

TITLE IX SEXUAL HARASSMENT POLICY

Berea College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, free from sexual harassment and retaliation. Consistent with its mission and the Great Commitments, Berea values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

1. Applicable Scope

The purpose of this policy is prohibition of sexual harassment and retaliation as mandated by the U. S. Department of Education under regulations set forth in 34 CRF § 106. When an alleged violation of this policy is reported, the allegations are subject to resolution using Berea College policies, as determined by the Title IX Coordinator, and as detailed below. Other inappropriate behaviors outside the scope of this policy may be addressed under different policies and procedures adopted by the College.

When a Respondent is a member of the Berea College community, a grievance process is available regardless of the status of a Complainant, who may or may not be a member of the Berea College community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and vendors.

The following policy and procedures have been developed and adapted for use by the College in collaboration with the Association of Title IX Administrators (ATIXA), which requires the following notice: *“ATIXA 2020 Interim Model Sexual Harassment Policies and Procedures. Use and adaptation of this model with citation to ATIXA is permitted through a limited license to Berea College. All other rights reserved. ©2020. ATIXA.”*

2. Glossary of Defined Terms

- *Advisor* means a person chosen by a party or appointed by the College to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment; or retaliation for engaging in a Protected Activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a Protected Activity against a Respondent and requesting that the College investigate the allegation.
- *Confidential Resource* means an employee who is not a Required Reporter of notice of harassment, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when the College is in normal operation, excluding weekends and holidays. This includes business days when classes are not in session.
- *Directly Related Evidence* is evidence obtained as part of an investigation connected to the complaint that is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation). Such evidence is not relied upon by the investigation report, but is retained for the record in accordance with Title IX regulations.

- *Education program or activity* means locations, events, or circumstances where the College exercises substantial control over both Respondent and the context in which the sexual harassment occurs and includes any building owned or controlled by a student organization recognized by the College.
- *Final Determination* means a conclusion by the preponderance of the evidence that the alleged conduct did or did not violate policy.
- *Finding* means a conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* is the method of formal resolution designated by the College to address conduct that falls within the policies included below, and which complies with the requirements of the U. S. Department of Education’s Title IX Regulations (34 CFR §106.45).
- *Grievance Process Pool* includes any investigators, hearing officers, and appeal officers who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-Maker or Panel* refers to those who have decision-making and sanctioning authority within Berea College’s Formal Grievance process.
- *Investigator* means the person or persons charged by Berea College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of the College expressly vested with responsibility to implement corrective measures for harassment, and/or retaliation on behalf of the College.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Protected Activity* means any right or privilege secured by law or this policy, or the making of a report or complaint, participating or refusing to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.
- *Relevant Evidence* is evidence that tends to prove or disprove an issue in the Complaint.
- *Remedies* are post-finding actions directed to the parties and/or the community as mechanisms to address safety, prevent recurrence, and restore equal access to the College’s educational program.
- *Required Reporter* means an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator. (This is not to be confused with reporting mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials.)
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment; or retaliation for engaging in a Protected Activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by the College on a Respondent who is found to have violated this policy.

- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
- *Title IX Coordinator* is the official designated by Berea College to ensure compliance with Title IX and the College's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

3. Title IX Coordinator

Berea College's Title VII/Title IX Coordinator serves as the Title IX and ADA Coordinator as well as overseeing certain aspects of the College's compliance obligations and other related policies.

4. Independence and Avoidance of Conflicts of Interest

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and the following procedures. Members of the Title IX Team are selected and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest or misconduct by the Title IX Coordinator, contact the President of Berea College, 210 Lincoln Hall, Phone: 859-985-3520, Fax: 859-985-3915,. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

5. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and the following procedures, may be made internally to:

Joslyn Olinger Glover
 Title VII/IX Coordinator
 Title IX Office
 Location/Address: Lincoln Hall 006, CPO 2075
 (859) 228-2323
 Email: titleix@berea.edu
 Web: <https://www.berea.edu/title-ix/>

The following are Officials with Authority at Berea College: Vice President for Diversity, Equity and Inclusion, Title VII/IX Coordinator and Associate VP for Human Resources.

For a current listing of Title IX Team members, please refer to <https://www.berea.edu/title-ix/>.

Inquiries may be made externally to:

Assistant Secretary
 Office for Civil Rights (OCR)
 U.S. Department of Education
 400 Maryland Avenue, SW
 Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

6. Notice/Complaints of Harassment, and/or Retaliation

Notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

1) File a complaint with, or give verbal notice to, the Title IX Coordinator, Lincoln Hall 006, CPO 2075, (859) 228-2323, titleix@berea.edu, <https://www.berea.edu/title-ix/>. Such a report may be made at any time by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.

2) Report online, using the College's [Title IX Office reporting form](https://cm.maxient.com/reportingform.php?BereaCollege&layout_id=31), available at: https://cm.maxient.com/reportingform.php?BereaCollege&layout_id=31. Anonymous reports are accepted and can give rise to a need to investigate. The College provides supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to consider supportive measures.

7. Supportive Measures

The Title IX Coordinator makes supportive measures available to the parties promptly upon receiving notice or a complaint. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Berea College's education program or activities, including measures designed to protect the safety of all parties or the College's educational environment, and/or deter harassment, and/or retaliation.

Berea College will inform the Complainant, in writing, that they may file a formal Complaint either at that time or in the future, if they have not done so already.

The College will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the supportive measures. The College will minimize academic/occupational impacts and will implement measures in a way that does not unreasonably burden either party.

These actions may include, but are not limited to:

- Referral to counseling or Employee Assistance Program
- Academic extensions of deadlines, or other course-related adjustments
- Implementing modifications of work, labor, or class schedules
- Providing campus safety escorts
- Implementing mutual contact restrictions (no contact orders) between the parties

- Altering labor, work or housing assignment(s)
- Leaves of absence
- Increased security and monitoring of certain areas of campus
- Any other actions deemed appropriate by the Title IX Coordinator

8. Emergency Removal

The Title IX Coordinator may, in consultation with the Vice President for Student Life, remove a student Respondent entirely or partially from the College’s education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

9. Promptness

All allegations are acted upon promptly by the College once it has received Notice or a formal Complaint. The complaint process can take 60-120 business days to resolve, typically over a span of 3-6 months. There may be exceptions and extenuating circumstances, however, that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in this policy will be delayed, the College will provide written notice to the parties of the delay, its cause, and an estimate of the anticipated additional time that will be needed as a result of the delay.

10. Privacy

Every effort is made by Berea College to preserve the privacy of reports. The College will not knowingly share the identity of: (i) any individual who has made a report or complaint of harassment, discrimination, or retaliation; (ii) any Complainant, (iii) any individual who has been reported to be the perpetrator of sex discrimination, (iv) any Respondent, or (v) any witness. The College will also make every effort to preserve the privacy of all records, proceedings and actions in connection and consistent with this policy and related procedures. The College’s privacy obligations are subject to exceptions as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as otherwise required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures. Berea College reserves the right to determine which College officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

11. Application of Policy; Jurisdiction

This policy applies to the education program and activities of Berea College, to conduct that takes place on the campus or on property owned or controlled by the College, at College-sponsored events, or in off-campus locations owned or controlled by recognized student organizations, all in the United States.

The Respondent must be a member of Berea College’s community in order for its policies to apply. If the Respondent is unknown or is not a member of the College community, the Title IX Coordinator will assist

the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Even when the Respondent is not a member of the Berea College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, Berea College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from College property and/or events.

All vendors serving Berea College through third-party contracts are subject to the policies and procedures of their employers, or to these policies and procedures to which their employer has agreed to be bound by their contracts.

12. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

When notice/complaint is affected by significant time delay, the College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

13. Online Sexual Harassment

This policy shall be interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited by these policies, when those behaviors occur in or have an effect on the College's education program and activities, including use of the College's networks, technology, or equipment.

14. Sexual Harassment Prohibited; Definitions

Under provisions of Title IX, Sexual Harassment is prohibited at Berea College. Acts constituting Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. The College has adopted Title IX's definition of Sexual Harassment in order to address the unique environment of an academic community.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:

1) Quid Pro Quo:

- a. an employee of the College,
- b. explicitly or implicitly conditions the provision of an aid, benefit, or service of Berea College,
- c. on an individual's participation in unwelcome sexual conduct.

2) Sexual Harassment:

- a. unwelcome conduct,

- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to Berea College’s education program or activity.

Note: Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

3) Sexual assault, defined as:

a) Sex Offenses, Forcible:

- Any sexual act directed against another person or having another person touch you sexually, forcibly, or without consent,
- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.

b) Sex Offenses, Non-forcible:

- Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by Kentucky law.
- Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of 16 years of age.

For the purposes of this policy a “sexual act” referred to in subsection 3 (a) above includes:

Forcible Rape:

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- The touching of private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

4) Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

- iii. Dating violence does not include acts covered under the definition of domestic violence.

5) Domestic Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Kentucky, or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Kentucky.

In order to categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity, which can include use of express or implied threats of violence or other act of retaliation or other intimidating behavior that puts a person in immediate fear to compel that person into sexual activity.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset by both parties is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given at any time, as long as the withdrawal is reasonably and clearly communicated by word or action. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to bondage, discipline/dominance, submission/sadism, masochism (BDSM) or other forms of kink, non-consent may

be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so an evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Incapacitation: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

15. Retaliation

The College and members of the College community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any Protected Activity, including any right or privilege secured by law or policy, or because the 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 and procedure.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The College will take appropriate action to protect individuals who have been retaliated against or who have a reasonable basis to believe that they may be subjected to retaliation.

16. Required Reporting

While all members of the College community are encouraged to report actual or suspected sexual harassment or retaliation, the following are required to report: all employees of Berea College (including all administrators, faculty and staff, other than student labor).

Persons considering confiding in others on campus should be aware of the confidentiality and reporting requirements of others. On campus, some confidantes may maintain confidentiality and are not required to report actual or suspected sexual harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Required Reporter will connect them with resources to report crimes and/or policy violations, and these employees will

immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Berea College for a Complainant or third-party (including parents/guardians when appropriate):

a. Confidential Resources

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus counselors at Counseling Services (students only)
- Employee Assistance Program
- On-campus College Chaplains at the Campus Christian Center
- Off-campus (non-employees):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorney(s) for the Complainant

All of the above-listed individuals may be expected to maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor, or when required to disclose by law or court order.

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Berea College employees (i.e., Counselors at Counsel Services and College Chaplains) who are confidential resources will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

b. Required Reporters and Formal Notice/Complaints

Required Reporters must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Required Reporters must also promptly share all details of acts, circumstances or behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that

they desire a report to be made or a seek a specific response from Berea College. Supportive measures may be offered as the result of such disclosures without formal College action.

A Required Reporter who fails to report an incident of sexual harassment or retaliation of which they become aware may be subject to disciplinary action.

Though this may seem obvious, when a Required Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct. The College, however, is not on notice when a harasser is also a Required Reporter unless the harasser does in fact report themselves. A Required Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

17. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared further, does not wish for an investigation to be undertaken, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the College's duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has discretion to determine whether the College proceeds with a case when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator must also consider the effect that a Complainant's non-participation may have on availability of evidence and the College's ability to pursue a Formal Grievance Process fairly and effectively.

The College's ability to remedy and respond to notice may be limited if the Complainant does not wish to proceed with an investigation and/or grievance process. In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow that request to be honored, the College will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action. If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date.

18. False Allegations and Evidence

False and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under various College policies.

19. Discretion on Reporting Collateral Misconduct

To encourage reporting and participation in the process, the College's Title IX Office exercises its discretion and does not report minor policy violations to other College offices – such as underage consumption of

alcohol or the use of illicit drugs – related to the incident. This does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

20. Revision of this Policy

This Policy, including the procedures that follow, supersede any previous policies and procedures of Berea College addressing sexual harassment and/or retaliation under Title IX. The College will periodically review and update this policy to assure compliance with Title IX. Any such changes shall be effective immediately upon being posted at www.berea.edu.

The Title IX Coordinator may make minor modifications to the procedures described in this policy during resolution processes, such as to accommodate summer and holiday schedules, provided that such changes do not materially affect the substantive rights of any party. The College may also vary procedures materially with notice (on the College’s website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and the accompanying procedures.

If applicable laws or regulations change, or court decisions alter, the requirements of Title IX in a way that impacts this document, this document will be construed consistent with the most recent government regulations or judicial holdings.

This policy does not create legally enforceable protections or private rights of action beyond the protection of the background state and federal laws which frame such policies and codes, generally.

RESOLUTION PROCEDURES

FOR ALLEGED VIOLATIONS OF THE TITLE IX SEXUAL HARASSMENT POLICY

Berea College will act on any formal or informal notice/complaint of violation of the policy on Sexual Harassment and Retaliation (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures.

The following procedures apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members under the College’s Title IX Sexual Harassment Policy.

1. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, Berea College initiates a prompt initial assessment to determine the next steps Berea College needs to take.

The Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to submit a formal complaint; and/or
- 2) An informal resolution (upon submission of a formal complaint); and/or

3) A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

The Formal Grievance Process is used to determine whether or not this policy has been violated. If so, the College will promptly implement effective remedies designed ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

2. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator engages in an initial assessment, typically in one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
 - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate issue, based on the nature of the complaint.

- If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit other authority of the College to address a complaint with an appropriate process and remedies.

3. Dismissal of Complaint or Allegations

(i) **Mandatory Dismissal.** Pursuant to the Title IX regulations, 34 CFR §106.45, the College **must dismiss** a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations), and/or the College does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the College.

(ii) **Discretionary Dismissal.** The College **may dismiss** a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled or employed by Berea College; or
- 3) Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the College’s Title IX office will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party under the procedures for appeal provided below.

4. Counterclaims

Counterclaims are permitted. The College uses the Initial Assessment, described above, to assess whether the allegations in the counterclaim are made in good faith and in a timely manner. Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may be resolved through the same investigation as the underlying allegation, or, at the discretion of the Title IX Coordinator, in a separate proceeding.

The College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Counterclaims not made in good faith will be considered retaliatory and may constitute a violation of this policy.

5. Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. For the purposes of this policy “available” means the party cannot insist on an Advisor who does not have the inclination, time, or availability to participate. Also, the Advisor cannot have conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. For students, their academic advisor may, but is not required to, serve an Advisor for purposes of this policy.

Upon request, parties may have a second Advisor for good cause shown. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

a. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with the party throughout the resolution process. The parties may choose Advisors from inside or outside of the Berea College community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from Berea College, the Advisor will be trained by the College and be familiar with these resolution processes. If the parties choose an Advisor from outside the pool of those identified by Berea College, the Advisor may not have been trained by the College and may not be familiar with these policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

b. Advisors in Hearings/Berea College-Appointed Advisor

Under Title IX regulations, cross-examination is required during the hearing, but must be conducted by the parties’ Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, Berea College will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party’s Advisor will not conduct cross-examination, the College will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-Maker(s) during the hearing.

c. Advisor’s Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Berea College cannot guarantee equal advisory capabilities among Advisors chosen by the parties. If one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the College is not obligated to provide an attorney.

d. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Berea College's policies and procedures.

e. Advisor Violations of Berea College Policy

All Advisors are subject to the College's policies and procedures. Advisors are expected to advise their advisees without disrupting proceedings. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-Maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and may disqualify the Advisor from further involvement in the case.

f. Sharing Information with the Advisor

The parties may wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may consent, in writing, to the sharing of this information directly with their Advisor or other individuals if they wish.

g. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Berea College. The College may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by these privacy expectations.

h. Expectations of an Advisor

Berea College generally expects an Advisor to adjust their schedule to allow them to attend meetings relating to a case when planned, but the College may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

i. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

Parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with College policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below.

a. Informal Resolution

Informal Resolution may include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to address the situation.
- When the parties agree to resolve the matter through an alternate resolution process, usually before a formal investigation takes place.
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation).

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. All parties must consent to the use of Informal Resolution.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the Berea College.

The College, acting through the Title IX Coordinator, will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

The Title IX Coordinator maintains records of any Informal Resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution are not appealable.

b. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the College are able to agree on responsibility, sanctions, and remedies. If so, the Title IX Coordinator implements the accepted finding that Respondent is in violation of College policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties have assented, in writing, to all agreed upon terms of resolution. If the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

c. Negotiated Resolution

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties. Negotiated resolutions are not appealable.

7. Grievance Process Pool

The Formal Grievance Process relies on a pool of individuals appointed by the College (“the Pool”). Members of the Pool are announced in an annual distribution of this policy to all students, employees, prospective students, and prospective employees. The list of Pool members and a description of the Pool can be found at www.berea.edu/title-ix/.

a. Pool Member Roles

Members of the Pool are trained, and may serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To serve in a facilitation role in Informal Resolution or Alternate Resolution

- To act as an Advisor to the parties
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-Maker regarding the complaint
- To serve as an Appeal Decision-Maker

b. Pool Member Appointment

The Title IX Coordinator, in consultation with the President or designee, appoints the Pool, which acts with independence and impartiality and aspires to be reflective of the College's diversity. This does not preclude the College from having all members of the Pool go through an application and/or interview/selection process. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the College can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

c. Pool Member Training

The Pool members receive annual training as a group. This training includes, but is not limited to:

- The scope of Berea College's Sexual Harassment and Retaliation Policy and Procedures
- The scope of Berea College's education program or activity
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to sexual harassment and/or retaliation allegations

Specific training is also provided for Appeal Decision-Makers, Advisors (who are Berea College employees), and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: www.berea.edu/title-ix/.

d. Pool Membership

The Pool includes:

- 2 or more members of the Academic Affairs administration and/or faculty
- 2 or more members of the administration/staff

- 1 or more representatives from Human Resources
- Other trained Decision-Makers, who may be appointed by the College

Pool members are usually appointed annually. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

8. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written “notice of the investigation and allegations” (“NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent. The NOIA will include:

- A summary of all of allegations,
- The identity of the parties involved (if known),
- The misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the Respondent is presumed not responsible for the reported misconduct unless and until a determination of responsibility is made at the conclusion of the grievance process,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties and their Advisor will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the College’s policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the College’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

The NOIA will be in writing and delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Berea College records, or emailed to the parties’ Berea College-issued email or designated accounts. Once mailed, emailed, and/or transmitted in person, notice will be presumptively delivered.

9. Resolution Timeline

Berea College will make reasonable efforts to complete the resolution process within 60 to 120 business days, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

10. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints one or more Pool members to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

11. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), and Decision-Maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The College operates with the presumption that the Respondent is not responsible for reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

The Title IX Coordinator will screen assigned Investigator(s) to ensure there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with Vice President for Diversity, Equity and Inclusion.

12. Investigation Timeline

Investigations are completed expeditiously depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Berea College will make a reasonable effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

13. Delays in the Investigation Process and Interactions with Law Enforcement

Berea College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, requests from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The Title IX Office will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the College will implement supportive measures as deemed appropriate.

Berea College action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses, obtaining available and relevant evidence.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

Investigator(s) write(s) a comprehensive investigation report, fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.

Prior to the conclusion of the investigation, the investigator(s) provide(s) the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of evidence directly related to the allegations, including evidence upon which the College does not intend to rely in reaching a determination, for a ten (10) business days review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.

The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business calendar days prior to a hearing. The parties are also provided access to any evidence that was not included in the report.

15. Role and Participation of Witnesses in the Investigation

Witnesses, including those who are employees of Berea College, are encouraged to cooperate with and participate in the College's investigation and resolution processes.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break, pandemic, or other special circumstances) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

16. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all participants must be made aware of audio and/or video recording.

17. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

18. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-Maker–unless all parties and the Decision-Maker agree to an expedited timeline.

The Title IX Coordinator will select appropriate Decision-Maker(s) from the Pool.

19. Hearing Decision-Maker Composition

Berea College will designate a single Decision-Maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-Maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-Maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-Makers. Those who are serving as Advisors for any party may not serve as Decision-Makers in that matter.

The Title IX Coordinator may not serve as a Decision-Maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

20. Evidentiary Considerations in the Hearing

Any evidence that the Decision-Maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the

Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Berea College employs a progressive discipline system, so previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process, and is shared during this stage of the process by the Title IX Coordinator.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-Maker(s) at the sanction stage of the process when a determination of responsibility is reached. The written impact statement shares with the Decision-Maker(s) the effects of the allegations on the party.

After deliberations, the Decision-Maker(s) renders a determination based on the preponderance of the evidence received; whether it is more likely than not that the Respondent violated the Policy as alleged.

21. Notice of Hearing

No less than ten (10) business calendar days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-Maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-Maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing and will likely result in a postponement of the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-Maker(s). For compelling reasons, the Chair may reschedule the hearing.

- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask of the other party and witnesses. The party must notify the Title IX Coordinator if they do not have an Advisor, and Berea College will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-Maker(s) about the matter, unless they have been provided already.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-Maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Notification that parties cannot bring mobile phones or other electronic devices into the hearing, except if approved by the Title IX Coordinator.

Hearings for possible violations that occur near or after the end of an academic term and are unable to be resolved prior to the end of term will typically be held as soon as practicable after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-120 business day goal for resolution.

22. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

23. Pre-Hearing Preparation

The Chair or hearing facilitator, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-Maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-Maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than one day prior to the hearing. Decision-Makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-Maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-Maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-Maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

24. Pre-Hearing Meetings

The Chair may convene pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they (the parties and their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings. Pre-hearing meeting(s) will not be recorded.

25. Hearing Procedures

At the hearing, the Decision-Maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment, and/or retaliation, even though those collateral allegations may not specifically fall within this policy.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-Maker(s) and the parties. Following their testimony, such witnesses will be excused.

26. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

27. Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-Maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Chair then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator or the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

28. Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-Maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report. Neither the parties nor the Decision-Maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions

about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

29. Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-Maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who is seated during questioning, will pose a question orally (in a live and direct fashion), the proceeding will pause to allow the Chair to consider the question’s relevance, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-Maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal.

30. Refusal to Submit to Cross-Examination and Inferences

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting (either in-person or remotely), or they attend but refuse to submit to questioning, then the Decision-Maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-Maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to participate in the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-Maker(s) may not draw any inference solely from a party’s or witness’s non-participation in the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-Maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with the rules of decorum established under this policy for the hearing, the College may require the party to use a different Advisor. If a Berea College-provided Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

31. Recording Hearings

Hearings (but not deliberations) are recorded by the College for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-Maker(s), the parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without the Title IX Coordinator's permission.

32. Deliberation, Decision-making, and Standard of Proof

The Decision-Maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. **The preponderance of evidence standard of proof is used.** The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-Maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the any other party. The Decision-Maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-Maker(s) will review the statements and any pertinent conduct history requested from the appropriate administrators and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions. This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

33. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within five (5) business days of receiving the Decision-Maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official College records, or emailed to the parties' College-issued email or otherwise approved account. Once sent, notice will be presumptively delivered.

The Notice of Outcome will articulate specific policy or policies reported to have been violated and will contain a description of the procedural steps taken by Berea College from the receipt of the harassment report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanctions issued which the College is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Berea College's educational or employment program or activity, to the extent the College is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

34. Sanctions

a. Factors considered when determining a sanction/responsive action may include, but are not limited to the following:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment, and/or retaliation
- The need to remedy the effects of the sexual harassment, and/or retaliation on the Complainant and the community
- The impact on the parties

- Any other information deemed relevant by the Decision-Maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions or sanctions imposed by external authorities.

b. Student Sanctions

Sanctions for a student or student organization who has engaged in sexual harassment and/or retaliation include:

- *Probation*
- *Suspension*
- *Expulsion*
- *Other sanctions as provided under the Student Conduct Code*
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate
- *Suspension or expulsion will result following a determination of sexual assault by forcible rape, forcible sodomy, or sexual assault with an object*

c. Employee Sanctions

Sanctions for an employee who has engaged in sexual harassment and/or retaliation include:

- *Warning*
- *Reprimand*
- *Required letter of apology*
- *Changed assignment*
- *Relocation of office*
- *Required counseling*
- *Suspension*
- *Demotion*
- *Loss of salary*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, Berea College may assign any other responsive actions as deemed appropriate
- *In the case of a faculty Respondent, a referral to the Dean and Faculty Status Council for possible discipline under terms of the Faculty Manual*

- *Suspension or termination will result following a determination of sexual assault by forcible rape, forcible sodomy, or sexual assault with an object*

35. Withdrawal, Graduation or Resignation While Charges Pending

a. Students: If a student withdraws or graduates from the College, the resolution process may continue in their absence. Berea College will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. This may include the College barring the withdrawn or graduating student from Berea College property and/or events.

The student who withdraws or leaves, without graduating, while the process is pending may not return to Berea College unless and until all sanctions have been satisfied.

b. Employees: If an employee resigns with unresolved allegations pending, they will not be eligible for future employment with the College.

Notwithstanding the withdrawal or resignation of a party, Berea College will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. This may include the College barring the resigned employee from Berea College property and/or events.

36. Appeals

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within 5 business days of the delivery of the Notice of Outcome.

The Appeal Decision-Maker/panel will be designed by the Title IX Coordinator from the Pool and if it is a panel a Chair will be designated. (see Section 7, page 21) No Appeal Decision-Maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Decision-Maker/Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If the Request for Appeal does not meet any of the grounds set forth above, the request will be denied by the Appeal Decision-Maker/Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Decision-Maker/Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-Maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-Maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Decision-Maker/Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-Maker(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-Maker/Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, will be shared with the Appeal Panel if applicable, and the Appeal Decision-Maker/panel will render a decision in no more than 5 business days, barring exigent circumstances. All decisions will be made using the preponderance of evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which the College is permitted to share according to state or federal law, and the rationale supporting essential findings to the extent Berea College is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official College records, or emailed to the parties' Berea College-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

b. Sanctions Status During the Appeal

Unless otherwise provided, sanctions imposed as a result of a hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the procedures referenced above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding

only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-Makers to substitute their judgment for that of original Decision-Maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-Makers may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-Maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural error cannot be cured by the original Decision-Maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-Maker(s).
- The results of a remand to a Decision-Maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to Berea College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

37. Long-Term Remedies/Other Actions

Following conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement and/or request additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling or Employee Assistance Program
- Academic extensions of deadlines, or other course-related adjustments
- Implementing modifications of work, labor, or class schedules
- Providing campus safety escorts
- Implementing mutual contact restrictions (no contact orders) between the parties
- Altering labor, work or housing assignment(s)
- Leaves of absence
- Increased security and monitoring of certain areas of campus
- Any other actions deemed appropriate by the Title IX Coordinator

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies for the Respondent to ensure no effective denial of educational access or employment opportunity.

The College will maintain the privacy of any long-term remedies/actions/measures, provided such privacy does not impair its ability to provide these remedial measures.

38. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-Maker(s) (including the Appeal Chair/Panel). Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Berea College. A suspension under this provision will only be lifted when compliance is achieved to the reasonable satisfaction of the Title IX Coordinator.

39. Recordkeeping

Berea College will maintain the following records for a period of at least seven years from the dates of their creation:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to Berea College's education program or activity;
4. Any appeal and the result thereof;
5. Any Informal Resolution and the result thereof;
6. All materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any persons who facilitate an Informal Resolution process. Berea College will make these training materials publicly available on Berea College's Title IX website or upon request for inspection by members of the public; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to Berea College's education program or activity; and
 - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The College also will maintain any and all records pertaining to these processes in accordance with applicable state and federal laws.

40. Disabilities Accommodations in Resolution Processes

Berea College is committed to providing reasonable accommodations and support to students, employees, or others with disabilities to ensure equal access to the College's resolution processes. Anyone needing such accommodations or support should contact the Director of Disability & Accessibility Services or Human Resources, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

Policy and Procedures – Approved by Administrative Committee and adopted by the President on an interim basis, effective August 14, 2020

Approved by the General Faculty Assembly – September 23, 2020

Board of Trustees Review and Approval – Pending, October 2020