

Taylor Business Institute's Title IX Sexual Harassment Policy

I. Policy Statement

Consistent with the U.S. Department of Education's implementing of regulations for Title IX of the Education Amendments of 1972 ("Title IX") (*see* 34 C.F.R. § 106 *et seq.*) and Taylor Business Institute's (TBI) Non-Discrimination Notice, TBI prohibits Sexual Harassment that occurs within its education programs or activities.

Taylor Business Institute (TBI) is committed to providing a learning and working environment that promotes personal integrity, civility, and mutual respect in an environment free of discrimination on the basis of sex. TBI considers sex discrimination in all its forms to be a serious offense. Sex discrimination constitutes a violation of this policy, is unacceptable, and will not be tolerated.

Sexual harassment, whether verbal, physical, or visual, that is based on sex is a form of prohibited sex discrimination. Sexual harassment is any conduct on the basis of sex that is; quid pro quo harassment, hostile environment harassment, sexual assault, dating violence, domestic violence and stalking. Sexual harassment also includes sexual violence and discrimination based on pregnancy.

Administrators, faculty member, staff, students, contractors, guests, and other members of TBI community who commit Sexual Harassment are subject to the full range of TBI discipline including verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; fines; permanent separation from the institution (that is, termination or dismissal); physical restriction from TBI property; cancellation of contracts; and any combination of the same.

TBI will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to TBI's Education Programs or Activities.

If you are a victim of sexual harassment do not blame yourself. These crimes are never the victim's fault. When physical violence of a sexual nature has been perpetrated against you, TBI recommends that you immediately go to the emergency room of a local hospital and contact local law enforcement, in addition to making a prompt complaint under Taylor Business Institute's Title IX Sexual Harassment Policy.

II. Scope

This policy applies to Sexual Harassment that occurs within TBI's Education Programs or Activities and that is committed by an administrator, faculty member, staff, student, contractor, guest, or other member of TBI community.

This policy does not apply to Sexual Harassment that occurs off-campus, in a private setting, and outside the scope of TBI's Education Programs or Activities; such sexual misconduct may be prohibited by the Student Code of Conduct if committed by a student, the Faculty Handbook if committed by a faculty member, or other TBI policies and standards if committed by an employee.

The Taylor Business Institute campus is currently housed in a downtown commercial office building located at 180 N. Wabash Ave 5th Floor, Chicago, IL 60601. Within the 18,000 square ft that comprise the college campus there are 11 lecture and lab spaces, a library, student break room, staff lounge, administrative offices, faculty workspace, and a conference room. There are also student restrooms and separate faculty restrooms located within this space. The commercial space must be entered through the main lobby where a security guard is present. The college's 5th floor may be accessed by either elevators or stairs.

TBI's prohibition on sex discrimination and sexual harassment extends to all aspects of its educational programs and activities, including but not limited to; admissions, employment, academics, students services, work-study, field trips and service learning activities, off-campus trips or experiences organized by TBI, and anything else that happens on campus.

III. Definitions

A. Sexual Harassment

Sexual harassment is unwelcomed conduct of a sexual nature; Quid pro Quo Sexual harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence and Stalking. It includes unwelcome sexual advances, requests for sexual behaviors, and other verbal, non-verbal, or physical conduct of a sexual nature. Sex-based harassment can happen to people and be perpetrated by people of any sex.¹

1. LGBTQ+ Rights under Title IX

Title IX protects transgender and gender nonconforming students from gender based harassment and bullying -- that is, harassment or bullying a

¹ Department of Health & Human Services. *Sex Based Harassment*. Office of Civil Rights. 2019. <https://www.hhs.gov/civil-rights/for-individuals/special-topics/harassment/index.html>

student experiences because they do not conform to stereotypical notions of masculinity and femininity.²

Harassment can force LGBTQ+ students to avoid classes or extracurriculars, stay home from school or even leave school entirely. LGBTQ+ survivors of harassment, have the same rights under Title IX to a prompt and equitable complaint process and investigation, and to be free from retaliation.

B. Quid Pro Quo Sexual Harassment

When an employee of TBI is conditioning the provision of an aid, benefit, or service of TBI on an individual's participation in unwelcome sexual contact.

Example: Manager of a subordinate employee states the subordinate will receive a raise if the subordinate performs sexual favors for the manager.

Example: A faculty member tells a student that the student can increase a grade if the student wears revealing clothing that is more flattering to the faculty members' gaze.

C. Hostile Environment Sexual Harassment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to TBI's Educational Programs, Activity or work experience. What is to be considered in the perspective of a reasonable person is the type of harassment, frequency, where it has occurred and whether a power differential exists.

Example: Student A gropes Student B in an elevator. Student B is not interested and has made it clear to Student A to stop. Student A persists with their actions to the point where Student B takes the stairs.

Example: Student A denies Student B's request to go on a date. Student B continues to text Student A vulgar messages. The Students share a class, where Student B repeats the vulgar comments out loud in the classroom. Student A blocks the Student B's number and drops the class.

D. Sexual Assault

Defined as the following classes of conduct: Rape, Sodomy, Sexual Assault with an Abject, Fondling, Incest and Statutory Rape.³

² Know your IX, "Title IX Protections for LGBTQ Students," August, 8, 2020.

<https://www.knowyourix.org/college-resources/title-ix-protections-lgbtq-students/>

³ TBI's definition of "Sexual Assault" is mandated by federal regulations implementations Title IX of the Education Amendments of 1972. Those regulations require TBI to adopt a definition of "Sexual Assault"

1. **Rape** is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
2. **Sodomy** is the 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 his/her age because of his/her temporary or permanent mental or physical incapacity
3. **Sexual assault with an Object** is using 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 his/her age or because of his/her temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
4. **Fondling** is the touching of the private 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 his/her age or because of his/her temporary or permanent mental or physical incapacity.
5. **Incest** as defined by and prohibited by the state law of Illinois (720 ILCS 5/11-11). Incest is when a person that commits sexual relations within families if he or she:
 - a. Commits an act of sexual penetration as defined in Section 11-0.1 of this code; and
 - b. The person knows that he or she is related to the other person as follows: 1) Brother or sister, either of the whole blood or the half-blood; or 2) father or mother, when the child, regardless of legitimacy and regardless of whether the child was of the whole blood or half-blood or was adopted, was 18 years of age or over when the act was committed; or 3) Stepfather or step-mother, when the

that incorporates various forcible and non-forcible sex crimes as defined by the FBI’s Uniform Crime Reporting System. See 34 C.F.R. § 106.30(a).

stepchild was 18 years of age or over when the act was committed; or 4) Aunt or uncle, when the niece or nephew was 18 years of age or over when the act was committed; or 5) Great-aunt or great-uncle, when the grand-niece, or grand-nephew was 18 years of age or over when the act was committed; or 6) grandparent or step grandparent, when the grandchild or step-grandchild was 18 years of age or over when the act was committed

(1) Sentence. Sexual relations within families is a Class 3 felony

6. Statutory Rape refers to the sexual relations involving someone who is below the age of consent. The age of consent in Illinois is 17. If sexual relations occur with someone who is under the statutory age of consent as defined by Illinois Law the act is considered statutory rape.

The Title IX coordinator has the PLUS factor on their side, in those cases that would have the potential of putting others in harm's way. In such instances the Coordinator may file a formal complaint overriding the parties involved.

E. Domestic Violence is a felony or misdemeanor crime of violence committed in the state of Illinois as defined by (750 ILCS 60/) as a means of physical abuse, harassment, intimidations of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis. Any person who hits, chokes, kicks, threatens, harasses or interferes with the personal liberty of a family or household member and has broken Illinois Domestic Violence Law⁴

F. Dating Violence is violence committed by a person:

1. Who is or has been in social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship will be determined based on consideration of the following factors:
 - The length of the relationship
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship

⁴ "Violence Against Women: Illinois Domestic Violence Act." Illinois Attorney General Online. 2020. <https://illinoisattorneygeneral.gov/women/idva.html>

Example: Employee A and Employee B are engaged, live separately and have no children. Employee A and Employee B get in an argument on campus. During the argument Employee A slaps employee B in the face and yells “shut your mouth”.

G. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for their safety or the safety of others; or
- Suffer substantial emotional distress
- Course of conduct must be 2 or more instances to be considered Stalking under Title IX
- Illinois Stalking Laws
 - (1) In Illinois Stalking is considered a class 4 felony that occurs when someone follows or watches the victim on at least two different occasions causing the victim to feel his or her safety or well-being at risk in some way
 - (2) [\(740 ILCS 21/\) Stalking No Contact Order Act.](#)
 - (3) [How Illinois Law can Protect your From Stalking](#)

H. Consent refers to words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is Incapacitated is not capable of giving Consent.¹

I. Incapacitated refers to the state where a person does not appreciate the nature or fact of sexual activity because of drugs or alcohol consumption, medical condition, or disability, or due to a state of unconsciousness or sleep

J. Retaliation is intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

K. Complainant means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment

L. Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment

M. Formal Complaint means a document filed by a Complainant or signed by the Title IX coordinator alleging Sexual Harassment against a Respondent and requesting that TBI investigate the allegation of Sexual Harassment in accordance with this policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in TBI’s Education Programs and

Activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint

N. Supportive Measures are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to TBI’s Education Programs or Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or TBI’s education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security, and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

O. Education Programs or Activities refers to all the operations of TBI, including, but not limited to, in-person and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by TBI. It also includes off-campus locations, events, or circumstances over which TBI exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by TBI.

IV. UNDERSTANDING HOSTILE ENVIRONMENT SEXUAL HARASSMENT

In determining whether a hostile environment exists, TBI will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. TBI will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant’s position. A person’s adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

TBI encourages members of the TBI Community to report all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- E-mail, internet, or other electronic use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on gender or gender stereotypes

V. UNDERSTANDING CONSENT AND INCAPACITATION

A. Consent

Lack of consent is a critical factor in determining whether Sexual Harassment has occurred. As defined above, consent is a mutual, voluntary, and informed agreement to participate in specific sexual acts with another person that is not achieved through unreasonable manipulation or coercion—or any kind of physical force or weapon—and requires having cognitive ability to agree to participate. Consent requires an outward demonstration, through mutually understandable words, conduct or action, indicating that an individual has freely chosen to engage in the specific sexual acts. A verbal “no” constitutes lack of consent, even if it sounds insincere or indecisive.

Impairment or incapacitation due to alcohol and/or drug use, permanent/ temporary psychological or physical disability, and being below the age of consent in the applicable jurisdiction are factors which detract from or make consent impossible. (Note: In Illinois, the minimum age of consent for purposes of Statutory Rape is age 17 and no one under 17 years of age is considered capable of consent.)

Silence or an absence of resistance does not imply consent, and consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Even in the context of an ongoing relationship, consent must be sought and freely given for each specific sexual act. Consent may be withdrawn at any time. When consent is withdrawn, sexual activity must immediately stop.

B. Incapacitation

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks

conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a sober, reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol of other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual’s:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

VI. REPORTING SEXUAL HARASSMENT

Any person may report Sexual Harassment to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. In-person reports must be made during normal business hours, but reports can be made by regular mail, telephone or electronic mail at any time, including outside normal business hours.

Title IX Coordinator

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In addition to reporting to the Title IX Coordinator, any person may report Sexual Harassment to any TBI employee with managerial authority over other employees, including deans, department heads, and supervisors known as Reporting Officials. The Reporting Officials must promptly forward such report of Sexual Harassment to the Title IX Coordinator.

TBI employees who are not Reporting Officials are encouraged, but are not required to, forward reports of Sexual Harassment to the Title IX Coordinator.

An individual may also file a complaint of sexual harassment with the United States Department of Education Office of Civil Rights with any type of allegation or alleged violation of Title IX [OCR Online Complaint](#) or by printed form [OCR Complaint Form](#).

Further Forms of contact with the Department of Education Office of Civil Rights:

Illinois, Indiana, Iowa, Minnesota, North Dakota, Wisconsin
Office of Civil Rights
Chicago Office
U.S. Department of Education
John C. Kluczynski Federal Building
230 S. Dearborn Street, 37th Floor
Chicago, IL 60604
Phone: 312-730-1560
Fax: 312-730-1576
Email: OCR.Chicago@ed.gov

VII. SPECIAL ADVICE FOR INDIVIDUALS REPORTING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE OR STALKING

If you believe you are the victim of Sexual Assault, Domestic Violence, or Dating Violence, get to safety and do everything possible to preserve evidence by making certain

that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Assault, Domestic Violence, or Dating Violence, TBI recommends the following:

Get to a safe place as soon as possible.

Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one’s mouth, or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.

Do not launder or discard bedding or otherwise clean the area where the assault occurred- preserve for law enforcement

Preserve all forms of electronic communication that occurred before, during, or after the assault

Contact law enforcement by calling 911.

Get medical attention - all medical injuries are not immediately apparent. This will also help collect evidence that may be needed in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.

Contact a trusted person, such as a friend or family member for support.

Talk with a professional licensed counselor, TBI chaplain, or health care provider who can help explain options, give information, and provide emotional support.

Make a report to the Title IX Coordinator.

Explore this policy and avenues for resolution under the Title IX Grievance Process.

It is also important to take steps to preserve evidence in cases of Stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, electronic images, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Harassment investigations.

Once a report of Sexual Assault, Domestic Violence, Dating Violence, or Stalking is made, the victim has several options such as, but not limited to:

- obtaining Supportive Measures
- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- filing a Formal Complaint
- requesting that no further action be taken

TBI's Campus Security Coordinator, can assist individuals in obtaining a personal protection order ("PPO").

VIII. ACTUAL KNOWLEDGE

When either party needs to file a complaint, they must reach out to a Reporting Official or the Title IX Coordinator or the Deputy Coordinator. Title IX Sexual Harassment response is triggered at TBI when actual knowledge is identified and occurs when a Reporting Official takes corrective action.

IX. PRELIMINARY ASSESSMENT

After receiving a report under "Reporting Sexual Harassment," the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls, or could fall within the scope of this policy (see "Scope"); and
- Whether the conduct, as reported, constitutes, or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of the policy, and/or could not constitute Sexual Harassment, even if investigated, the Title Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act ("FERPA"). The Title IX Coordinator may refer the report to other TBI offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of the policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant (see "Contacting the Complainant")

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if it is not apparent from the report.

If the complainant cannot be identified during the preliminary investigation after reasonable inquiry the matter needs to be documented and considered to be handled with other polices i.e. student code of conduct.

X. CONTACTING THE COMPLAINANT

If a report is not closed and actual knowledge has been confirmed as a result of the preliminary assessment (see "Preliminary Assessment") and the Complainant's identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (see "Supportive Measures"); to discuss and consider the Complainant's wishes with respect to Supportive Measures; to inform the Complainant about the availability of Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. The Complainant will also be provided options for filing complaints with the local police and information about resources that are available on campus and in the community.

XI. SUPPORTIVE MEASURES

If a report is not closed as a result of the preliminary assessment (see “Preliminary Assessment”), TBI will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a Formal Complaint.

Contemporaneously with the Respondent being notified of a Formal Complaint, the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures for the Respondent, and TBI will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. TBI will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a Formal Complaint if the Respondent requests such measures.

TBI will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair TBI’s ability to provide the Supportive Measures in question.

Supportive measures must be offered when actual knowledge identifies the Complainant. Examples of supportive measures can include: Counseling, Academic Accommodations, Security Escorts, Leave of Absence, Increased Monitoring, modified work schedules, mutual no-contact order can be implicated on fact.

Supportive measures may also include the utilization of interim removals or suspensions for students

XII. INTERIM REMOVAL

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from one or more of TBI’s Education Programs or Activities on an temporary basis if 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. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, TBI may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process (see “Investigation” and “Adjudication”).

For all other Respondents, including independent contractors and guests, TBI retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

XIII. FORMAL COMPLAINT

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that TBI investigate and adjudicate a report of Sexual Harassment in accordance with the provisions “Investigation” and “Adjudication.” Provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of TBI’s Education Programs or Activities.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in “Reporting Sexual Harassment.” No person may submit a Formal Complaint on the Complainant’s behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of TBI if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to TBI Community. Factors the Title IX Coordinator may consider include (but are not limited to): (a) was a weapon involved in the incident; (b) were multiple assailants involved in the incident; (c) is the accused a repeat offender; and (d) does the incident create a risk of occurring again.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then TBI will commence an investigation as specified in “Reporting Sexual Harassment” and proceed to adjudicate the matter as specified in “Adjudication,” below. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party’s level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

There are reasons a Formal Complaint **MAY** be dismissed which include:

A complaint **MAY** be dismissed even when the alleged conduct must not amount to sexual harassment even if it occurred as reported

A complaint **MAY** be dismissed if the alleged victim indicates in writing a desire to withdraw the complaint

A complaint **MAY** be dismissed if the Respondent is no longer enrolled or employed by TBI

A complaint **MAY** be dismissed for specific circumstances that prevent TBI from gathering evidence sufficient to reach a resolution

XIV. CONSOLIDATION OF FORMAL COMPLAINTS

TBI may consolidate Formal Complaints as to allegations of Sexual Harassment 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 Sexual

Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Sexual Harassment.

XV. DISMISSAL PRIOR TO COMMENCEMENT OF INVESTIGATION

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines:

The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or

The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in “Scope” (that is, because the alleged conduct did not occur in TBI’s Education Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in “Appeal.” The Title IX Coordinator may refer the subject matter of the Formal Complaint to other TBI offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination for purposes of this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

XVI. NOTICE OF FORMAL COMPLAINT

Within five (5) days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

A physical copy of this policy or a hyperlink to this policy;

Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);

A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;

Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice, as specified in “Advisor of Choice.”

Notifying the Complainant and Respondent of their right to inspect and review evidence as specified in “Access to Evidence.”

Notifying the Complainant and Respondent of TBI’s prohibitions on retaliation and false statements specified in Sections “Bad Faith Complaints and False Information” and “Retaliation.”
Information about resources that are available on campus and in the community.

Should TBI elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, TBI will provide a supplemental written notice describing the additional allegations to be investigated.

XVII. INVESTIGATION

A. Commencement and Timing

After the written notice of Formal Complaint is transmitted to the parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with TBI and not with the parties. The investigation will culminate in a written investigation report, specified in “Investigation Report,” that will be submitted to the adjudicator during the selected adjudication process. Although the length of each investigation may vary depending on the totality of the circumstances, TBI strives to complete each investigation within thirty (30) to forty-five (45) days of the transmittal of the written notice of Formal Complaint.

B. Equal Opportunity

During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. Notwithstanding the foregoing, the investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically inadmissible, such as testimony concerning sexual history of the Complainant, as specified in “Sexual History.” The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party’s opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses during the investigation, and elects not to, will be prohibited from introducing any such evidence during the adjudication absent a showing.

C. Documentation of Investigation

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator’s notes, audio recorded, video recorded, or transcribed. The method utilized to record the interviews of parties and witnesses will be determined by the

investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout an investigation.

D. Access to the Evidence

At the conclusion of the evidence-gathering phase of the investigation, but prior to the completion of the investigation report, the Investigating Officer will transmit to each party and their advisor, in either electronic or hard copy form, all evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence TBI may choose not to rely on at any hearing and inculpatory or exculpatory evidence whether obtained from a party or some other source. Thereafter, the parties will have ten (10) days in which to submit to the investigator a written response, which the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to the public.

E. Investigation Report

After the period for the parties to provide any written response as specified "Access to Evidence" has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form.

XVIII. ADJUDICATION / MEDIATION PROCESS SELECTION

After the investigator has sent the investigation report to the parties, the Title IX Coordinator will transmit to each party a notice advising the party of the two different adjudication processes specified in "Adjudication." The notice will explain that the hearing process specified in "Hearing Process" is the default process for adjudicating all Formal Complaints and will be utilized unless both parties voluntarily consent to administrative adjudication as specified in "Administrative Adjudication (Optional)" as a form of informal resolution. The notice will be accompanied by a written consent to administrative adjudication and will advise each party that, if both parties execute the written consent to administrative adjudication, then the administrative adjudication process will be used in lieu of the hearing process. Parties are urged to carefully review this policy (including the entirety of "Adjudication"), consult with their advisor, and consult with other persons as they deem appropriate (including an attorney) prior to consenting to administrative adjudication.

Each party will have three (3) days from transmittal of the notice specified in this Section to return the signed written consent form to the Title IX Coordinator. If either party does

not timely return the signed written consent, that party will be deemed not to have consented to administrative adjudication and the Formal Complaint will be adjudicated pursuant to the hearing process.

XIX. ADJUDICATION / MEDIATION / HEARING PROCESS

A. Hearing Process

The default process for adjudicating Formal Complaints is the hearing process specified in this Section (“Hearing Process”). The hearing process will be used to adjudicate all Formal Complaints unless both parties' timely consent to administrative adjudication as specified in “Adjudication Process Selection.”

1. Hearing Officer

After selection of the hearing process as the form of administrative adjudication, the Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report and a copy of all evidence transmitted to the parties by the investigator as specified in “Access to Evidence.”

2. Hearing Notice and Response to the Investigation Report

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer’s appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting a date and time for the hearing; and providing a copy of TBI’s Hearing Procedures. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this Section (“Hearing Notice and Response to the Investigation Report”).

A party’s written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in “Sexual History,” or for any other reason;
- A list of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- Any objection that the party has to TBI’s Hearing Procedures;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;

- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;
- The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing;
- If the party does not have an advisor who will accompany the party at the hearing, a request that TBI provide an advisor for purposes of conducting questioning as specified in “Hearing.”

A party’s written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

3. Pre-Hearing Conference

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors. The pre-hearing conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-hearing conference will be conducted with the hearing officer, the parties, the advisors, and other necessary TBI personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer’s discretion, the pre-hearing conference may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

During the pre-hearing conference, the hearing officer will discuss the hearing procedures with the parties; address matters raised in the parties’ written responses to the investigation report, as the hearing officer deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the hearing officer determines, in the hearing officer’s discretion, should be resolved before the hearing.

4. Issuance of Notices of Attendance

After the pre-hearing conference, the hearing officer will transmit notices of attendance to any TBI employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise

the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

TBI will not issue a notice of attendance to any witness who is not an employee or a student.

5. Hearing

After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to TBI's Hearing Procedures. The hearing will be audio recorded. The audio recording will be made available to the parties for inspection and review on reasonable notice, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary TBI personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer directly and to respond to questions posed by the hearing officer;
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;

- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect;
- Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing officer, the Title IX Coordinator, and other necessary TBI personnel. With the exception of the investigator and the parties, witnesses will be sequestered until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them pursuant to “Access to Evidence.”

While a party has the right to attend and participate in the hearing with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive, may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified in this Section (“Hearing”), the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified in this Section (“Hearing”) are met.

6. Subjection to Questioning

In the event that any party or witness refuses to attend the hearing, or attends but refuses to submit to questioning by the parties’ advisors, the statements of that party or witness, as the case may be, whether given during the investigation or during the hearing, will not be considered by the hearing officer in reaching a determination of responsibility.

Notwithstanding the foregoing, the hearing officer may consider the testimony of any party or witness, whether given during the investigation or during the hearing, if the parties jointly stipulate that the testimony may be considered or

in the case where neither party requested attendance of the witness at the hearing.

In applying this Section (“Subjection to Questioning”), the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party or a witness’s absence from the live hearing and/or refusal to submit to questioning by the

7. Deliberation and Determination

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person’s status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or by operation of “Subjection to Questioning.” The hearing officer will resolve disputed facts using a preponderance of the evidence (that is, “more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

8. Discipline and Remedies

In the event the hearing officer determines that the Respondent is responsible for violating this policy, the hearing officer will, prior to issuing a written decision, consult with an appropriate TBI official, with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The hearing officer will also, prior to issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

9. Written Decision

After reaching a determination and consulting with the appropriate TBI official and Title IX Coordinator as required by “Discipline and Remedies,” the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by TBI upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing.

- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate TBI official as referenced in “Discipline and Remedies;”
- Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and
- A description of TBI’s process and grounds for appeal, as specified in “Appeal.”

The hearing officer’s written determination will be transmitted to the parties. Transmittal of the written determination to the parties concludes the hearing process, subject to any right of appeal as specified in “Appeal.”

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, TBI strives to issue the hearing officer’s written determination within fourteen (14) days of the conclusion of the hearing.

XX. DISMISSAL DURING INVESTIGATION OR ADJUDICATION

TBI shall dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that one or more of the following is true:

The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or

The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in ”Scope” (that is, because the alleged conduct did not occur in TBI’s Education Programs or Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

TBI may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);

The Respondent is no longer enrolled or employed by TBI, as the case may be or Specific circumstances prevent TBI from gathering evidence sufficient to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator dismisses a Formal Complaint pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in” Appeal.” The Title IX Coordinator may refer the subject matter of the Formal Complaint to other TBI offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination as it pertains to this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

XXI. THE APPEAL

Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

A procedural irregularity affected the outcome;

There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome;

The Title IX Coordinator, investigator, hearing officer, or administrative officer, as the case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, that affected the outcome.

No other grounds for appeal are permitted.

A party must file an appeal within seven (7) days of the date they receive notice of dismissal or determination appealed from or, if the other party appeals, within three (3) days of the other party appealing, whichever is later. The appeal must be submitted in writing to Rakesh Kumar, Faculty Senate President, who serves as the appeal officer. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) days. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted.

Although the length of each appeal will vary depending on the totality of the circumstances, TBI strives to issue the appeal officer's written decision within (21) days of an appeal being filed.

XXII. ADVISOR OF CHOICE

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during the hearing specified in "Hearing," the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with TBI about the matter without the party being included in the communication. In the event a party's advisor of choice engages in material violation of the parameters specified in this Section and "Hearing," TBI may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing specified in "Hearing," and requests TBI to provide an advisor, TBI will provide the party an advisor, without fee or charge, who will conduct questioning on behalf of the party at the hearing. TBI will have sole discretion to select the advisor it provides. The advisor TBI provides may be, but is not required to be, an attorney.

TBI is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing specified in "Hearing," and requests that TBI provide an advisor.

XXIII. TREATMENT RECORDS AND OTHER PRIVILEGED INFORMATION

During the investigation and adjudication processes, the investigator and adjudicator, as the case may be, are not permitted to access, consider, disclose, permit questioning concerning, 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 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; or
- Information or records protected from disclosure by any other legally recognized privilege, such as the attorney client privilege;
- unless TBI has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, may consider any such records or information otherwise covered by this Section if the party

holding the privilege affirmatively discloses the records or information to support their allegation or defense, as the case may be.

XXIV. SEXUAL HISTORY

During the investigation and adjudication processes, questioning regarding a 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, 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. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this Section for the purpose of supporting the Complainant's allegations, may be deemed to have waived the protections of this Section.

XXV. INFORMAL RESOLUTION

At any time after the parties are provided written notice of the Formal Complaint as specified in "Notice of Formal Complaint," and before the completion of any appeal specified in "Appeal," the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties. Administrative Adjudication as specified in "Administrative Adjudication" is a form of informal resolution.

The specific manner of any informal resolution process will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another TBI official, or a suitable third-party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator before the informal resolution may commence.

During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will reduce the terms of the agreed resolution to writing and present the resolution to the parties for their written signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by TBI, except as otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to TBI. Notwithstanding the forgoing if the form of informal resolution is Administrative Adjudication as specified in "Administrative Adjudication," there shall not be an agreed resolution requiring the parties' signatures; instead, the determination issued by the administrative officer shall serve as the resolution and conclude the informal resolution process, subject only to any right of appeal. With the exception of a resolution resulting from the Administrative Adjudication process specified in "Administrative Adjudication," all other forms of informal resolution pursuant to this Section are not subject to appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.

Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) days. If an informal resolution process does not result in a resolution within twenty-one (21) days, and absent an extension, abeyance, or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedures. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Other language in this Section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

XXVI. PRESUMPTION OF NON-RESPONSIBILITY

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

XXVII. RESOURCES

Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through TBI. TBI encourages any individual who has questions or concerns to seek support of TBI identified resources. The Title IX Coordinator is available to provide information about TBI's policy and procedure and to provide assistance. A list of TBI identified resources is located at the following link:

- [Domestic Violence and Sexual Assault Directories](#)
- [Domestic Violence Hotlines and Links](#)
- [Illinois Domestic Violence Act Victim Information - English](#)
- [Illinois Domestic Violence Act Victim Information - Spanish](#)

XXVIII. CONFLICTS OF INTEREST, BIAS, AND PROCEDURAL COMPLAINTS

The Title IX Coordinator, investigator, hearing officer, administrative officer, appeals officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these TBI officials has a material conflict of interest or material bias must raise the concern promptly so that TBI may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in “Appeal,” or otherwise.

XXIX. OBJECTIONS GENERALLY

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that TBI may evaluate the matter and address it, if appropriate.

XXX. RELATIONSHIP WITH CRIMINAL PROCESS

This policy sets forth TBI’s processes for responding to reports and Formal Complaints of Sexual Harassment. TBI’s processes are separate, distinct, and independent of any criminal processes. While TBI may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, TBI will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

XXXI. RECORDINGS

Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by TBI and is considered property of TBI, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only TBI is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction

contemplated under this policy is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

XXXII. VENDORS, CONTRACTORS AND THIRD PARTIES

TBI does business with various vendors, contractors, and other third-parties who are not students or employees of TBI. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, TBI retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. And TBI retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

XXXIII. BAD FAITH COMPLAINTS AND FALSE INFORMATION

It is a violation of this policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Violations of this Section are not subject to the investigation and adjudication processes in this policy; instead, they will be addressed under the Code of Student Conduct in the case of students and other TBI policies and standards, as applicable, for other persons.

XXXIV. RETALIATION

It is a violation of this policy to engage in Retaliation. Reports and Formal Complaints of retaliation may be made in the manner specified in "Reporting Sexual Harassment," and "Formal Complaint." Any report or Formal Complaint of Retaliation will be processed under this policy in the same manner as a report or Formal Complaint of Sexual Harassment, as the case may be. TBI retains discretion to consolidate a Formal Complaint of Retaliation with a Formal Complaint of Sexual Harassment for investigation and/or adjudication purposes if the two Formal Complaints share a common nexus.

XXXV. CONFIDENTIALITY

TBI will keep confidential the identity of any individual who has made a report or Formal Complaint of Sexual Harassment or Retaliation including any Complainant, the identity of any individual who has been reported to be a perpetrator of Sexual Harassment or Retaliation including any Respondent, and the identity of any witness. TBI will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, TBI may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out TBI's obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding TBI's general obligation to maintain confidentiality as specified herein, the parties to a report or Formal Complaint will be given

access to investigation and adjudication materials in the circumstances specified in this policy.

While TBI will maintain confidentiality specified in this Section, TBI will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this policy.

Note that certain types of Sexual Harassment are considered crimes for which TBI must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

XXXVI. OTHER VIOLATIONS OF THIS POLICY

Alleged violations of this policy, other than violations of the prohibitions on Sexual Harassment and Retaliation, will be subject to review under the Student Code of Conduct for students, the Faculty Handbook for faculty, or other TBI policies and standards for employees.

XXXVII. SIGNATURES AND FORM OF CONSENT

For purposes of this policy, either a physical signature or digital signature will be sufficient to satisfy any obligation that a document be signed. Where this policy provides that written consent must be provided, consent in either physical or electronic form, containing a physical or digital signature, as the case may be, will suffice.

XXXVIII. DEADLINES, TIME, NOTICES, AND METHOD OF TRANSMITTAL

Where this policy specifies a period of days by which some act must be performed, the following method of calculation applies:

Exclude the day of the event that triggers the period;

Count every day, including intermediate Saturdays, Sundays, and legal holidays recognized by the federal government;

Include the last day of the period until 5:00 p.m. central time, but if the last day is a Saturday, Sunday, or legal holiday recognized by the federal government, the period continues to run until 5:00 p.m. central time on the next day that is not a Saturday, Sunday, or legal holiday recognized by the federal government.

All deadlines and other time periods specified in this policy are subject to modification by TBI where, in TBI's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator, adjudicator, or the parties; the need to consult with TBI's legal counsel; unforeseen weather events; and the like.

Any party who wishes to seek an extension of any deadline or other time period may do so by filing a request with the investigator, hearing officer, administrative officer, appeal officer, or Title IX Coordinator, as the case may be, depending on the phase of the process. Such request must state the extension sought and explain what good cause exists for the requested extension. TBI officer resolving the request for extension may, but is not required to, give the other party an opportunity to object. Whether to grant such a requested extension will be in the sole discretion of TBI.

The parties will be provided written notice of the modification of any deadline or time period specified in this policy, along with the reasons for the modification.

Where this policy refers to notice being given to parties “simultaneously,” notice will be deemed simultaneous if it is provided in relative proximity on the same day. It is not necessary that notice be provided at exactly the same hour and minute.

Unless otherwise specified in this policy, the default method of transmission for all notices, reports, responses, and other forms of communication specified in this policy will be email using TBI email addresses.

A party is deemed to have received notice upon transmittal of an email to their TBI email address. In the event notice is provided by mail, a party will be deemed to have received notice three (3) days after the notice in question is postmarked.

Any notice inviting or requiring a party or witness to attend a meeting, interview, or hearing will be provided with sufficient time for the party to prepare for the meeting, interview, or hearing as the case may be, and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this policy, the sufficient time to be provided will be determined in the sole discretion of TBI, considering all the facts and circumstances, including, but not limited to, the nature of the meeting, interview, or hearing; the nature and complexity of the allegations at issue; the schedules of relevant TBI officials; approaching holidays or closures; and the number and length of extensions already granted.

XXXIX. OTHER FORMS OF DISCRIMINATION

This policy applies only to Sexual Harassment. Complaints of other forms of sex discrimination are governed by TBI’s Non-Discrimination Policy.

XL. OUTSIDE APPOINTMENTS, DUAL APPOINTMENTS, AND DELEGATIONS

TBI retains discretion to retain and appoint suitably qualified persons who are not TBI employees to fulfill any function of TBI under this policy, including, but not limited to, the investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

TBI also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, administrative officer, informal resolution officer, and/or appeals officer.

The functions assigned to a given TBI official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, hearing officer, administrative officer, informal resolution officer, and appeals officer, may, in TBI's discretion, be delegated by such TBI official to any suitably qualified individual and such delegation may be recalled by TBI at any time.

XLII. TRAINING

TBI will ensure that TBI officials acting under this policy, including but not limited to the Title IX Coordinator, Deputy Coordinator, investigators, hearing officers, administrative officers, informal resolution facilitators, TBI provided advisors, and appeals officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

XLIII. RECORDKEEPING

TBI will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in TBI's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

XLIV. DEFINITIONS

Words used in this policy will have those meanings defined herein and if not defined herein will be construed according to their plain and ordinary meaning.

XLV. DISCRETION IN APPLICATION

TBI retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if TBI's interpretation or application differs from the interpretation of the parties.

Despite TBI's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case TBI retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy and the Hearing Procedures referenced in "Hearing" are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, TBI retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. TBI may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

Optional “Coercion” Definition:

“Coercion” is direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity.

Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person’s words or conduct cannot amount to Coercion for purposes of this policy unless they wrongfully impair the other’s freedom of will and ability to choose whether or not to engage in sexual activity.