

Bryan College  
Title IX  
and  
Non-Title IX Discrimination, Harassment,  
and Misconduct  
Policy and Procedure Manual

Updated 4 January 2021

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## PROCEDURAL OVERVIEW

### Reporting

#### *When to Report: Required Reporting*

You must report in the following two situations.

- 1) You become aware of a complaint against a person or group over whom you have disciplinary authority.
- 2) You become aware of a complaint that involves a minor.

#### *When to Report: Reporting that is not Mandatory*

You are strongly encouraged to report in all other situations when you become aware of a violation of Title IX Sexual Harassment or Non-Title IX Discrimination, Harassment, or Misconduct. This includes harassment, sex-based harassment, and race-based harassment. For definitions and details, please see the “Non-Title IX Discrimination, Harassment, or Misconduct” and “Applicable Tennessee State Laws” headings at the end of this manual.

You can report an incident in which you were the subject of discrimination, harassment, or misconduct. You can also report when you witnessed someone else being the subject of discrimination, harassment, or misconduct.

#### *When to Report: Anonymous Reporting*

Bryan College understands that faculty, staff, and students build relationships of trust with one another and that (particularly when colleagues have developed friendships or when faculty and staff have developed mentoring relationships) 1) someone may share something in confidence and 2) it can be difficult to determine when something is shared in an official manner and when it is shared between friends. Our goal is to honor those relationships while providing protection and support for anyone who is suffering from discrimination, harassment, or misconduct.

To that end, you are able to make anonymous reports. You are able to share that you were informed of an incident and do that without sharing names or identifying details. This will help us to create necessary anonymous reports (such as the Cleary Report) and will give the Title IX Office helpful information, including providing contact information that you can share with the person who shared with you, in case they are interested in making a report themselves.

### ***How to Report***

You can make a report to the Title IX Coordinator, Dr. Hannah Schultz, in person, over the phone, via email, or through the email. Please use the following contact information.

Title IX Coordinator: Hannah Schultz

Office: MER 236B

Email: [TitleIX@bryan.edu](mailto:TitleIX@bryan.edu)

Phone: 423-775-7265

Mail Address: 721 Bryan Drive, Box # 7645, Dayton, TN 37321

Website: <https://www.bryan.edu/about/consumer-information/policy-title-ix/>

### ***What Can a Report, or other Communication, Accomplish?***

There are a variety of reasons that you might contact the Title IX Coordinator, including the following:

- You have questions about our policies in general or in your particular circumstances. (e.g., what does Title IX look like in the online setting?)
- You would like special training for your department or cohort. (e.g., before undertaking a multi-day missions trip with students)
- You would like to know about the resources available to support people who have suffered discrimination, harassment, or misconduct under this policy.
- You are unsure if an incident falls under Title IX or under our Non-Title IX Discrimination, Harassment, or Misconduct policy.
- You would like advice on how to handle an awkward interpersonal communication issue. (e.g., how many times are you allowed to ask a girl out before it becomes harassment?)
- You would like support in addressing an awkward Matthew 18 situation. (e.g., you find your colleague's jokes personally objectionable but would like advice in how to tell them that)
- You would like to make a report about an issue, to have on file in case a situation becomes more serious in the future, but do not want to make a complaint at this time.
- You would like to understand your options (and the related obligations) under Title IX or under our Non-Title IX Discrimination, Harassment, or Misconduct.
- You would like to file a Formal Complaint about an instance that violates this policy.

### ***What Will Happen When I Report?***

If you report an issue to the Title IX office, the following approximate things will happen. The exact order may differ slightly—some people want to just share their concerns, others want to hear about the options first, for instance.

1. The Title IX Coordinator provides explanations of our policies and procedures, and your options for reporting.
2. You share the issue that you feel is of concern. The Title IX Coordinator will follow up with questions and ask for more information as needed.
3. The Title IX Coordinator will explain what your options are, going forward.
4. The Title IX Coordinator will explain supportive measures that we have available.
5. If you are interested in pursuing a Formal or Informal Complaint, the Title IX Coordinator may undertake initial inquiries to see if the report falls under this policy.
6. If you are reporting as a witness, the Title IX Coordinator will follow up with the subject of the incident before taking next steps.
7. In certain cases, after a report, the Title IX Coordinator may initiate a Formal Complaint of their own volition, if it is in the best interest of the safety of the Bryan College Community or if it is required by law.
8. If a criminal issue is raised, the Title IX Coordinator can also provide information on how to make a report to the police.

### **Making a Formal Complaint**

#### ***What Will Happen If I Don't Make a Complaint?***

If you decide you do not want to make a Complaint, and if the Title IX Coordinator is not required to make a Formal Complaint on behalf of the school, there are a variety of things that can happen, based on the facts of the case.

- The Title IX Coordinator can help you to find supportive services (e.g., counseling)
- The Title IX Coordinator can help you to address the issue by facilitating a meeting with the other party/parties

### ***What Will Happen If I Make a Complaint?***

If you make a Complaint, there are a variety of things that can happen, based on the facts of the case and the issues that arise.

- If you make a report but the issue is not subject to this policy, then the Title IX Coordinator will direct you to the correct office (e.g., Human Resources, Student Life, the Police)
- If you make a report but the person that you would like to bring a Complaint against is not under the Jurisdiction of Bryan College (i.e., not a student or employee of Bryan College and not on the Bryan College campus), then the Title IX Coordinator can provide you with information about supportive services (e.g., counseling, etc.) but a Complaint will otherwise be of limited assistance.

### ***What Happens During an Investigation?***

If you bring a Formal Complaint, and it falls within the jurisdiction of this policy, then the Title IX Coordinator will investigate the issue.

- The person(s) bringing the complaint is the Complainant(s). The person(s) being accused is the Respondent.
- The Title IX Coordinator will get a statement from both parties and from any witnesses that wish to have interviewed that are relevant to the case at hand.
- The Complainant and Respondent will each have a chance to review the statements provided by the other and to respond to them.

### ***How will a Complaint be Resolved? Informal Resolution***

At any point during the Investigation, the parties may reach an Informal Resolution (a mutual agreement between the parties involved). This could include:

- An opportunity to sit down and talk through the issue.
- An apology
- An agreement to undertake counseling or educational training.
- Other resolutions agreed to by all parties and approved by the Title IX Coordinator.

### ***How will a Complaint be Resolved? Formal Adjudication***

If there is no Informal Resolution, the case will reach Formal Adjudication.



- The Title IX Coordinator will submit a file with all relevant witness statements, other factual information (videos, texts, pictures, logs, etc.), and a statement of the relevant laws and policies.
- The file will be reviewed by an Adjudicating Panel of 1-3 people. The people involved in the Adjudicating Panel will vary depending on the issues involved, conflicts of interest, and the needs for a possible appeal, but will usually be made up of faculty or staff who have served on these panels before or who are in a director role or above.
- The Adjudicating Panel will make a decision based on the evidence, including penalties as appropriate. The decision will be made based on a “preponderance of the evidence” (more likely than not) standard. This is the same standard used in most civil trials.
- If either party objects to the ruling, they can appeal the decision. The appeal process will match the appeal process laid out in the Student Handbook or the Staff-Faculty Handbook as appropriate.

### ***How will a Title IX Sexual Harassment Complaint be Resolved? Live Hearing***

In Title IX Sexual Harassment Complaints, there is also an option for a Live Hearing. It will allow the advocates for each party to ask questions of the other party during a live hearing before an Adjudicating Panel. The details of this hearing are laid out in the “Title IX Hearing” section below.

### ***How will a Complaint be Resolved? Penalties***

The penalties for violating Title IX or the Non-Title IX Discrimination, Harassment, or Misconduct policy varies. It can include any of the following, or other penalties as determined by the adjudicating panel or the parties, except where proscribed by law:

- Educational program
- Counseling
- An official or unofficial reprimand
- A letter to your file
- Probation
- Administrative Leave or suspension
- Expulsion from the college or firing

## **POLICIES AND PROCEDURES**

### **Purpose and Mission**

#### ***Title IX Policies and Non-Title IX Policies***

The Bryan College Title IX Office is responsible for issues arising under Title IX proper. It is also responsible for issues related to general harassment, racial harassment arising under Title VI, and non-Title IX sexual harassment. Where policies and procedures differ, they are clearly laid out in this manual.

Sexual harassment may be addressed under Non-Title IX Policies where the activity falls outside of Title IX jurisdiction. For instance, incidents that occur off-campus, or incidents that occur on school-related trips that are outside of the United States. Sexual harassment may also be addressed under Non-Title IX Policies where incidents occur which violate Bryan College Conduct requirements but do not violate Title IX itself.

#### ***Policy Statement***

Bryan College is committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX of the Higher Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in education programs or activities; Title VII of the Civil Rights act of 1964 (Title VII), which prohibits sex discrimination in employment; Title VI of the Civil Rights act of 1964 (Title VI), which prohibits discrimination based on race, color, or national origin in education programs or activities; and the Campus Sexual Violence Elimination Act, Clery Act, and the Violence Against Women Act (VAWA). Prohibited Conduct under this Policy will not be tolerated and is grounds for disciplinary action, up to and including, permanent dismissal from Bryan College and/or termination of employment.

#### ***Purpose Statement***

Bryan College takes all reported sexual misconduct and racial, sexual, and other harassment seriously. We believe that such misconduct and harassment violate our community obligations and principles under our mission statement: “educating students to become servants of Christ to make a difference in today’s world”. Addressing such issues promptly and clearly supports our purpose to do justly, and to love mercy, and to walk humbly with our God. (Micah 6:8)

***Bryan College’s Identification as a Religious Institution under Title IX, 30 U.S.C. §1681(a)(3)***

Bryan College identifies as an institution that is controlled by a religious organization for Title IX purposes under Title IX, 20 U.S.C. § 1681(a)(3) and therefore “asserts a religious exemption to the extent application of this part would not be consistent with its religious tenets”.

Bryan College bases this identification on Federal Regulations at 34 C.F.R. § 106.12(c)(3), (4), and (5).

- (3) That the educational institution, in its charter or catalog, or other official publication, contains an explicit statement that it is controlled by a religious organization or an organ thereof, or is committed to the doctrines or practices of a particular religion, and the members of its governing body are appointed by the controlling religious organization or an organ thereof, and it receives a significant amount of financial support from the controlling religious organization or an organ thereof.*
- (4) That the educational institution has a doctrinal statement or a statement of religious practices, along with a statement that members of the institution community must engage in the religious practices of, or espouse a personal belief in, the religion, its practices, or the doctrinal statement or statement of religious practices.*
- (5) That the educational institution has a published institutional mission that is approved by the governing body of an educational institution and that includes, refers to, or is predicated upon religious tenets, beliefs, or teachings.*

The information relevant to this identification is found in the following locations:

- 1) Bryan College Catalog, under the “Brief History” and “Statement of Belief” Headings, on pages 6-12 of the 2020-2021 Catalog. <https://www.bryan.edu/wp-content/uploads/2020/08/Catalog-2020-21.pdf>
- 2) The 2021 Employee Handbook, under the “College Statement of Identity and Mission”, on pages 6-8.
- 3) The Bryan Student Handbook Community Life Standards, particularly pages 2-7. <https://www.bryan.edu/life-at-bryan/bryan-community-standards/>

## **Introductory Elements**

### ***Title IX Coordinator***

The Title IX Coordinator oversees Bryan College's compliance with Title IX. The Title IX Coordinator is available to discuss the grievance process, coordinate supportive measures, explain Bryan College's policies and procedures, and provide education on relevant issues.

Any member of the Bryan community may contact the Title IX Coordinator with questions. Contact information is as follows:

Title IX Coordinator: Hannah Schultz

Office: MER 236B

Email: [TitleIX@bryan.edu](mailto:TitleIX@bryan.edu)

Phone: 423-775-7265

Mail Address: 721 Bryan Drive, Box 7645, Dayton, TN 37321

Website: <https://www.bryan.edu/about/consumer-information/policy-title-ix/>

### ***Amnesty***

Bryan College strongly encourages students to report incidents violating the policy related to discrimination, harassment, sexual harassment, and related inappropriate conduct. Bryan College's primary concern is the safety of the members of the community, and it encourages behavior that demonstrates care and concern for members of the community. Accordingly, the college reserves the right to provide a reprieve from disciplinary actions for Complainants and other individuals who exhibit responsible and proactive behavior in reporting sexual harassment, sexual misconduct, sexual violence, or other prohibited conduct or for students acting as a witness during the formal grievance procedures. Bryan College may provide referrals to counseling and may require educational options, rather than disciplinary sanctions, in such cases.

### ***False Allegations***

Knowingly making false allegations of discrimination or harassment or providing evidence during an investigation with knowledge that the evidence is false, is also a violation of College policy and will subject a person to disciplinary action up to and including termination of employment or expulsion.

### ***Parties Involved***

“Complainant” refers to an individual who is alleged to be the victim of conduct that could constitute sexual harassment, or the individual who is identified as the subject of Prohibited Conduct.

“Respondent” refers to an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, or the individual alleged to have engaged in Prohibited Conduct.

A “Third-Party” refers to any other participant in the process, including a witness or an individual who makes a report on behalf of a Complainant.

## **Reporting**

### ***Reporting Encouraged***

The College strongly encourages all individuals to seek assistance from law enforcement immediately after an incident of Sexual Misconduct. This is the best option to ensure preservation of evidence and to begin a timely investigative and remedial response.

### ***Time Limits on Reporting***

There are no time limits on reporting violations to the Title IX Coordinator. If the Respondent is no longer subject to Bryan College’s education program or activity or significant time has passed, the college will have limited ability to investigate, respond and/or provide disciplinary remedies and sanctions.

### ***Preservation of Evidence***

Bryan College recognizes that a Complainant may need time to decide whether to report an incident of Sexual Harassment to the police and/or the college. The purpose of this section is to provide Complainants with suggestions on preserving evidence while they decide whether to report an incident. The college encourages Complainants, as soon as possible after experiencing Sexual Assault to take steps to preserve evidence such as:

- Have a forensic sexual assault nurse examination performed as soon as possible after the incident, but no later than 72-96 hours after the incident
- When possible, prior to having a forensic sexual assault nurse examination performed, avoid changing clothing, bathing, showering, using a douche, using the bathroom,

brushing one's teeth, drinking liquids, washing one's hands or face, or combing one's hair.

- Preserve any clothing, sheets, or other materials (items containing bodily fluids should be stored in cardboard boxes or paper bags).
- Preserve or capture electronic communications such as text messages, e-mails, social media posts or exchanges (e.g., Snapchat, Facebook, Twitter).
- Preserve or capture video, audio (e.g., voice mail messages), or photographs, including those stored on smartphones or other devices; and
- Preserve any other physical, documentary, and/or electronic data that might be helpful to an investigator

### ***Federal Reporting Obligations***

Bryan has a duty to report certain incidents of misconduct to comply with the Clery Act. We are not required to report personally identifiable information for Clery Act purposes, but statistical information must be sent regarding the type of incident that occurred and its general location (e.g., on or off-campus) for publication in an annual report of crime statistics, called the Annual Security Report. Statistics published in the Annual Security Report help to provide the campus community with a clearer picture of the extent and nature of campus crime, but the statistics do not personally identify Complainants or Respondents. These reports are not official police reports and do not initiate criminal investigations. When Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking are reported under the Clery Act, the college must issue timely warnings for such incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community. Bryan will not disclose a Complainant's name and other identifying information in a timely warning but will provide sufficient information for community members to make informed safety decisions in response to potential danger.

### ***Confidentiality and Privacy Concerns***

The College is committed to protecting the privacy of all individuals involved in the investigation and resolution of reports under this Policy. While not legally bound by confidentiality, those involved in the Title IX proceedings will be discreet and respect the privacy of all individuals involved in the process to the extent permitted by law. If an individual desires to report Prohibited Conduct to the College but requests to maintain confidentiality or to not pursue a formal Title IX Complaint investigation, the Title IX Coordinator will weigh the request against the College's obligation to provide a safe, non-discriminatory environment for all college community members, including the reporting individual. In making this determination, the Coordinator may consider the seriousness of the conduct, whether there have been other complaints or reports of harassment or misconduct against the Respondent, and the rights of the

Respondent to receive notice and relevant information before disciplinary action is sought. The college will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. If the college determines that it cannot maintain a Complainant's confidentiality, the college will inform the Complainant individual prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the college's response. An individual who seeks confidential assistance may do so by speaking with professionals who have a legally protected confidentiality.

### ***Confidential Resources for Support***

Students are highly encouraged to seek professional care for both physical and mental health, regardless of seeking to make a Title IX or Sexual Misconduct Complaint. Counselors in the Campus Counseling Services are confidential resources. Additionally, they can point students to other resources outside the College.

Counseling Center: <https://www.bryan.edu/health-and-wellness/counseling-services/>

## **Supportive Measures**

### ***Supportive Measures and Remedies***

Upon receipt of a Formal Complaint, the College will provide reasonable and appropriate Supportive Measures designed to eliminate any existing hostile environment and protect the parties involved. The College will make reasonable efforts to communicate with the parties to ensure that all safety, emotional, and physical well-being concerns are being addressed.

Supportive Measures may be imposed regardless of whether formal disciplinary action is sought by the Complainant or the College, and regardless of whether a crime is reported to Campus Security or local law enforcement. A Complainant or Respondent may request a "No-Contact Order" or other protection, or the College may choose to impose supportive measures at its discretion to ensure the safety of all parties, the broader College community, and/or the integrity of the process. The College will maintain the privacy of any Supportive Measures provided under this Policy to the extent practicable and will promptly address any violation of the Supportive Measures. The College will take immediate and responsive action to enforce a previously implemented Supportive Measure restriction if such restriction was violated.

### ***Range of Supportive Measures***

Supportive Measures will be implemented at the discretion of the College. Supportive measures may include, but are not limited to, the following list below, regardless of whether the Respondent is a student or an employee. Supportive measures may continue after a case is resolved if it is in the best interest of the Complainant, Respondent, or the campus community.

- Imposition of campus “No-Contact Order”.
- Rescheduling of exams and assignments.
- Providing alternative course completion options or change in class schedule.
- Change in work schedule or job assignment.
- Change in on-campus housing.
- Limit an individual or organization’s access to certain College facilities or activities pending resolution of the matter.
- Increased security and monitoring
- Leave of Absence for employees

### ***Emergency Removal***

The College reserves the right to remove any member of the College community suspected or accused of violating this policy provided that the College’s BIT Team undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to appeal the decision immediately following the removal.

## **Due Process Protections**

### ***Rights of Respondent and Complainant***

Complainants and Respondents shall both be provided with the following in connection with the resolution process of suspected or alleged violations of this policy: rights of both parties include:

- Right to be informed of the process and all available options for resolution (Informal and Formal)
- Right to review all reports involved in the investigation
- Right to Supportive Measures and access to campus resources
- Right to an Advisor of choice
- Right to a prompt, fair, and impartial investigation of all complaints, including the opportunity for the parties to present witnesses and other evidence.
- Right to speak on their own behalf



- Right to review any information that will be offered by the other party in support of the other party’s position (to the greatest extent possible and consistent with FERPA)
- Right to a live hearing (in cases that are addressed under Title IX)
- Right to object to a Title IX Coordinator, Title IX Investigator, Decision Maker(s), or any person in the informal resolution process based on conflict of interest and bias.
- Right to be informed of the outcome of the investigation and any proceeding simultaneously/contemporaneously and in writing (to the greatest extent possible and consistent with FERPA or other applicable law).
- Right to appeal final decision

### ***Burden of Proof and Burden of Gathering Evidence***

All investigations and proceedings, including hearings, relating to Sexual Harassment will be conducted using a “preponderance of the evidence” (more likely than not) standard.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Bryan College, not the parties.

### ***Presumption of Not Responsible***

The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.

### ***Time Frames for Grievance Process***

Bryan College strives to complete the grievance process within one hundred and twenty (120) Business Days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include but are not limited to considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

### ***Role of the Advisor of Choice***

During any on-campus Title IX Investigation, both parties are entitled to the same opportunities to have an Advisor of their choice present during this process. The purpose of the Advisor is to provide support. The Advisor may be a student, staff or faculty member, or external individual of choice. The Advisor may, but is not required to be, an attorney. The Advisor may attend any

meeting or hearing with the respective Complainant or Respondent regarding the case, if invited by the respective Complainant or Respondent. For all cases, the Advisor may not speak on behalf of the individual during, or participate directly in, meetings or other proceedings prior to the Live Hearing.

At a Live Hearing (for cases addressed under Title X), the Advisor is exclusively permitted to cross-examine the parties and witnesses when directed to do so. If either Party does not have an Advisor for the Live Hearing, the college will provide a designated representative to serve as an Advisor. Either party may choose not to have an Advisor present. However, any Party who declines an Advisor will not be allowed to cross-examine the other party or related witnesses at the Live Hearing. It is the responsibility of the Complainant and Respondent to communicate with the Advisor regarding allegations, times and dates of meetings, hearings, outcomes, and any other information regarding the case.

## **INVESTIGATION AND RESOLUTION PROCESS**

### ***Initial Inquiry***

Upon receipt of information relevant to a Title IX or Non-Title IX Harassment, Discrimination, or Misconduct issue, the Title IX Coordinator should review the information available, the issues raised in the report, and the desires of the reporter. For reports relating to non-Title IX issues, or for cases in which the reporter declines to proceed with submitting a Formal Complaint, and in cases where the Title IX Coordinator does not determine that a Formal Complaint is mandated, cases may be addressed via Informal Resolution Procedures or during Non-Complaint Resolution Procedures. For Formal Complaints, the following Policies and Procedures are required.

## **Title IX Investigation of Formal Complaints**

### ***Notice of Allegations***

The Respondent and Complainant will be provided with a Notice of Allegations prior to the initiation of an investigation under this Policy. The Notice of Allegations will include:

- (1) Notice of the party's rights and options
- (2) Notice of this Policy Manual
- (3) Notice of the allegations of Prohibited Conduct including:
  - The identities of the parties involved in the incident, if known,
  - The conduct allegedly constituting Prohibited Conduct, and
  - The date and location of the incident, if known.
- (4) Notice that the Respondent is presumed not responsible
- (5) Notice that the parties may have an advisor of their choice

The Notice of Allegations will be updated, and written notice provided to the parties if, at any time during the investigation, Bryan College decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations.

### ***Investigation Timeframe***

The investigation of a Formal Complaint will be concluded within 90 Business Days of the filing of a Formal Complaint. The parties will be provided updates on the progress of the investigation, as needed.

### ***Investigation of Formal Complaint***

Bryan College will conduct an investigation following a Formal Complaint and Notice of Allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be an attorney. During the investigation stage of the grievance process, the advisor's role is limited to assisting, advising, and/ or supporting a Complainant or Respondent. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent during the investigation phase of the grievance process.

### ***Opportunity to Provide Information and Present Witnesses***

Each party will be provided an equal opportunity to provide information to the investigator and present witnesses for the investigator to interview. The information provided by the parties can include inculpatory and exculpatory evidence. The witnesses can include both fact witnesses and expert witnesses.

### ***Opportunity to Inspect and Review Evidence***

Each party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which Bryan College does not intend to rely upon in reaching a determination regarding responsibility. This review includes inculpatory and exculpatory evidence that is obtained by a party, witness, or other source. Each party and their advisor (if any) will be provided an electronic copy of the evidence for inspection and review. The parties will have ten (10) business days to review submit a written response to the investigator. The investigator will consider the written responses prior to completing an investigative report. All

evidence provided during the inspection and review phase will be available at any hearing for the parties to use during the hearing, including for purposes of cross examination.

### ***Hearing***

At the conclusion of the investigation, the Title IX Coordinator will appoint a decision-maker who will oversee the hearing and make a determination based on the preponderance of the evidence standard whether the Respondent violated this Policy.

### ***Agreement of the Parties***

If, at any time during or after the investigation, prior to the determination of responsibility by the decision-maker, the Respondent accepts responsibility for the allegations, the Title IX Coordinator may recommend appropriate sanctions. If the Respondent accepts the recommended sanctions and the sanctions are agreed to by the Complainant, the matter shall be resolved by agreement. This will be considered a form of informal resolution under this Policy.

### ***Notice of Hearing***

After the investigative report has been completed and at least ten (10) business days prior to the date set for the hearing, the parties will be provided with a Notice of the Hearing which will include date, time, and location of the hearing.

## **Title IX Hearing**

### ***Live Hearing***

After the investigation, Bryan College will provide for a live hearing for all Formal Complaints of Sexual Harassment that have not been dismissed or resolved by informal resolution. At the request of either party, or at the discretion of the Title IX Coordinator, Bryan College will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the other party or witness answering questions.

### ***Information at the Hearing***

The following information/evidence will be available in electronic form at the hearing:

- (1) Evidence from the investigation, including the evidence directly related to the allegations that was reviewed by the parties, regardless of whether it was incorporated into the report.
- (2) The investigation report and any attachments/appendices.

### ***Decision-makers***

The decision-makers will be appointed by Bran College and will not be the Title IX Coordinator or investigator. The decision-makers will be trained, impartial, and without a conflict of interest. The decision-makers will be a panel of three (3) Bryan College employees with one panel member serving as a chairperson or an external individual designated by Bryan College.

### ***Challenge to Decision-Maker***

Either party may challenge the appointment of a decisionmaker, based on conflict of interest or bias, in writing to the Title IX Coordinator, no less than five (5) Business Days prior to the scheduled hearing.

### ***Recording of the Hearing***

Bryan College will create an audio or audiovisual recording of all hearings and make the recording available to the parties for inspection or review.

### ***Advisor's Role at the Hearing***

Each party must have an advisor present at the hearing. The advisor's role is limited to supporting, advising, and assisting the party during the hearing and conducting questioning (cross-examination) of participants. Advisors are required to follow rules of decorum enforced by the decision-maker. Failure to follow the rules of decorum by an advisor may result in removal of an advisor from the hearing. If a party does not have an advisor present at the live hearing, Bryan College will appoint the party with an advisor without fee or charge.

### ***Hearing Process Facilitator***

Bryan College may designate a hearing process facilitator to coordinate the hearing, including, but not limited to, coordination and scheduling of the hearing; the logistics of physical or virtual rooms for parties and/or witnesses, including separation of the parties; ensuring all technology is working appropriately; ensuring the parties have access to electronic documents during the

hearing; distributing materials; etc. The facilitator may also be the Title IX Coordinator. The facilitator may invite the parties and their advisors, separately, to a meeting prior to the hearing to review the hearing process for the purpose of ensuring a smooth hearing. This meeting is separate from the pre-hearing conference discussed below.

### ***Pre-Hearing Matters***

In order to streamline the hearing process, the chairperson may request the submission of questions prior to the hearing through electronic submission and/or a pre-hearing conference.

- (1) Pre-Hearing Submission of Questions: The chairperson may request the parties to submit questions, in writing prior to the hearing. This submission does not preclude the Advisor from asking additional questions live during the hearing. The chairperson may allow for the pre-hearing submission of questions regardless of whether a pre-hearing conference occurs.
- (2) Pre-Hearing Conference: The chairperson may hold a pre-hearing conference. During the pre-hearing conference, parties and their Advisors will be asked to submit, in writing, any questions they wish to ask during the live hearing so that the chairperson can be prepared to respond to relevancy at the hearing. This conference does not preclude the Advisor from asking additional questions live during the hearing. At the pre-hearing conference, the chairperson may also hear arguments regarding the relevance of the evidence identified in the investigation report as relevant or not relevant, and/or directly related to the allegations.

### ***Participants in the Hearing***

Participants at the hearing include the decision-makers, the investigator(s) who conducted the investigations, the parties, advisors to the parties, witnesses and anyone providing authorized accommodations. In addition, Bryan College may have a hearing facilitator present. Any witnesses scheduled to participate in the hearing must have been first interviewed by the investigator (s) or have provided a written statement or answered questions from the investigator in writing.

## **Hearing Process**

### ***(1) Notice of Hearing***

After the investigative report has been completed and at least ten (10) business days prior to the date set for the hearing, the parties and their Advisors (if any) will be provided with a Notice of the Hearing. The Notice will include the date, time, location, name of the decision-maker, names of all participants in the hearing, and the location (virtual or in person) of the hearing.

## ***(2) Opening Statements***

Each party will have the opportunity to present an opening statement to the decision-makers.

## ***(3) Questioning of Hearing Participants (Parties and Witnesses)***

*i. By the Chairperson:* The chairperson will ask initial questions of the participants at the hearing.

*ii. By the Advisors:* After the chairperson asks questions of a participant, each party's advisor will be permitted to ask relevant questions and follow up questions orally, directly, and in real time of the participant. The parties are never permitted to ask questions of participants directly. The questioning of participants by advisors will be conducted in the following manner:

- A question is asked by an advisor
- Before participant answers the questions, the chairperson determines whether the question is relevant
- If the question is determined relevant by the chairperson, the participant answers the question
- If the question is determined not to be relevant by the chairperson, the decision-maker must explain the decision to exclude a question as not relevant.

*iii. Evidence and Questions Excluded:*

- *Sexual Predisposition or Prior Sexual Behavior of the Complainant:* Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the 23 Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
- *Privileged Information:* No person will be required to disclose information protected under a legally recognized privilege. The decision-maker must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- *Medical Records:* Evidence or 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, are not permitted to be used during a hearing unless the party provides voluntary, written permission to do so for the grievance process within this Policy.

*iv. Party or Witness Does Not Submit to Cross-examination:* If a party or witness does not submit to cross-examination by an advisor at the live hearing, the decision-makers will not rely on any statement of that party or witness in reaching a determination regarding responsibility. The decision-makers, however, will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

#### ***(4) Closing Statements***

Each party will have the opportunity to present a closing statement to the decision-makers.

#### ***Determination Regarding Responsibility***

After the hearing, the decision-maker will deliberate privately. The decision-maker will issue a written determination to the Complainant and Respondent simultaneously. The determination regarding responsibility becomes final either on the date that Bryan College provides the parties with the written determination of the result of the 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. The written notice will include:

- Identification of the allegations potentially constituting Prohibited Conduct.
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions that Bryan College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant; and
- The procedures and permissible bases for the Complainant and Respondent to appeal

## **Appeals**

Either party may appeal the determination regarding responsibility within three (3) Business Days of the receipt of the determination regarding responsibility. The appeals must be made in writing and delivered to the Title IX Coordinator.

#### ***Bases for Appeal***

Appeals of the determination of responsibility may be made on the following bases:

- Procedural irregularity that affected the outcome of the matter.



- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; or
- The Title IX Coordinator, investigator, 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

### ***Appeal Procedures***

If an appeal is submitted, Bryan will:

- (1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
- (2) Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator.
- (3) Provide the non-appealing party with five (5) Business Days from receipt of the notification of appeal to submit a written statement in support of the outcome of the determination or dismissal.
- (4) Issue a written decision describing the result of the appeal and the rationale for the result which can be one of the following:
  - Affirm the decision-maker's determination regarding the Respondent's responsibility and affirm the disciplinary sanctions and remedies, if applicable.
  - Affirm the decision-maker's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable.
  - Remand the process back to the hearing stage for the decision-maker to remedy any procedural irregularity or consider any new evidence.
  - Reverse the decision-maker's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
  - Affirm or amend the sanctions and/or remedies outlined in the determination issued under this Policy.
- (5) Provide the written decision simultaneously to both parties.

### ***Appeal Timeframe***

The appellate decision-maker will release the written decision within twenty (20) Business Days of receiving the appeal.

### ***Reasons for Dismissal of Complaint***

The College may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; the Respondent is no longer enrolled or employed by the College; or specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Dismissal of a Title IX Complaint does not preclude action under another provision of the College's Standards of Conduct

### **Informal and Non-Title IX Resolution**

#### ***Non-Title IX Issues in Title IX Procedures***

At their discretion, the Title IX Coordinator can follow Title IX Resolution Procedures for Non-Title IX Discrimination, Harassment, and Misconduct cases, provided that appropriate notice is given to the parties and that the seriousness or complexity of the case at hand is sufficient to warrant the additional expense.

#### ***Informal Resolution***

At any time after a report of Prohibited Conduct under this Policy and with the agreement of the Title IX Coordinator, parties may voluntarily agree to resolve the allegations through an information resolution facilitated by Bryan College that does not involve a full investigation and adjudication. In order to resolve the allegations through an informal resolution, the parties must provide voluntary, written agreement to the informal resolution process. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process. Agreed resolutions through the informal resolution process cannot be appealed. Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, and restorative justice and resolution by agreement of the parties.

#### ***Non-Complaint Resolution***

If a Complainant elects not to make a complaint, and the Title IX Coordinator does not find it appropriate or necessary to file a Formal Complaint on behalf of the Complainant, the Title IX Coordinator may still assist the Complainant by offering access to appropriate supportive measures or by providing suggestions or assistance in dealing with the situation on their own.

## **Non-Title IX Discrimination, Harassment, and Misconduct**

### ***Harassment***

Bullying may be characterized as offensive, intimidating, malicious or insulting behavior, an abuse or misuse of power through means intended to undermine, humiliate, denigrate, or injure the recipient. Examples of bullying could be:

- abuse of power or authority
- verbal, written and/or physical intimidation e.g., threats, derisory remarks
- persistent unjustified criticism
- public humiliation
- having responsibilities or decision-making powers withdrawn without good reason or explanation
- unwarranted exclusions

*Vigorous speech and comment, academic debate, and legitimate management of performance can be distinguished from bullying behavior. However, care should be taken to ensure that no one is made to feel intimidated.*

### ***Sexual Harassment***

Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that creates an intimidating, hostile, degrading, or offensive environment. It may include:

- physical contact
- invasion of personal space
- suggestive remarks or sounds
- unwanted comments on dress and appearance
- jokes of a sexual nature
- display of sexually offensive material
- inappropriate downloading of pornographic or sexually exploitive and degrading material by computer
- verbal threats

It is important to remember that sexual harassment can occur of women by men, men by women, and also between members of the same sex. It can also refer to unwanted conduct that is related to the sex of the other person or characteristics related to sex, such as pregnancy.

### ***Racial Harassment***

Racial harassment is any behavior, deliberate or otherwise, pertaining to race, color, nationality - including citizenship, or ethnic or national origins, which is directed at an individual or group

and which is found to be offensive or objectionable to recipients and which creates an intimidating, hostile or offensive environment. Such behavior may include:

- derogatory name calling
- insults and racist jokes
- display of racially offensive material and abusive language
- exclusion from normal conversation or activities
- unfair allocation of work
- verbal threats
- physical attack
- incitement of others to commit any such acts

## **Applicable Tennessee State Laws**

### ***Domestic Assault:***

TCA § 39-13-111 A person commits domestic assault who commits an assault as defined in TCA § 39-13-101 against a domestic abuse victim.

Domestic abuse victim is defined as:

- (1) Adults or minors who are current or former spouses;
- (2) Adults or minors who live together or who have lived together;
- (3) Adults or minors who are dating or who have dated or who have or had a sexual relationship, but does not include fraternization between two (2) individuals in a business or social context;
- (4) Adults or minors related by blood or adoption;
- (5) Adults or minors who are related or were formerly related by marriage; or
- (6) Adult or minor children of a person in a relationship that is described in subdivisions (a) (1)-(5)

A person commits assault who:

- (1) Intentionally, knowingly, or recklessly causes bodily injury to another;
- (2) Intentionally or knowingly causes another to reasonably fear imminent bodily injury;
- or
- (3) Intentionally or knowingly causes physical contact with another and a reasonable person would regard the contact as extremely offensive or provocative.

### ***Incest:***

TCA § 39-15-302 A person commits incest who engages in sexual penetration as defined in § 39-13-501, with a person, knowing the person to be, without regard to legitimacy:

- (1) The person's natural parent, child, grandparent, grandchild, uncle, aunt, nephew, niece, stepparent, stepchild, adoptive parent, adoptive child; or
- (2) The person's brother or sister of the whole or half-blood or by adoption.

"Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required.

***Statutory Rape:***

TCA § 39-13-506

- (a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.
- (b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:
  - (1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or
  - (2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.
- (c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.

***Fondling/Sexual Contact:***

TCA § 39-13-509

- (a) It is an offense for a defendant to engage in unlawful sexual contact with a minor when:
  - (1) The minor is at least thirteen (13) but less than eighteen (18) years of age;
  - (2) The defendant is at least four (4) years older than the victim; and
  - (3) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the minor by virtue of the defendant's

legal, professional, or occupational status and used the position of trust or power to accomplish the sexual contact; or

(4) The defendant had, at the time of the offense, parental or custodial authority over the minor and used the authority to accomplish the sexual contact.

(b) As used in this section, “sexual contact” means the defendant intentionally touches or kisses the minor’s lips with the defendant’s lips if such touching can be reasonably construed as being for the purpose of sexual arousal or gratification.

***Rape:***

TCA § 39-13-503

(a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act;

(2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;

(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless; or

(4) The sexual penetration is accomplished by fraud.

“Coercion” means:

(a) Causing or threatening to cause bodily harm to any person, physically restraining or confining any person or threatening to physically restrain or confine any person;

(b) Exposing or threatening to expose any fact or information that, if revealed, would tend to subject a person to criminal or immigration proceedings, hatred, contempt or ridicule;

(c) Destroying, concealing, removing, confiscating, or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document, of any person; or

(d) Providing a controlled substance, as defined in § 39-17-402, or a controlled substance analogue, as defined in § 39-17-454, to a person.

***Stalking:***

TCA § 39-17-315

(a) As used in this section, unless the context otherwise requires:

- (1) “Course of conduct” means a pattern of conduct composed of a series of two (2) or more separate noncontinuous acts evidencing a continuity of purpose;
- (2) “Emotional distress” means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling;
- (3) “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated, or continuing unconsented contact that would cause a reasonable person to suffer emotional distress, and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose;
- (4) “Stalking” means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested, and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested;
- (5) “Unconsented contact” means any contact with another person that is initiated or continued without that person's consent, or in disregard of that person's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:
  - (A) Following or appearing within the sight of that person;
  - (B) Approaching or confronting that person in a public place or on private property;
  - (C) Appearing at that person's workplace or residence;
  - (D) Entering onto or remaining on property owned, leased, or occupied by that person;
  - (E) Contacting that person by telephone;
  - (F) Sending mail or electronic communications to that person; or
  - (G) Placing an object on, or delivering an object to, property owned, leased, or occupied by that person; and
- (6) “Victim” means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(b) (1) A person commits an offense who intentionally engages in stalking.

## **Appendix: Procedural Flow Chart**

This flow chart demonstrates the steps in a Non-Title IX investigation. These steps are also similar for a Title IX investigation, except with the addition of an in-person hearing as discussed above.

**Procedural Flow Chart, Title IX Complaints have an In-Person Hearing Element Described Elsewhere**

