectively referred to herein as “Community Member”).

This Policy will apply to any instance in which a Community Member is alleged to have engaged in Sexual Misconduct prohibited under this Policy against any person, regardless of the Complainant’s or Respondent’s sexual orientation or gender.

Where conduct in violation of this Policy also violates any other University policies, the University’s response will be governed by the procedures described herein. Where this Policy applies, its provisions will supersede any conflicting provision contained in other University policies.

### C. Reports and Formal Complaints of Prohibited Conduct

The University strongly encourages anyone who experiences, witnesses, or becomes aware of Sexual Misconduct to report such conduct immediately. This Policy specifically prohibits retaliation against any person who makes a good faith report or formal complaint of conduct prohibited under this Policy.

<sup>2</sup> Effective, July 1, 2024, Cambridge College has been acquired by Bay Path University. Consequently, this policy is equally applicable to both Bay Path University and Cambridge College (including CC Puerto Rico).

The Title IX Coordinator and Assistant Title IX Coordinator are the University officials with authority to institute corrective measures on behalf of the University with respect to alleged violations of this Policy.

The University will promptly respond to reports or formal complaints of prohibited conduct made in accordance with the requirements of this Policy. The University's response will include measures designed to stop the prohibited conduct, prevent its recurrence, and remediate any adverse effects of such conduct.

#### **D. Period of Limitations**

A report or formal complaint of Sexual Misconduct may be made at any time, regardless of the length of time between the occurrence of the alleged misconduct and the decision to report or file. However, the University strongly encourages individuals to report or file promptly. A delay in reporting or filing a formal complaint may compromise the University's ability to take action and effectively respond to the alleged misconduct, particularly if neither the Complainant nor the Respondent is employed by the University or enrolled as a Student at the time the Complaint is made.

#### **E. Statement of Non-Discrimination and Coordination of Policies**

The University is committed to adhering to all state and federal laws prohibiting discrimination in its educational programs and activities including employment on the basis of a person's race, sex, religion, color, national origin, age, marital or parental status, military service or veteran status, gender, disabilities, genetic information or other legally protected status, mission as permitted by law.<sup>1</sup>

This Policy supports the University's commitment to compliance with Title IX of the Education Amendments of 1972 (Title IX), a federal civil rights law that prohibits discrimination on the basis of sex in education programs and activities, as well as other federal and state laws prohibiting discrimination in education and employment including Title VII of the Civil Rights Act of 1964 and The Massachusetts Fair Employment Practices Act, M.G.L. Ch. 151B.

Questions concerning the University's policies prohibiting sex-based discrimination including Sexual Misconduct and other forms of prohibited discrimination and harassment, can be directed to: Human Resources Business Partner, Megan Rosenberger at [mrosenberger@baypath.edu](mailto:mrosenberger@baypath.edu) and/or Title IX Coordinator, Dr. Peter Testori, whose office is located at Elliott 209 and who can be contacted by phone at 413-565-1058 or by email at [ptestori@baypath.edu](mailto:ptestori@baypath.edu).

In addition to making reports to the University, individuals may direct questions and/or complaints regarding sex-based discrimination to the United States Department of Education Office for Civil Rights, at ([OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481), or to the United States Equal Employment Opportunity Commission, John F. Kennedy Federal Building, 475 Government

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<sup>1</sup> The prohibition of forms of discrimination not covered by this Policy is addressed in the University's Non-Discrimination and Anti-Harassment Policy.

Center, Boston, MA (617) 565-3200 and the Massachusetts Commission Against Discrimination, 436 Dwight St # 220, Springfield, MA 01103, (413) 739-2145, concerning prohibited discrimination in employment.

**F. Individuals with Disabilities**

The University will provide appropriate accommodations for individuals with disabilities, to the extent necessary and available, to access and participate in the procedures outlined in this Policy. An individual seeking accommodation must notify the Coordinator of their need for accommodation. Requests for accommodations for Employees and Students may be reviewed in consultation with Human Resources and/or the AcessAbility Services Office.

**G. University Title IX Coordinators**

The University has designated Dr. Peter Testori to serve as the University Title IX Coordinator (“Coordinator”).<sup>2</sup> The Coordinator is charged with oversight and coordination of the University’s activities with respect to Title IX compliance and the development and implementation of the University’s policies, procedures, and activities to prevent sexual misconduct and response to reports and formal complaints alleging conduct in violation of this Policy. The University has also designated an Assistant University Title IX Coordinator (“Assistant Coordinator”) to assist the Coordinator in the discharge of these responsibilities.

The Coordinator and/or Assistant Coordinator are available to meet with any Community Member to discuss this Policy or any issues or concerns with respect to the University’s Title IX related policies, procedures and activities. The Coordinator and Assistant Coordinator can be contacted by telephone, email, or in person during regular office hours:

<b>Dr. Peter Testori</b> Title IX Coordinator Elliott 209 413-565-1058 <a href="mailto:ptestori@baypath.edu">ptestori@baypath.edu</a>	Asst Title IX Coordinator <a href="mailto:titleix@baypath.edu">titleix@baypath.edu</a>
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**II. PROHIBITED CONDUCT**

This Sexual Misconduct Policy prohibits forms of sexual discrimination as defined in Title IX regulations issued by the U.S. Department of Education (34 CFR Part 106) and other sexual misconduct that does not fall within the scope of Title IX. Conduct prohibited under this Policy includes the following:

<sup>2</sup> The Coordinator may designate the Assistant Coordinator or another qualified person to assume or assist in performing all or part of their duties under this Policy. Therefore, where the Coordinator is identified as the person responsible for some aspect of this Policy, such provision should be read with the understanding that any duty or function of the Coordinator, other than overall responsibility for the oversight and coordination of Title IX programs and compliance, may be performed by the Deputy or another qualified person designated by the Coordinator.

#### **A. Title IX Sexual Misconduct**

Sexual Harassment is the form of Sexual Misconduct prohibited by Title IX. Title IX Sexual Harassment includes all of the forms of conduct based on sex set forth in this Section III (A) meeting the following requirements:

**Jurisdiction** – Title IX applies only when the alleged sexual conduct:

- Occurs within the United States; and
- Occurs within the University's education program or activity, meaning
  - locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the Title IX Sexual Harassment occurs, and
  - any building owned or controlled by a student organization that is officially recognized by the University; and
  - at the time of filing a formal complaint, a complainant is participating in or attempting to participate in the education program or activity at the University.

**Title IX – Sexual Harassment includes:**

- **Quid Pro Quo Sexual Harassment:** An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- **Sexual Harassment:** Unwelcome sexual conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive to Reasonable Person that it effectively denies an individual equal access to the University's education program or activity;
- **Sexual Assault:** Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault can occur between individuals of the same or different sexes and/or genders. This includes the following:
  - **Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
  - **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving

consent because of their age or because of their temporary or permanent mental or physical incapacity;

- **Sexual Assault with an Object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of sixteen (16).

- **Domestic Violence:** A felony or misdemeanor crime of violence committed: (a) by a current or former spouse or intimate partner of the victim; (b) by an individual with whom the victim shares a child in common; (c) by an individual who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (d) by an individual similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred; (e) by any other individual against an adult or youth victim who is protected from that individual's acts under the domestic or family violence laws of the jurisdiction in which the felony or misdemeanor crime of violence occurred.
- Intimate partner is defined as an individual with whom one has or had a short-or long-term relationship that provides romantic and/or physical intimacy or emotional dependence. Intimate relationships can occur between individuals of the same gender or different genders and may include (but are not limited to) marriages, civil unions, dating relationships, "hook-up" relationships, relationships in which partners are characterized as "girlfriends" or "boyfriends," and relationships between individuals with a child in common.

- **Dating Violence:** Violence committed by an individual who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting individual's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship. This includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

- **Examples of Dating Violence:**

- A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy
- An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she does not give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
- A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
- Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.

- **Stalking:** Engaging in a course of conduct directed at a specific individual that would cause a reasonable person to: (a) fear for the individual's safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of the Stalking definition: Course of conduct means two or more acts, including acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about an individual, or interferes with an individual's property. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

- **Example of Stalking:** A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together.

## **B. Non-Title IX Sexual Misconduct**

Non-Title IX Sexual Misconduct means forms of conduct based on sex prohibited by the University as set forth in this Section III (B) meeting the following requirements:

**Jurisdiction –** Non-Title IX Sexual Misconduct applies when the alleged sexual conduct:

- Occurs on University premises or other property owned or controlled by the University;
- Occurs in the context of a University employment or education program or activity, regardless of location, including, but not limited to University-sponsored events and programs including study abroad, research, on-line and internship programs; or
- Occurs on premises or other property not owned or controlled by the University or outside the context of a University employment or education program or activity, where the impact of the conduct has the effect of interfering with a Community Member(s) equal access to the University's employment or educational programs and/or activities.

**Non-Title IX Sexual Misconduct includes:**

- **Conduct Outside Title IX Jurisdiction:** conduct that would otherwise be prohibited under Section II (A) (e.g., Quid Pro Quo Sexual Harassment, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking), but which must be dismissed under the Title IX Sexual Harassment Policy because they do not meet jurisdictional requirements.
- **Sexual Harassment:** defined as any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when:
  - Submission to or rejection of such conduct is either an explicit or implicit term or condition of an individual's employment, academic standing, evaluation of academic work or advancement in an academic program, or is used as the basis for University decisions affecting the individual (often referred to as "quid pro quo" or "this for that" harassment); or
  - Creates a hostile environment when the conduct has the purpose or effect of unreasonably interfering with an individual's learning, working, or living environment, or limiting or depriving an individual of the ability to participate in or benefit from the University's employment or educational programs and/or activities. Conduct must be sufficiently severe or pervasive to create an intimidating, threatening, abusive, humiliating, or sexually offensive learning, working, or living environment.<sup>3</sup> A single incident of Prohibited Conduct can be sufficiently severe to support the existence of a hostile environment (for example, Sexual Assault or Sexual Exploitation).

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<sup>3</sup> Title IX does not reach curriculum or in any way prohibit or abridge the use of particular textbooks or curricular materials. See 28 C.F.R. § 54.455; 34 C.F.R. § 106.42.

- **Examples of conduct that may constitute Sexual Harassment include, but are not limited to:**
  - Unwelcome sexual advances, whether they involve physical touching or not;
  - Sexual innuendos, jokes, written or verbal references to sexual conduct, gossip regarding one's sex life, commenting on an individual's body, discussion or inquiry about an individual's sexual orientation, sexual activity, deficiencies, or prowess;
  - Displaying or circulating sexually suggestive objects, pictures, videos, or cartoons, including via electronic communications;
  - Bullying or hazing based on sex or gender.
- **Sexual Exploitation:** occurs when a person takes non-consensual or abusive sexual advantage of another. Sexual exploitation includes the following activities:
  - Taking advantage of another person, or attempting to take advantage of another person, without that person's consent. The following activities are prohibited under this provision:
  - Voyeurism or Peeping: Intentionally watching, videotaping, or recording an individual who is undressing, completely or partially naked, or engaging in sexual activity. This includes allowing others to observe such conduct.
  - Sexual Exhibitionism: Engaging in sexually explicit activity in public spaces, including online.
  - Displaying or distributing nude or sexually explicit images of another person without that person's consent.
  - Writing or marking of graffiti on University property that is sexually graphic in nature.
  - Prostituting another person or soliciting a prostitute to campus, or a campus event, to engage in prostitution.
  - Knowingly exposing another person to a sexually transmitted infection or virus without that person's knowledge.
- **Stalking:** The repetitive and menacing pursuit, following, harassing and/or interfering with the peace and/or safety of another.
  - **Example of Stalking:** A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student and stated that it was not necessary and would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude

on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together".

- **Non-Consensual Sexual Contact:** any intentional sexual touching, however slight, with any object or body part, by a person upon another person that is without consent and/or by force. Sexual touching includes intentional contact with the breasts, groin, genitals, or mouth; touching another person with your breasts, groin, genitals, or mouth; making another touch you or themselves with any of these body parts; or any other bodily contact in a sexual manner.
- **Other Civil Rights Offenses:** In addition to the forms of sexual misconduct described above, the following behaviors are also prohibited as forms of discrimination when the act is based upon the complainant's actual or perceived membership in a protected class.
  - Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
  - Discrimination, defined as actions that deprive, limit or deny other members of the community of educational or employment access, benefits or opportunities;
  - Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
  - Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
  - Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally that is not speech or conduct otherwise protected by the First Amendment.
- **Inducing Incapacitation:** providing alcohol or drugs to an individual, with or without the individual's knowledge, with the purpose or intent of taking advantage of that individual's impairment or intoxication in furtherance of any conduct prohibited under this Policy.
- **Aiding or Facilitating:** Aiding or facilitating Sexual Misconduct means promoting or encouraging the commission of any behavior prohibited under this Policy. Community Members are prohibited both from personally engaging in Sexual

Misconduct, and also from engaging in conduct which assists or encourages another person or persons to engage in such conduct (for example, acting as a lookout or inciting another to engage in prohibited conduct).

- **Attempted Violations:** The University will treat attempts to commit any of the conduct prohibited by this Policy as if those attempts had been completed.
- Conduct prohibited under any other University policies may fall within this section when a violation is motivated by the actual or perceived membership of the complainant's sex or gender.

### **C. Retaliation**

Retaliating is seeking retribution against a Complainant, Respondent, or any individual for exercising their rights under this Policy or making a report or complaint, testifying, assisting, conducting, participating or refusing to participate in an investigation, hearing, or other proceeding under this Policy. Retaliation can be committed by any individual or group of individuals, not just those involved in a report or complaint.

Retaliation may include, but is not limited to, threats, coercion, verbal abuse, violence, and harassment, including knowingly making false statements about another person verbally or in writing. Retaliation will violate this Policy even where the underlying allegation(s) of Sexual Misconduct are dismissed or a finding of "no responsibility" has been made.

Complaints alleging retaliation under this Policy, including for the exercise of rights under this Policy, must be filed as a formal complaint in accordance with the procedures set forth in this Policy.

The University may take disciplinary action against an individual for making a materially false statement in bad faith in the course of an investigation, proceeding, or hearing under this Policy. However, the University will not conclude that a materially false statement was made in bad faith solely based on a determination regarding responsibility in connection with an adjudication under this Policy. Further, the exercise of rights guaranteed under law including the First, Fifth, and Sixth Amendments to the United States Constitution and will not constitute a violation of this Policy.

### **III. CONSENT**

Engaging in sexual activity of any type with another person without their Consent is prohibited. Consent is defined as a freely and affirmatively communicated willingness to participate in sexual activity, expressed either by words or clear, unambiguous actions. Individuals who choose to engage in sexual behavior should verbally communicate their intentions and Consent to engage in specific sexual activity as clearly as possible.

Consent may be withdrawn at any time. An individual who seeks to withdraw consent should communicate, through clear words or actions, a decision to cease the sexual activity. Once Consent is withdrawn, the sexual activity must cease immediately.

Because individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. Lack of protest, lack of resistance, silence and/or passivity do not constitute Consent. Relying solely on non-verbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this Policy.

Consent to one form of sexual activity (such as kissing or fondling) or with one partner does not, by itself, constitute Consent to another form of sexual activity (such as intercourse) or with others. In addition, Consent to sexual activity on a prior occasion does not, by itself, constitute Consent to future sexual activity. In cases where the parties are or were engaged in a prior or ongoing consensual sexual relationship, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on evaluating the presence of Consent, but any sexual activity must still be mutually agreed upon.

Consent, even when given, is ineffective if given by a minor (in Massachusetts, those not yet sixteen (16) years of age), by individuals who are incapacitated, or when obtained by force, violence, threats, intimidation, or coercion.

#### **A. Incapacity**

A person who is incapacitated is unable, temporarily or permanently, to give consent because she or he lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity as a result of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place (e.g., individual lacks capacity to understand the “who, what, when, where, why or how” of their sexual interaction). An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

Mental helplessness means a person who is incapable of appraising or controlling their own conduct. Physical helplessness means a person who is physically unable to communicate their willingness or unwillingness to engage in an act. A person may be incapacitated as a result of the voluntary or involuntary consumption of alcohol or other drugs, involuntary physical restraint, and/or due to a temporary or permanent physical or mental health condition.

A person is not necessarily incapacitated merely as a result of ingesting alcohol or other drugs. Incapacitation is an extreme form of intoxication. The impact of alcohol and other drugs varies from person to person. A person’s level of intoxication can change rapidly, and incapacitation can be reached within a short period of time. Although every individual may manifest signs of incapacitation differently, typical signs include, but are not limited to, slurred or incomprehensible speech, unsteady gait, combativeness, emotional volatility, vomiting, outrageous or unusual behavior, and/or unconsciousness.

## **B. Consent Cannot Be Obtained by Force**

Consent cannot be obtained by Force. Force includes the use of physical violence, threats, intimidation, and/or coercion.<sup>4</sup>

**Physical violence** means that a person is exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, pushing, restraining, choking, and brandishing or using any weapon.

**Threats** are words or actions that would compel a reasonable person to engage in unwanted sexual activity. Examples include threats to harm a person physically, to reveal private information to harm a person's reputation or cause a person academic or economic harm.

**Intimidation** is an implied threat that menaces or causes reasonable fear in another person. A person's size, alone, does not constitute intimidation; however, a person's size may be used in a way that constitutes intimidation (e.g., blocking access to an exit).

**Coercion** is the use of an unreasonable amount of pressure to gain sexual access. Coercion is more than an effort to persuade, entice, or attract another person to have sex. When a person makes clear a decision not to participate in a particular sexual activity or a form of sexual activity, a decision to stop, or a decision not to go beyond a certain sexual interaction, continued pressure can be coercive. To constitute coercion, conduct must impair the other individual's freedom of will to participate in sexual activity.

In evaluating whether Consent existed, consideration will be given to the totality of the circumstances including, but not limited to, the extent to which the words or clear, unambiguous actions of the alleged victim affirmatively communicated their willingness to participate in sexual activity; whether a reasonable sober person in the position of the individual alleged to have engaged in the prohibited conduct would have known or should have known that the alleged victim was incapacitated; and whether the circumstances indicate that Consent to sexual activity did not exist.

## **IV. REPORTING AND CONFIDENTIALITY**

The following information is provided to help Community Members make informed choices about where to turn if they or someone else is a victim of Sexual Misconduct. The University encourages victims to talk to someone about what happened so that they can get the care and support they may need, and so the University can take prompt action to respond to the issue.

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<sup>4</sup> The use of force in non-consensual sexual intercourse and contact-based incidents is not "worse" than the subjective experience of violation of someone who is a victim of sexual intercourse or sexual contact without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct allegation, but allegations under the code for the additional assaultive behavior.

The University is committed to protecting the privacy of all involved in the response to a report of Sexual Misconduct in accordance with applicable law, and will take steps to limit disclosure of related information only to those individuals who have a need to know in order to assess the report, provide supportive measures, and to take steps to eliminate conduct that violates this Policy, prevent its recurrence, and remedy its effects.

The privacy of Student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual's medical and related records is generally protected by the Health Insurance Portability and Accountability Act (HIPAA), excepting health and treatment records protected by FERPA.

#### **A. Employee Confidentiality and Reporting Obligations**

It is important to understand that each Employee's obligations with respect to maintaining confidentiality and reporting disclosures concerning Sexual Misconduct will depend on whether the Employee is considered to be a "Confidential Employee." Only Confidential Employees are exempted from the requirement for employees to report information concerning incidents of Sexual Misconduct to the Coordinator.

All Employees including faculty, staff, administrators, and students employed as resident assistants, community desk workers, supervisors, graduate assistants and teaching assistants who are not identified as being a Confidential Employee as defined herein, are required to immediately report all information obtained, whether directly or indirectly, about incidents of Sexual Misconduct to the Coordinator including the names, if known, of the victim and all others involved in, or having knowledge of the incident.

Reporting allows the Coordinator to provide support services and information concerning reporting and resolution options and procedures to individuals who may have been subjected to Sexual Misconduct and to evaluate patterns, trends, and safety issues for the Community at-large.

**Confidential Employees:** A victim of Sexual Misconduct can seek assistance and support from a Confidential Employee without triggering a report of information concerning such conduct to the Coordinator or to the University that could reveal the victim's identity or that the victim disclosed the incident.

The University has designated individuals who are employed in positions that provide medical care, mental health services, and counseling, as well as employees providing such services under their supervision, as being Confidential Employees. A listing of confidential positions is included in section V(A) below.

The designation of Confidential Employee status extends to employees working in positions that provide administrative and/or related support to Confidential Employees in connection with their provision of confidential services. However, the designation extends only to information received or learned by such employees in the course of performing their job duties in support of the Confidential Employee(s).

Confidential Employees are instructed to inform individuals who may have been subjected to Sexual Misconduct of their right to make a report and to file a Complaint with the University, however, Confidential Employees are not required to disclose to the University any personal or other information that could reveal the identity of a victim of Sexual Misconduct who disclosed information to the Confidential Employee in connection with their provision of confidential services to the victim.

While Confidential Employees may maintain a victim's confidentiality with respect to the University, they may disclose personally identifiable information as required by law or a court order. For example, such information may be disclosed when: (i) the victim gives written consent for disclosure; (ii) there is an imminent threat of harm to the individual or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

All Community members are required to immediately report any suspected abuse or neglect of a minor to the Coordinator who will contact appropriate agencies including law enforcement and the Massachusetts Department of Children and Families ("DCF"). Community Members may also report suspected abuse or neglect of a minor through DCF's Child-at-Risk Hotline at (800) 792-5200.

## **V. CONFIDENTIAL AND NON-CONFIDENTIAL SUPPORT AND ASSISTANCE**

The University offers a wide range of resources to provide Community Members with care, support and guidance in response to incidents of Sexual Misconduct. The University strongly encourages community members who have been subjected to Sexual Misconduct to seek care and support from confidential and/or non-confidential resources available to them on or off campus.

### **A. On-Campus Resources**

A listing of on-campus confidential and non-confidential resources, including contact information that can provide Community Members with emergency and ongoing medical treatment, counseling, support, victim advocacy services, and options for reporting incidents to the University and/or law enforcement is included at Appendix B.

### **B. Off-Campus Resources**

Off-campus counselors, advocates, and health care providers will also generally maintain confidentiality and not share information with the University unless the victim authorizes the disclosure.

Information concerning some of the resources available in the Springfield community including hospitals, counseling, advocates, law enforcement agencies, and legal services is included in Appendix C.

## VI. SUPPORTIVE MEASURES

The University's Title IX/Sexual Misconduct Coordinator is responsible for the implementation of supportive measures and for coordinating with other University officials and departments to do so. Upon receipt of a report or formal complaint of a violation of this Policy, the University, through the Coordinator, will promptly contact the complainant, or if unknown attempt to identify the complainant, to discuss the availability of supportive measures.

Supportive measures are designed to restore or preserve equal access to the University's educational and employment programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties and the broader University community, or deter Sexual Misconduct. The approval and application of supportive measures will be determined by the specific circumstances of each case.

The Coordinator shall 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. The University will also consider supportive measures, as appropriate and reasonably available, for the respondent and for third parties, taking into account the role of the third party and the nature of their relationship to the University.

Supportive measures may impose restrictions on a party; however, supportive measures will not impose an unreasonably burden to them. The University may provide supportive measures to the complainant or respondent, as appropriate, as reasonably available, and will do so without fee or charge, regardless of whether the complainant seeks formal disciplinary action.

Once supportive measures are approved, the parties and/or affected individuals will be notified in writing of the supportive measures. The University will keep supportive measures provided to a party confidential to the extent practicable.

For information and assistance in arranging supportive measures, individuals may contact the Coordinator or the Assistant Coordinator.

<b>Dr. Peter Testori</b> Title IX Coordinator Elliott 209 413-565-1058 <a href="mailto:ptestori@baypath.edu">ptestori@baypath.edu</a>	Asst Title IX Coordinator <a href="mailto:titleix@baypath.edu">titleix@baypath.edu</a>
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Examples of supportive measures include:

- Issuing mutual no-contact orders (i.e., an order directing one or both of the parties to refrain from contacting the other, directly or through proxies);

- Placing a non-student Employee on administrative leave from employment during the pendency of investigation and resolution proceedings.
- Arranging access to counseling services and assistance in setting up initial appointments for students, or providing contact information for available counseling services for employees;
- Assistance in seeking academic assistance or modifications;
- Assistance in modifying University housing arrangements;
- Assistance in modifying University employment arrangements, including changes in work schedules, job assignments, or work locations;
- Changing an Employee's phone number at work;
- Arranging a meeting with Police to discuss safety planning, the filing of a criminal complaint or request for a protective order;
- Arranging a leave of absence.

## **VII. REPORTING TITLE IX OR NON-TITLE IX SEXUAL MISCONDUCT**

The University strongly encourages anyone who experiences, witnesses, or becomes aware of Sexual Misconduct to report such conduct immediately. No Community Member may retaliate against an individual for reporting incidents of potential Sexual Misconduct.

The University provides multiple avenues for reporting. Individuals may choose to make a report to the University under this Policy, to law enforcement for potential criminal prosecution, to both, or neither. Complaints made to the University and law enforcement can be pursued simultaneously.

### **A. Filing a Complaint with Campus Public Safety**

A Complainant has the right to notify or decline to notify CPS concerning an incident of Sexual Misconduct. A Complainant who wishes to pursue criminal action in addition to, or instead of, making a report to the University is strongly encouraged to immediately notify CPS directly by contacting:

#### **Bay Path University Public Safety**

D'Amour Hall and 577 Longmeadow Street

413-565-1225

Public Safety Officers are available 24 hours a day, seven days a week.

**Local Police Department** (contact information located on page 49 of this policy)

#### **Emergency – 911**

Police have the power to seek and execute search warrants, collect forensic evidence, make arrests, and assist in obtaining civil protective orders. Campus Public Safety and/or the Coordinator can provide support and arrange transportation for a Community Member who wishes to seek the assistance of off-campus law enforcement authorities concerning

incidents of Sexual Misconduct. Under limited circumstances, posing a threat to health or safety of a Community Member, the University may independently notify law enforcement of the incident(s).

Individuals may inform law enforcement authorities about Sexual Misconduct and discuss the matter with a law enforcement officer without making a formal criminal complaint or a formal complaint to the University. Individuals who make a criminal complaint may also choose to pursue a formal complaint with the University simultaneously.

A criminal investigation into the matter will not preclude the University from conducting its investigation of a formal complaint. However, the University may temporarily delay its investigation while criminal investigators are gathering evidence. Although the investigations/complaints may be conducted simultaneously, they will be independent of one another. The University may obtain and use reports and information developed in the course of a law enforcement investigation in the University's investigation and resolution of a Complaint of Sexual Misconduct.

Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate the matter is determinative of whether Sexual Misconduct, for the purposes of this Policy, has occurred.

#### **B. Reporting to the University**

The University strongly encourages anyone who has experienced, has knowledge of, or has witnessed Sexual Misconduct to make a report to the University. Making a report to the University does not require participation in any subsequent University proceedings, nor is a report required in order for an individual to receive support or remedial measures.

**Note:** All of the following, including employees of the identified offices and departments, are employees required to immediately report all information (obtained directly or indirectly) about incidents of Sexual Misconduct involving a Community Member to the Coordinator. They must also report information as required under the Clery Act.

#### **The University Title IX/Sexual Misconduct Coordinator and Assistant Coordinator**

Reports and formal complaints can be submitted to the Coordinators 24 hours a day, seven days a week via email or during business hours (8:30 a.m. to 4:30 p.m. Monday through Friday) in person, via email or telephone (reports only). [Reports and formal complaints may also be made online via the sexual misconduct reporting form](#):

<https://www.baypath.edu/about/title-ix/>

<p><b>Dr. Peter Testori</b> Title IX Coordinator Elliott 209 413-565-1058 <u><a href="mailto:ptestori@baypath.edu">ptestori@baypath.edu</a></u></p>	
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**Bay Path University Public Safety**  
D'Amour Hall and 577 Longmeadow Street  
413-565-1225  
Public Safety Officers are available 24 hours a day, seven days a week.

**Office of the Dean of Students**  
Blake Student Center  
Office staff are available during business hours (8:30 a.m. to 4:30 p.m., Monday through Friday).

**Human Resources**  
Longmeadow Campus  
Human Resources staff are available during business hours (8:30 a.m. to 5:00 p.m., Monday through Friday).

**C. Anonymous Reporting Options**

Anonymous reports may be made in writing to the Coordinator via mail, the sexual misconduct reporting form (<https://www.baypath.edu/about/title-ix/>) or by calling 413-565-1058.

**A formal complaint cannot be made anonymously.**

Individuals who choose to file anonymous reports of Sexual Misconduct are advised that the University will conduct an inquiry into the report. However, the University's ability to conduct an effective inquiry and to take action concerning the report may be significantly limited. Anonymous reports may be used for Clery Act data collection purposes.

Employees cannot make anonymous reports concerning information (obtained directly or indirectly) about incidents of Sexual Misconduct involving a Community Member. Employees must report all such information to the Coordinator.

**D. Informal Resolution Process**

Subject to the consent of the parties and the approval of the Coordinator, the University may permit a formal complaint to be resolved through informal resolution. Informal resolution is available for cases under this Policy except those involving allegations that an employee has subjected a student to conduct prohibited under this Policy.

The informal resolution process is a voluntary, mediation-based process designed to provide parties with an option to reach an agreement to resolve the complaint through mediation outside of the University's formal grievance processes under the Policy. The mediation will be facilitated by an individual selected by the University.

In order to use the informal resolution process, both parties must provide voluntary, written consent to the informal resolution process and must receive written notice disclosing: the

allegations, the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations), and any outcomes resulting from participating in the informal resolution process (including the records that will be maintained or could be shared). At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the University Sexual Misconduct grievance process with respect to the formal complaint.

The University will 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 of University Sexual Misconduct. Similarly, the University will not require, encourage, or discourage the parties from participating in the informal resolution process. The University will not offer the informal resolution process unless a formal complaint is filed and the Coordinator approves the use of the process for the resolution of the complaint.

The parties may submit a request to the Coordinator for approval to use the informal resolution any time after the filing of a formal complaint up to 48 hours prior to the schedule start of an adjudicatory hearing under this Policy.

#### **E. Classroom Discussions and Public Awareness Events**

Classroom discussions and assignments as well as public awareness events such as “Take Back the Night,” candlelight vigils, protests, survivor speak outs, film screenings, or other public forums in which incidents of Sexual Misconduct are disclosed shall not be considered to place the University on notice of an incident of Sexual Misconduct for purposes of triggering its obligation to investigate any particular incident(s).

#### **F. Clery Act Reporting**

Pursuant to the Clery Act, the University includes statistics about certain offenses in its daily crime log and annual security report and provides those statistics to the United States Department of Education, but does so in a manner that does not include any personally identifying information about persons involved in an incident. If a report of Sexual Misconduct discloses a serious and continuing threat to the University community, where timely notice must be given to protect the health or safety of the community, the University is required to issue a timely notification to the community under the Clery Act. The timely warning will not provide any personally identifying information about the victim.

#### **G. Limited Immunity for Conduct Violations**

The University considers the reporting and resolution of Sexual Misconduct violations to be of paramount importance. The University does not condone underage drinking or the use of drugs; however, the University may extend limited immunity from disciplinary actions for violations of University rules (e.g. student violation of rules concerning alcohol, consensual sexual activity, and other infractions) to victims, witnesses, and other individuals who in

good faith, provide information to the University in connection with the investigation or resolution of a report of alleged Sexual Misconduct.

## **VIII. PROCEDURES FOR RESPONDING TO TITLE IX SEXUAL MISCONDUCT**

These procedures outline the steps the University will take upon receiving a report or formal complaint of alleged Title IX Sexual Misconduct.

In order to protect the safety of the campus community, the Coordinator may review reports of alleged violations of this Policy even when a formal complaint has not been filed or has been withdrawn to determine if an investigation may be warranted. In such cases, the Coordinator may determine to file a formal complaint and proceed with an investigation even if a complainant has requested that the University take no action on the matter.

In making a determination to file a formal complaint, the Coordinator will consider the complainant's request, the University's obligations to address sexual misconduct, safety concerns, the interests of others involved, and the interests of the University community.

### **A. Supportive Measures**

As described in Section VI, above, the Coordinator is responsible for the implementation of supportive measures and for coordinating with other University officials and departments to do so. Upon receipt of a report or formal complaint of a violation of this Policy, the University, through the Coordinator, will promptly contact the complainant, or if unknown attempt to identify the complainant, to discuss the availability of supportive measures.

The Coordinator will also discuss the availability of supportive measures with the Respondent, as appropriate, with third parties taking into account the role of the third party and the nature of their relationship to the University.

### **B. Emergency Removal / Administrative Leave**

In connection with this Policy, whether or not a grievance process is underway, the University may summarily remove a student from an educational programs and/or activities on an emergency basis, after undertaking an individualized safety and risk analysis, and upon the determination that the individual poses an immediate threat to the physical health or safety of any student or other individual (including themselves, the respondent, the complainant, or any other individual). In these situations, the University will provide the individual with notice and an opportunity to challenge the decision immediately following removal.

The University may place an employee who is named as a Respondent in a formal complaint under this Policy on administrative leave for all or any part of the investigation and resolution proceedings. However, leave will be administered in a manner that will allow the employee an equal opportunity to participate in the proceedings.

### **C. Initial Assessment and Determination of Covered Conduct**

Where the complainant is known or identified, the Coordinator will arrange a meeting to discuss the report or formal complaint with the complainant and the procedures and actions available under this Policy to resolve the complaint.

The actions of the Coordinator in conducting the initial assessment will include, but are not limited to, the following:

- Inform complainant about how to access a copy of the Sexual Misconduct Policy.
- Provide complainant with information about confidential and non-confidential medical, wellness, and support resources on-campus and off-campus.
- Explain the importance of obtaining and preserving forensic and other evidence, and their right to contact law enforcement, or to decline to contact law enforcement, and/or to seek a protective order.
- Inform complainant of the prohibition of retaliation against individuals who make a report or formal complaint, or who participate in the grievance and resolution procedures under this Policy.
- Assess the nature and circumstances of the report and determine if the reported conduct demonstrates a threat to the health or safety of the University community that may warrant issuance of a timely warning or entry of the report in the daily crime log.
- Make a determination as to whether the conduct reported would, if substantiated, constitute conduct prohibited under this Policy.
- If the Coordinator determines that the conduct reported would, if substantiated, constitute conduct prohibited under this Policy, the complaint may move forward. If not, the complaint will be dismissed. If applicable, the complaint may be referred for action under other applicable University policies.
- If a formal complaint has not been made, the Coordinator will discuss the process for making a formal complaint with the complainant and the procedures and actions available under this Policy to resolve the complaint.
- Discuss any concerns or barriers to complainant's participation in any investigation or resolution procedures under this Policy and explain the University's policies concerning retaliation, privacy and confidentiality with respect to such procedures.
- Discuss the Complainant's preferred resolution for the complaint.
- If the complainant does not file a formal complaint or chooses not to go forward with a formal complaint, the Coordinator may review the matter to determine whether to file a formal complaint and proceed with an investigation even if complainant has requested that the University take no action.

### **D. Investigation & Adjudication Background**

The University is committed to providing a prompt, fair, and impartial investigation and adjudication of all formal complaints alleging violations of this Policy. During the grievance process, both parties (complainant and respondent) will have equal rights to participate.

The Coordinator is responsible for overseeing the investigation and resolution of formal complaints, and will be the primary point of contact for complainant and respondents(s) throughout the grievance process. This process will result in the resolution of formal complaints through investigation, adjudication, or dismissal.

**Presumption of Good Faith Reporting:** The University presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this Policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.

**Presumption of Non-Responsibility:** The respondent is presumed to be not responsible for the alleged conduct unless and until a determination, regarding responsibility is made at the conclusion of the grievance process.

**Notices and Communications:** Unless the Coordinator gives written direction otherwise, all notices and other communications made by the University in connection with these procedures shall be deemed to have been delivered to a participant (Complainant, Respondent, witness, etc.) when sent electronically to the participant's University issued email account.

**Time Period:** The University will endeavor to complete the investigation and adjudication of formal complaints within ninety (90) business days from the date of the investigators' first interview of the complainant. Timeframes for all phases of the grievance process, including the investigation, the hearing, and any related appeals, apply equally to both parties.

There may be circumstances that require the extension of time frames for good cause. The Coordinator may extend time frames to ensure the integrity and completeness of the investigation or adjudication, comply with a request by external law enforcement, accommodate the absence of a party, adviser, or witness, or for other legitimate reasons, including the complexity of the investigation and the severity and extent of the alleged misconduct. The University will notify the parties in writing of any extension of the time frames for good cause, and the reason for the extension.

**Standard of Evidence:** All determinations concerning responsibility for violations of the Sexual Misconduct Policy will be made using a preponderance of the evidence standard. Preponderance of the evidence means that, based on the evidence, it is more likely than not that the Respondent engaged in prohibited conduct as defined in the Sexual Misconduct Policy.

**Cooperation:** All Community Members involved in the investigation and resolution of Complaints are expected to cooperate with the Coordinator, Investigator and others with responsibility for implementation of these procedures. All Community Members participating as a Complainant, Respondent or witness under this Policy are expected to do so honestly. Individuals who make knowingly false or intentionally misleading statements in connection with any part of the process may be subject to disciplinary action.

**Conflict of Interest/Bias:** All individuals involved in the administration of the grievance process must be free of conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent and be trained as required pursuant to Title IX regulations. Parties will be notified at the appropriate junctures of the identities of the individuals serving as investigators, hearing panel members, and appeal officers.

A party who has concerns that one or more of the individuals assigned to perform the duties of one of these positions has a conflict of interest or is biased must report their concerns in writing to the Coordinator within 48 hours of being notified of their appointment to explain the basis for the claimed conflict or bias. A party who has concerns that the Coordinator has a conflict of interest or is biased must report their concerns in writing to the University President's Office within 48 hours of receiving the notice of allegations to explain the basis for the claimed conflict or bias. The Coordinator will review the allegations of conflict or bias and will determine if the individual(s) identified can fulfill their duties impartially. If not, the Coordinator will replace the individual(s).

**Confidentiality:** While complainants, respondents, and witnesses involved in the grievance process under this Policy are strongly encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation, complainants and respondents are not restricted from discussing the allegations under investigation.

Medical, psychological, and similar treatment records are privileged and confidential documents that cannot be accessed or used for a grievance process under this Policy without the relevant party's voluntary, written consent.

**Advisors:** Throughout the investigation and resolution process, the complainant and respondent have the right to be accompanied by an advisor of their choice during any University disciplinary proceeding, including any related meeting, interview, or hearing, held pursuant to the Sexual Misconduct Policy ("Proceeding"). An advisor may be any person, including an attorney. Complainant and respondent need not use the same advisor throughout the investigation and resolution process. However, he or she may only have a single advisor present during any Proceeding.

Advisors may not participate actively or speak for the individual he or she is advising in any Proceeding other than an adjudicatory hearing, although they may ask for brief breaks during meetings, interviews, or hearings to consult privately with the individual they are present to advise. The Advisor will conduct cross-examination of the opposing party during the adjudicatory hearing. If a party does not have an advisor for a scheduled adjudicatory hearing, they must notify the Coordinator and the University will provide an advisor for them for the hearing.

Advisors are subject to the same confidentiality expectations applicable to others in attendance. Accommodations, including scheduling of interviews or hearings, will not be made for any advisors if such will unduly delay the process. The University official presiding over a Proceeding may terminate the participation of an advisor who is disruptive or

otherwise fails or refuses to comply with the University's rules and/or policies with respect to the Proceeding.

**Past History:** In general, information concerning either party's sexual history beyond the conduct forming the basis of the Complaint, will not be solicited or considered as part of the investigation and resolution process. However, where Consent is at issue and the parties have previously engaged in consensual sexual relations, the prior consensual sexual history between them including the manner and nature of communications between them, may be relevant to the assessment of issues concerning Consent, to explain the presence of a physical injury, or to help resolve other questions relevant to the conduct alleged in the complaint. However, as previously stated in this Policy, the mere fact that the parties had engaged in a current or previous consensual sexual relationship, by itself, is not sufficient to establish Consent to subsequent sexual activity, and there must be Consent for all sexual activity.

Information concerning incidents of similar conduct or acts of violence on the part of the Respondent prior or subsequent to the conduct raised in the Complaint, whether or not the subject of another Complaint or finding of responsibility, may be deemed relevant to the assessment of responsibility for conduct alleged in a complaint, if such information indicates a history of conduct related to the conduct alleged in the complaint.

**Consolidation:** The Coordinator has the discretion to consolidate multiple formal complaints of allegations of violations of the Sexual Misconduct Policy against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of arise out of the same facts or circumstances.

**Failure or Refusal to Participate:** The failure or refusal of a Complainant or Respondent to participate in any investigation or resolution proceedings will not prevent the University from moving forward. If after appropriate notice is given, a party fails or refuses to participate in any such Proceeding, the University shall continue the process and will make its determinations based on the information available.

The University will not take disciplinary or other adverse action against a party for choosing not to participate in the proceeding, refusal to answer questions, or to be cross-examined(s) at a hearing. Further, no adverse inference shall arise or be applied in making any decision or determination concerning a party based solely on the individual's absence from the proceeding, refusal to answer a question, or to be cross-examined at a hearing.

If a party or a witness fails to appear at an adjudicatory hearing or refuses to be cross-examined, the Hearing Officer or Panel may not rely on any statement provided by that non-participating individual in reaching a determination regarding responsibility; or draw any adverse inference from same.

## **E. Investigation**

If the Coordinator has determined, following an initial assessment, that an investigation is appropriate, they will refer the matter for investigation and will appoint an investigator. If needed, the investigator may be assisted in conducting investigation functions by other qualified individuals.

### **Notice of Investigation**

Following the receipt and review of the formal complaint by the Coordinator, and it being determined that the matter properly falls under this University Sexual Misconduct policy the parties will be informed in writing of the initiation of the investigation. The written information shall include:

- The identities of the parties, if known.
- A concise summary of the alleged conduct at issue (including when and where it occurred, if known).
- Notice of the allegations potentially constituting University Sexual Misconduct.
- A statement that the respondent is presumed not responsible and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement informing the parties that they may have an adviser of their choice, who may be, but is not required to be, an attorney.
- A statement informing the parties that they may request to inspect and review evidence.
- A statement informing the parties that knowingly making false statements or knowingly submitting false information during the grievance process may constitute a violation of University policy.
- Information regarding the applicable grievance procedures, including the informal resolution process.
- Notice of the individual appointed to conduct the investigation, including the individual's name and business address.
- If, during the investigation, additional information is disclosed that may also constitute prohibited conduct under this policy, the respondent and complainant will be informed in writing that such additional information will be included in the grievance process.

## **Collection of Evidence**

The investigator(s) will collect information from each party. While the complainant and the respondent are not restricted from gathering and presenting relevant evidence, the investigators are responsible for gathering relevant evidence to the extent reasonably possible. However, each party will be given an equal opportunity to suggest witnesses; provide other relevant information, such as documents, communications, photographs, and other evidence; and to submit a written statement concerning the allegations in the formal complaint.

Parties and witnesses are expected to provide all available relevant evidence to the investigator(s) during the investigation. While parties are not restricted from presenting information attesting to the parties' character, such evidence generally is not considered relevant.

The investigator(s) will provide to a party written notice of the date, time, location, participants, and purpose of all investigative interviews to which they are invited or expected, with sufficient time (generally no less than three (3) business days, absent exigent circumstances) for the party to prepare to participate.

Parties will be interviewed separately and will be interviewed by the investigators. The investigators will interview witnesses as necessary and may, at their discretion, delegate witness interviews to two investigators. The investigators will record all interviews, or notes of the interviews will be taken by the investigators. Any other recording of interviews is prohibited and violations may result in discipline.

In general, a party's medical and counseling records are confidential. The investigators will not 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 investigators obtain that party's voluntary, written consent to do so.

The investigator(s) will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client, doctor-patient), unless the individual holding such privilege has waived the privilege.

## **Case File**

After investigator(s) have completed any witness interviews and gathering of evidence, the investigator(s) will prepare a case file. The case file will include all collected evidence that is directly related to the allegations raised in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and including any inculpatory or exculpatory evidence, whether obtained from a party or other source as part of the investigation.

The case file may include, as applicable, transcripts or summaries of party and witness interviews and other collected documents and evidence. The investigator(s) will provide the case file (or, when deemed appropriate, a written summary of relevant information contained in the case file), redacted of personally identifiable information in accordance with privacy regulations, to each party and their adviser in electronic form or hard copy. In all cases, any information relied on in adjudicating the matter will be provided to the parties and their advisers. The investigator(s) will also provide an updated Notice of the Allegations, as appropriate.

Within ten (10) business days of receiving the case file (or written summary, as applicable), each party may respond in writing, which may include a request that the investigators collect additional evidence. If the investigator(s) believe that further information is needed following receipt of any responses from the parties, the investigator(s) will pursue any additional investigative steps as needed. The parties and their advisers will be provided with each party's written responses to the case file, if any, as well as any additional information collected by the investigators (or a written summary of same, as applicable), in electronic format or hard copy.

### **Investigation Report**

Following their review of the parties' responses (if any) to the case file (or written summary, as applicable), the investigator(s) will create a written investigative report that summarizes all relevant evidence; the report will not contain irrelevant information. The report should include a statement of the allegations, a description of the events in question, information concerning the scope and conduct of the investigation, and summaries of interviews conducted and relevant evidence developed (for example, documents, photographs, electronic records, police reports, text messages, statements, and other relevant materials). The report may include the investigator(s) observations with respect to the demeanor and participation of the parties and witnesses, relevant consistencies and inconsistencies in the information provided, and issues, if any, concerning the credibility of information submitted by parties and witnesses.

At least ten (10) business days prior to the hearing, the investigative report (or a written summary of the same, as applicable) will be provided to the parties and their advisers via electronic format.

The parties may choose to provide a written response to the investigative report, which must be submitted at least five (5) business days prior to the start of the hearing. The response may consist of a written statement not to exceed five (5) double spaced pages. At least 48 hours prior to the hearing, the parties and their advisers will be provided with the other party's written response to the investigative report, if any, in electronic format.

### **F. Hearing**

The Coordinator may appoint a single individual to preside over the hearing as a Hearings Officer, or three individuals to act as a Hearings Panel. One of the individuals selected for the Hearings Panel shall be designated as the Chairperson of the Hearings Panel. Hearings will

generally be conducted as a live hearing during which it assembles (in person or virtually) all of the parties together at the same time.

The Hearings Officer or the Chair of the Hearings Panel as the case may be, shall act as Chief Hearing Officer and will have absolute discretion with respect to administering the hearing. The Chief Hearing Officer will decide whether evidence and witnesses are relevant or irrelevant, with the understanding that the introduction of relevant evidence and witnesses will always be permitted, and shall be responsible for maintaining an orderly, fair, and respectful hearing. The Chief Hearing Officer will have broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending individual, including a party, witness, or advisor.

Prior to the hearing, the Hearings Officer or Hearing Panel will be provided with the case file (and written summaries, as applicable), investigative report, and any responses to the investigative report. Hearings Officer or each member of the Hearing Panel shall review the case file (including the parties' responses), ask questions during the hearing as they deem appropriate, and participate in the deliberations leading to the adjudication of responsibility.

At least five (5) business days prior to the hearing, the parties and their advisers will be notified of the hearing date, time, and location (or relevant electronic information, if the hearing will be conducted remotely).

In advance of the hearing, parties will be given the opportunity to request that certain witnesses be called at the hearing. The Chief Hearing Officer has the discretion to exclude from the hearing evidence/witnesses/questions deemed irrelevant.

At the Chief Hearing Officer's discretion, pre-hearing meetings may be scheduled with each of the parties and their advisers to explain the hearing protocol. Each party may make requests related to the format or the nature of their participation in the hearing. The Chief Hearing Officer's will accommodate requests by either party for the hearing to occur with the parties located in separate locations with technology enabling the Hearings Officer or Hearing Panel and the parties to simultaneously see and hear the party answering questions.

As appropriate and/or at the discretion of the Chief Hearing Officer, hearings may be conducted in person or by video conference or any other means of communications by which all individuals participating are able to see and hear each other.

### **Presentation of the Case**

A typical hearing may include brief opening remarks by the Chief Hearing Officer; questions posed by the Hearings Officer or Hearing Panel to one or both of the parties; questions posed by the Hearings Officer or Hearing Panel to any relevant witnesses; and the opportunity for the parties' Advisors to cross-examine the other party and relevant witnesses. Only relevant cross examination questions may be asked of a party or witness. The Chief Hearing Officer has the sole discretion to determine what questions are relevant. The Hearings Officer or Hearing Panel will consider all relevant evidence.

## **Record of Hearing**

The University shall create an official record in the form of a recording or transcript of any live (or remote) hearing and make it available to the parties for inspection and review. Any other record of the hearing or any other recording is prohibited and violations may result in discipline and/or appropriate legal action.

## **Written Determination**

Following the hearing, the Hearings Officer or Hearing Panel will consider all of the relevant evidence and deliberate regarding responsibility. In a case presided over by a Hearings Officer, the Hearings Officer shall make a determination, by a preponderance of the evidence, whether the respondent has violated the policy. In the case of Hearing Panel, the members of the panel shall deliberate and make a determination, by a preponderance of the evidence, whether the respondent has violated the policy by a majority vote of the members of the Hearing Panel.

The Chief Hearing Officer shall write a written determination, which will contain:

- the allegations potentially constituting University Sexual Misconduct;
- a description of the procedural steps taken from the receipt of the formal complaint through the determination (including any notifications to the parties, interviews with parties and witnesses, site visits (if any), methods used to gather other information, and the hearing);
- findings of fact supporting the determination;
- conclusions regarding the application of this policy to the facts;
- a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether a policy violation occurred), any disciplinary sanctions imposed by the Sanction Officer if there has been a finding of responsibility (as described in section \_\_\_\_):
- whether any remedies designed to restore or preserve equal access to the University's education program or activity or working environment will be implemented; and
- relevant appeal information for the parties.

Disciplinary sanctions and remedies will be determined in accordance with the procedures listed below, and the information will be provided to the Chief Hearing Officer for inclusion in the written determination.

The parties and their advisers will simultaneously be provided with the written determination (or, when deemed appropriate, a written summary of the written determination) via electronic format.

## **G. Disciplinary Sanctions and Remedies**

If a party is found to have violated this policy, before finalizing the written determination, the Chief Hearing Officer will refer the matter to the appropriate University official(s) to determine sanctions and remedies. Sanctions being imposed will be included in the written determination.

Sanctions will take into account the seriousness of the misconduct as compared to like cases in the past, the respondent's previous disciplinary history (if any), and institutional principles. Remedies, which may include supportive measures, will be designed to restore or preserve equal access to the University's education program or activity.

When there is a finding of responsibility, the case record (consisting of the case file and responses, investigative report and responses, hearing recording, and written determination relating to the finding of responsibility) will be provided to the appropriate Sanction Officer listed below, based on respondent's primary relationship to the University.

The Sanction Officer shall set the sanctions in consultation with appropriate University administrators:

- If an undergraduate student is found responsible for violating the policy, the Dean of Students will determine sanctions and remedies.
- If a graduate student is found responsible for violating the policy, the Dean of Students will determine sanctions and remedies.
- If a faculty member is found responsible, the Chief Academic Officer will determine sanctions and remedies.
- If a staff member is found responsible, the Director of Human Resources will determine sanctions and remedies.

In the event that any of the Sanction Officers is unavailable, an appropriately trained University official will serve as a substitute. Any sanctions and remedies will be forwarded to the Chief Hearing Officer and will be included in the written determination. Sanctions will be subject to appeal under this policy.

## **H. Appeal**

Appeals under this policy will be heard by a single Appeal Officer. Both parties have equal rights to an impartial appeal at the following junctures:

- Upon the dismissal of a formal complaint or any allegations therein.
- Upon receiving the Chief Hearing Officer's written determination regarding responsibility and, when applicable, sanction and remedies.

Appeals may be submitted 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 which could affect the outcome of the matter;
- The Coordinator, investigator(s), the Hearings Officer or any member of the Hearing Panel, or Sanction Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

To appeal, a party must electronically submit a written appeal statement to the Title IX Coordinator of the University within five (5) business days of receipt of the written determination or dismissal. The Appeal Officer may deem a late submission reasonable only under extenuating circumstances, and may decide in their sole discretion what constitutes valid extenuating circumstances.

The appeal shall consist of a written statement not to exceed five (5) double spaced pages, outlining the basis for appeal and the relevant information to substantiate the appeal. The non-appealing party will be provided with a copy of the appealing party's written statement and may submit a written response, not to exceed not to exceed five (5) double spaced pages, to the Title IX Coordinator of the University within five (5) business days of receipt of the appealing party's written statement. The non-appealing party's statement will be provided to the appealing party. No further appeal submissions from the parties shall be permitted.

An appeal is limited in scope. The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of University rules has occurred. In deciding an appeal, the Appeal Officer may consider the case file and any responses, investigative report and any responses, the hearing record, the written determination, and any written appeal(s) or statements by the parties. The Appeal Officer also may consider any other materials the University deems relevant and that have been shared with the parties.

The parties and their advisors will simultaneously be provided (via electronic format) with the written decision describing the result of the appeal and the rationale for the result.

- If the Appeal Officer finds that:
  - the earlier decision should stand, the parties will be so informed and the University Sexual Misconduct process is concluded.
  - there was procedural irregularity that affected the outcome of the matter, the matter will be remanded to the Chief Hearing Officer to determine appropriate further action.

- new evidence is available which was not reasonably available at the time of the determination regarding responsibility or dismissal, and such evidence could alter the outcome of the matter, the matter will be remanded to the Chief Hearing Officer for appropriate further action.
- the Coordinator, investigator, Hearings Officer or member of the Hearing Panel, or Sanction Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter, the Appeal Officer will take appropriate measures to address and remediate the impact of the bias or conflict consistent with the general procedures of this policy.

The Appeal Officer will endeavor to complete the appeal review within fifteen (15) days following receipt of the party's appeal statements.

The determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of an appeal if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

#### **I. Potential Sanctions for Violations**

The Coordinator will review and monitor the application of formal and informal resolution procedures and appeals, if applicable, concerning formal complaints alleging violations of the Sexual Misconduct Policy for compliance with the requirements of Title IX and VAWA. The University reserves the right to amend, modify, suspend and/or change any University policy, procedure or rule in order to ensure such compliance.

Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct, and the adjudication and/or disciplinary procedures applicable to the Respondent. In general, sanctions for violations of the Sexual Misconduct Policy may include, without limitation, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, compensation adjustments, expulsion or suspension from the University, expulsion from campus housing, mandated counseling, educational sanctions, and/or the suspension or revocation any other privilege with respect to membership or participation in the University Community.

In cases involving Sexual Harassment, the University will also take reasonable steps to eliminate any hostile environment that has been created, such as arranging trainings and disseminating informational materials.

#### **IX. PROCEDURES FOR RESPONDING TO NON-TITLE IX SEXUAL MISCONDUCT**

Incidents arising from the same set of operative facts as Title IX Sexual Misconduct, as determined by the University, will be addressed under the same hearing procedures applicable to Title IX Sexual Misconduct. Standalone incidents of Non-Title IX Sexual Misconduct will be addressed in accordance with the procedures described in this Section.

#### **A. Interim Remedies/Actions**

As described in Section VI above, the Coordinator may provide supportive measures intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the complainant and the community and to prevent further violations.

In addition, the University may interim suspend a student, employee or organization pending the completion of investigation and procedures, particularly when, in the judgment of the Coordinator, the safety or well-being of any member(s) of the University community may be jeopardized by the presence of the respondent or the on-going activity of a student organization whose behavior is in question. In all cases in which an interim suspension is imposed, the student, employee or student organization will be given the option to meet with the prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Coordinator has sole discretion to implement or stay an interim suspension and to determine its conditions and duration. Violation of an interim suspension under this Policy will be grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to University housing and/or to University campus/facilities/events. As determined by the Coordinator, this restriction can include classes and/or all other Bay Path University activities or privileges for which the student might otherwise be eligible. At the discretion of the Coordinator, alternative coursework options may be pursued to ensure as minimal an effect as possible on the Respondent.

The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures.

#### **B. Preliminary Inquiry**

Following receipt of notice or a report of misconduct, the Coordinator engages in a preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. The preliminary inquiry is typically 1-3 days in duration. This inquiry may also serve to help the Coordinator to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, in the event that the complainant has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Coordinator may respect a complainant's request for no action, and will investigate.

If circumstances require, the President or Coordinator may designate another person to oversee the process below, should an allegation be made against the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

As necessary, University reserves the right to initiate resolution proceedings without a formal report or participation by the complainant.

In cases where the complainant wishes to proceed or the University determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Coordinator will direct a formal investigation to commence and the allegation will be resolved through the processes described below.

If, during the preliminary inquiry or at any point during the formal investigation, the Coordinator determines that there is no reasonable cause to believe that policy has been violated, the process will end unless the complainant requests that the Coordinator makes an extraordinary determination to re-open the investigation. This decision lies in the sole discretion of the Coordinator.

### **C. Investigation**

The Coordinator will appoint an investigator to investigate the claims. Once a formal investigation is commenced, the Coordinator will provide written notification of the investigation to the respondent at an appropriate time during the investigation. This notification will include a detailed explanation of the charges against the respondent. Upon receiving this notification, respondent will have five (5) days to respond to the allegations in a format determined by the investigator. At the conclusion of the investigation, the investigator will provide the Coordinator with a written report summarizing the evidence gathered and examined, an assessment of credibility of the parties and witnesses, an analysis of the information and a recommended finding and sanction (if applicable).

The Coordinator will conduct any additional necessary inquiry and then finalize a determination. The Coordinator will base the determination(s) on the preponderance of the evidence, whether it is more likely than not that the responding party violated policy as alleged.

The respondent may choose to admit responsibility for all or part of the alleged policy violations at any point during the investigation or Administrative Resolution process. If the respondent admits responsibility, the Title IX Coordinator will render a determination that the individual is in violation of University policy.

If the respondent admits the violation, or is found in violation, the Coordinator, in consultation with others as appropriate, will determine an appropriate sanction or responsive action, will implement it, and act promptly and effectively to stop the harassment or discrimination, prevent its recurrence and remedy the effects of the discriminatory conduct.

The Coordinator will inform the parties of the final determination within 3 days of the resolution, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' Bay Path University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the University is permitted to share according to state or federal law, and the

rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. The notice will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization, and any appeals options that are available.

#### **D. Advisors**

Each party is allowed to have an advisor of their choice present with them for all meetings and proceedings, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually otherwise not involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the University community. The parties may choose their advisor or proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the University is not obligated to provide one.

All advisors are subject to the same University policies and procedures, whether they are attorneys or not. Advisors may not address University officials in a meeting or interview unless invited to do so by the presiding chair. The advisor may not make a presentation or represent the complainant or the respondent during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or hearing panelists. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have, and allows the University an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Coordinator will determine whether the advisor may be reinstated, may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process.

The University expects that the parties will wish to share documentation related to the allegations with their advisors. The University provides a consent form that authorizes such sharing. The parties must complete this form before the University is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

The University expects an advisor to adjust their schedule to allow them to attend University meetings when scheduled. The University does not typically change scheduled meetings to accommodate an advisor's inability to attend. The University will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor throughout.

The parties must advise the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

#### **E. Disciplinary Sanctions and Remedies**

If a party is found to have violated this policy, the Coordinator will refer the matter to the appropriate University official(s) to determine sanctions and remedies.

Sanctions will take into account the seriousness of the misconduct as compared to like cases in the past, the respondent's previous disciplinary history (if any), and institutional principles. Remedies, which may include supportive measures, will be designed to restore or preserve equal access to the University's education program or activity.

When there is a finding of responsibility, the case record (consisting of the case file and responses, investigative report and responses, and written determination relating to the finding of responsibility) will be provided to the appropriate Sanction Officer listed below, based on respondent's primary relationship to the University.

The Sanction Officer shall set the sanctions in consultation with appropriate University administrators:

- If an undergraduate student is found responsible for violating the policy, the Dean of Students, who will determine sanctions and remedies.
- If a graduate student is found responsible for violating the policy, the Dean of Students, who will determine sanctions and remedies.

- If a faculty member is found responsible, the Chief Academic Officer will determine sanctions and remedies.
- If a staff member is found responsible, the Director of Human Resources will determine sanctions and remedies.

In the event that any of the Sanction Officers is unavailable, an appropriately trained University official will serve as a substitute. Any sanctions and remedies will be forwarded to the Chief Hearing Officer and will be included in the written determination. Sanctions will be subject to appeal under this policy.

#### **F. Appeal**

Both parties have equal rights to an impartial appeal at the following junctures:

- Upon the dismissal of a formal complaint or any allegations therein.
- Upon receiving a determination regarding responsibility and, when applicable, sanction and remedies.

Appeals may be submitted 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 which could affect the outcome of the matter;
- The Coordinator, investigator(s), or decision maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

To appeal, a party must electronically submit a written appeal statement to the Title IX Coordinator of the University within five (5) business days of receipt of the written determination or dismissal. The Appeal Officer may deem a late submission reasonable only under extenuating circumstances, and may decide in their sole discretion what constitutes valid extenuating circumstances.

An appeal is limited in scope. The purpose of an appeal is not to initiate a review of substantive issues of fact or a new determination of whether a violation of University rules has occurred. In deciding an appeal, the Appeal Officer may consider the case file and any responses, investigative report and any responses, the hearing record, the written determination, and any written appeal(s) or statements by the parties. The Appeal Officer also may consider any other materials the University deems relevant and that have been shared with the parties.

The parties and their advisors will simultaneously be provided (via electronic format) with the written decision describing the result of the appeal and the rationale for the result.

- If the Appeal Officer finds that:
  - the earlier decision should stand, the parties will be so informed and the University Sexual Misconduct process is concluded.
  - there was procedural irregularity that affected the outcome of the matter, the matter will be remanded to the Coordinator to determine appropriate further action.
  - new evidence is available which was not reasonably available at the time of the determination regarding responsibility or dismissal, and such evidence could alter the outcome of the matter, the matter will be remanded to the Coordinator for appropriate further action.
  - the Coordinator, investigator, decision maker, or Sanction Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter,

the Appeal Officer will take appropriate measures to address and remediate the impact of the bias or conflict consistent with the general procedures of this policy.

The Appeal Officer will endeavor to complete the appeal review within fifteen (15) days following receipt of the party's appeal statements.

The determination regarding responsibility becomes final either on the date that the parties are provided with the written determination of the result of an appeal if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## **X. PREVENTION AND AWARENESS**

The University is committed to the prevention of Sexual Misconduct through education and awareness programs. Incoming students and new employees receive primary education and prevention training as part of their orientation, and returning employees and students receive ongoing training and related programs. The Coordinator is charged with monitoring the University's education, prevention and training programs as required by Title IX and VAWA.

Resources are also available through the Campus Public Safety Department which provides the University Community with safety information as well as programs and workshops on sexual assault, crime prevention, and personal safety.

## **XII. GENERAL**

The University reserves the right to modify this Policy and the procedures herein to take into account applicable legal requirements, to address extraordinary circumstances, and/or as it deems necessary to further the purpose and intent of the Policy.

In order to comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the investigation and resolution procedures applicable to issues of Sexual Misconduct are not open to the general public. Accordingly, documents prepared and/or submitted in connection with proceedings including but not limited to complaints, reports, notices, summaries, recordings, transcripts, or other information introduced during the procedures may not be disclosed outside of the proceedings, except as may be required or authorized by law.

The University will retain documentation (including but not limited to the written complaint, notifications, the investigation materials, reports, recordings or transcriptions of hearings, findings of fact, petitions for appeal, and any written communications to or from the parties), for at least seven years. Documentation pertaining to expulsions or educational sanctions may be retained indefinitely.

## APPENDIX A

### Definitions

The following are provided to give further definition to some of the terms referenced in the Sexual Misconduct Policy. Any questions concerning the definition, meaning or application of any term of the Sexual Misconduct Policy should be directed to the Title IX Coordinator.

**Assigned Title IX Coordinator.** The “Assigned Title IX Coordinator” means either the Title IX Coordinator or the Assistant Title IX Coordinator assigned by the Title IX Coordinator or President to handle a given Complaint.

**Clery Act.** The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) is a federal statute codified at 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 CFR 668.46. The Clery Act requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses.

**Complainant.** Refers to the individual(s) who is alleged to be the victim of Sexual Misconduct as defined in University’s Sexual Misconduct Policy.

**Day.** A “day” is a business day, unless otherwise specified.

**FERPA.** The Family Educational Rights and Privacy Act (“FERPA”) is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 CFR Part 99. FERPA protects the privacy of student education records. FERPA grants to parents or eligible students the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to the disclosure of education records.

**Formal Complaint.** Refers to a written document filed by a Complainant (meaning a written document or electronic submission (such as by email) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the individual filing the formal complaint) alleging that a respondent(s) has engaged in conduct prohibited under the University’s Sexual Misconduct Policy, and requesting that the University investigate the allegation. The University’s Title IX / Sexual Misconduct Coordinator may also initiate a Formal Complaint by signing a written document alleging that a respondent(s) has engaged in conduct prohibited under the University’s Sexual Misconduct Policy. In such cases, the University Title IX / Sexual Misconduct Coordinator is not a complainant or a party to the action.

A formal complaint may be filed with the University’s Title IX / Sexual Misconduct Coordinator in person, by mail, or by electronic mail, by using the contact information provided in this Policy, and by any additional method identified in this Policy.

**Investigator.** A neutral fact-gatherer who is designated by the Assigned Title IX Coordinator to investigate a Complaint.

**Official with Authority.** Refers to the University's Title IX and Assistant Title IX Coordinator identified in the University's Sexual Misconduct Policy.

**Party or parties.** Refer to the complainant(s) and the respondent(s).

**Personally Identifiable Information.** Personally Identifiable Information includes, but is not limited to:

- a person's name;
- the name of a person's parent(s) or other family members;
- the address of a person or a person's family;
- a personal identifier, such as a person's social security number, student/employee number, or biometric record;
- other indirect identifiers, such as a person's date of birth, place of birth, or mother's maiden name;
- other information that, alone or in combination, is linked or linkable to a specific person and that would allow a reasonable person in the University community, who does not have personal knowledge of the relevant circumstances, to identify the Student with reasonable certainty; or
- Information requested by a person whom the University reasonably believes knows the identity of the person to whom the information relates.

**Reasonable Person.** means a reasonable person under similar circumstances and with similar identities to the alleged victim.

**Report.** A report refers to information brought to the attention of an Official with Authority alleging that an incident(s) of conduct prohibited under the University's Sexual Misconduct Policy has occurred; a report is not considered to be a formal complaint. A party may bring a report and then subsequently file a formal complaint.

**Respondent.** A "Respondent" is an individual accused of engaging in conduct prohibited under the University's Sexual Misconduct Policy, in a Formal Complaint.

**Third party** refers to any individual who is not a University student, a faculty member, or a staff member (e.g., vendors, alumni/ae, or local residents).

**VAWA.** Section 304 of the Violence Against Women Reauthorization Act of 2013.

**Witness** refers to any individual who shares information relating to an allegation of prohibited conduct under this Policy.

## **APPENDIX B**

### **On-Campus Resources**

The following represent some of the resources and services available to Students and Employees.

#### **A. On-Campus Confidential Resources**

##### **Bay Path University Counseling Center**

413-565-1276

North House

The Counseling Center provides support and counseling to Student victims of Sexual Misconduct and can explain common reactions to crises and discuss coping methods that may assist victims following a Sexual Assault.

##### **Bay Path University Student Health Services**

413-565-1276

North House

Student Health Services can provide referrals for Students to receive follow-up care and screening for sexually transmitted diseases.

##### **Athletic Trainers**

Athletic Trainers who are licensed by the Commonwealth of Massachusetts and employed by the University to provide first aid and treatment to student athletes can provide confidential care, support and guidance to Student victims of Sexual Misconduct.

#### **B. On-Campus Non-Confidential Resources**

These on-campus non-confidential resources can provide Community Members with information and assistance with respect to reporting Sexual Misconduct to the University and/or law enforcement, obtaining supportive measures, and access to University and community resources for emergency and on-going assistance, medical treatment, counseling, support, and advocacy services.

**Take Note:** Employees of the following offices and departments are required to report all information (obtained directly or indirectly) about incidents of Sexual Misconduct involving a Community Member to the Title IX/ Sexual Misconduct Coordinator. They must also report information as required under the Clery Act.

##### **Title IX / Sexual Misconduct Coordinator and Assistant Coordinator**

Contact information for the Title IX Coordinators is included above.

##### **Assistant Title IX Coordinator for employee-related incidents**

Carla Carvajal

Human Resources Manager

588 Longmeadow Street

Longmeadow, MA 01106

ccarvajal@ baypath.edu

**Bay Path University Campus Public Safety**

D'Amour Hall and 577 Longmeadow Street

413-565-1225

Public Safety Officers are available 24 hours a day, seven days a week.

**Office of the Dean of Students**

Office staff are available during business hours (8:30 a.m. to 4:30 p.m., Monday through Friday).

**Human Resources**

Human Resources staff are available during business hours (8:30 a.m. to 4:30 p.m., Monday through Friday).

**Resident Assistant (RA) or Residential Life Staff Member**

An RA or Residential Life staff member can provide immediate support and referrals for further care.

## APPENDIX C

### Off-Campus Resources

#### Rape Crisis Centers

The following is a list of Rape Crisis Centers in Massachusetts. As the following contact information may be subject to change, current contact information on rape crisis centers in Massachusetts can be found at the Commonwealth's Executive Office of Health and Human Services Website under "Consumer" information <http://www.mass.gov/eohhs/>:

#### Greater Boston Area

Boston Area Rape Crisis Center, Cambridge, 800-841-8371 Hotline, 617-492-6434 TTY

#### Northeastern Massachusetts

North Shore Rape Crisis Center, Lynn, 800-922-8772 Hotline, 978-921-8729 TTY Rape Crisis Services of Greater Lowell, 800-542-5212 Hotline, 978-452-8723 TTY YWCA of Greater Lawrence, 877-509-9922 SA Hotline, 978-686-8840 TTY

#### Central Massachusetts

Rape Crisis Center of Central Mass., Worcester, 800-870-5905 Hotline, 888-887-7130 TTY  
Rape Crisis Center of Central Mass., Fitchburg, 800-870-5905  
Wayside Victim Services, Milford, 800-511-5070 Hotline, 508-478-4205 TTY 23  
Voices Against Violence, Framingham, 800-593-1125 Hotline, 508-626-8686 TTY

#### Southeastern Massachusetts

A Safe Place, Nantucket, 508-228-2111 Hotline, 508-228-0561 TTY  
Independence House, Hyannis, 800-439-6507 Hotline, 508-771-6782 TTY  
Women Support Services, Vineyard Haven, 508-696-7233, 508-684-8176 TTY

Greater New Bedford Women Center, New Bedford, 888-839-6636 Hotline, 508-996-1177

TTY

New Hope, Attleboro, 800-323-4673 Hotline/TTY

Womansplace Crisis Center, Brockton, 508-588-8255 SA Hotline, 508-894-2869 TTY

#### Western Massachusetts

Elizabeth Freeman Center, Pittsfield, 866-401-2425 Hotline, 413-499-2425 TTY

Everywoman Center, Amherst, 413-545-0800 Hotline, 413-577-0940 TTY

NELCWIT, Greenfield, 413-772-0806 Hotline/ 413-772-0815 TTY

YMCA, Springfield, 800-796-8711, 413-732-7100 TTY

#### Statewide Spanish Hotline

Llámanos: Statewide Spanish Rape Crisis Hotline (800) 223-5001

#### Nationwide Resources

SAVE (<http://www.saveservices.org>)

The Victim Rights Law Center (<http://www.victimrights.org>), or the

The National Center for Victims of Crime (<http://www.victims of crime.org>), which maintains

the Crime Victim's Bar Association.

#### **Medical Facilities**

Immediate medical care can be obtained at local hospitals. Several area hospitals have SANE (Sexual Assault Nurse Examiner) nurses on staff who have been trained to work with victims of sexual assault through the medical process. This examination is a voluntary procedure and it does not commit you to any legal action. It is an individual's right to ask for a SANE nurse to perform the examination. Hospitals in the Springfield area with sexual assault nurse examiners are:

<p><b><a href="#">Baystate Medical Center</a></b> 759 Chestnut St. Springfield, MA 01199 (413) 794-0000</p>	<p><b><a href="#">Berkshire Medical Center</a></b> 725 North St. Pittsfield, MA 01201 (413) 447-2000</p>
<p><b><a href="#">Cooley Dickinson Hospital</a></b> 30 Locust St. Northampton, MA 01061-5001 (413) 582-2000</p>	<p><b><a href="#">Mercy Medical Center</a></b> 271 Carew St. Springfield, MA 01102-9012 (413) 748-9000</p>
<p><b><a href="#">Boston Medical Center</a></b> <a href="#">One Boston Medical Center Place, Boston, MA 02118</a> <a href="#">617-638-6800</a> <a href="#">Designated SANE site hospital, Open 24 hours</a></p>	

## **Law Enforcement**

**Longmeadow Police Department - 911**  
Business - 413-567-3311

East Longmeadow Police-911  
Business - 413-525-5440

**Boston Police - 911**  
Business - 617-343-4400  
Massachusetts State Police  
Business - 508-820-2300

**Guaynabo City Police Department**  
Business - 787-720-5040

**Hampden County District Attorney's Office**  
50 State Street, Springfield, MA  
413-747-1000

## **Financial Assistance**

Confidential financial assistance may be available for costs related to medical care, mental health counseling, and other expenses through the Victims of Violence Crime Compensation Program, which operates out of the Attorney General's Office. Victim Compensation (508) 755-8601.

## **Legal Assistance**

Community Legal Aid  
405 Main Street  
Worcester, MA 01608  
855-CLA-LEGAL (855-252-5342)  
508-755-3260 (TTY/TTD)  
<https://communitylegal.org>

