

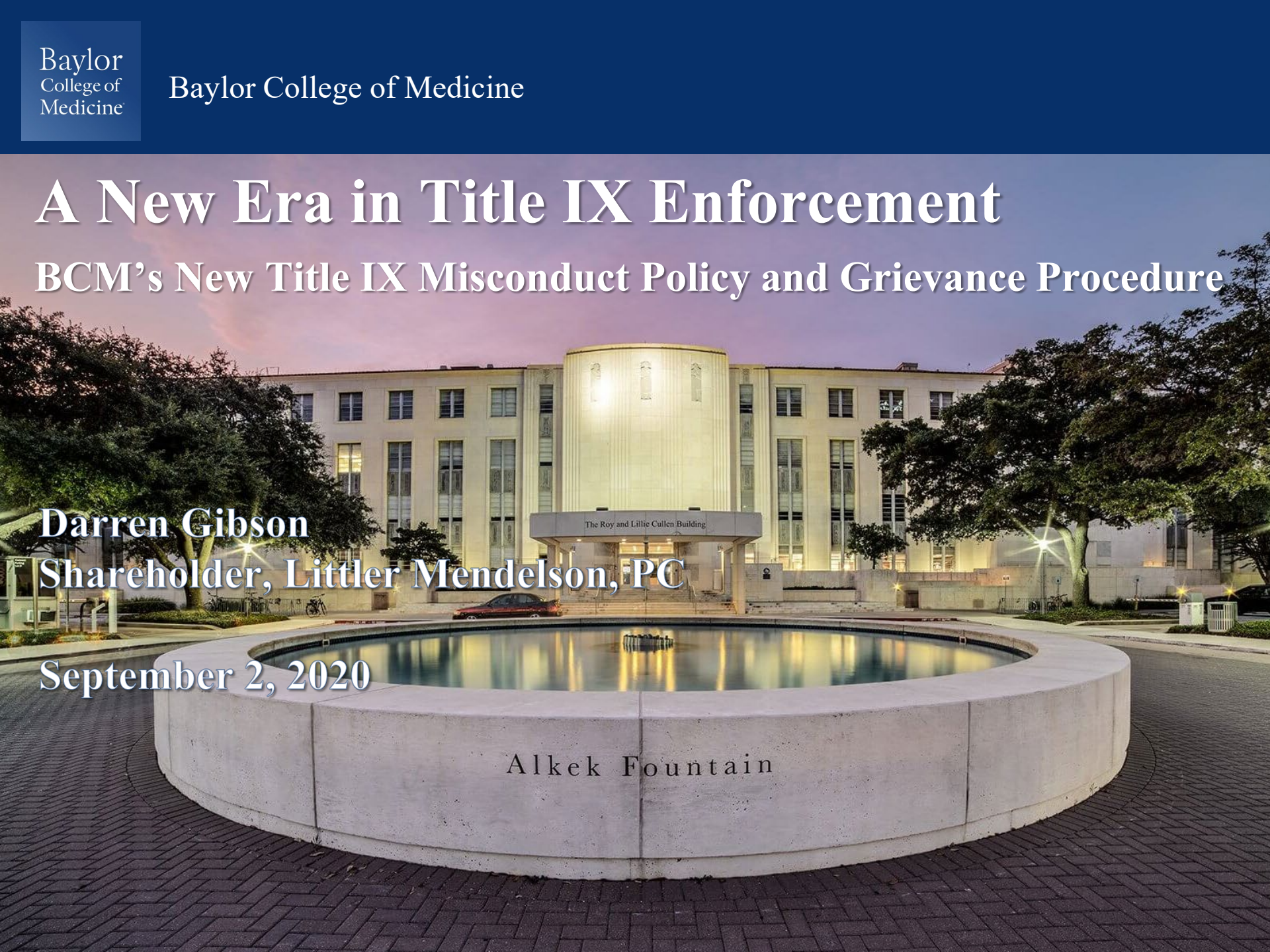
A New Era in Title IX Enforcement

BCM's New Title IX Misconduct Policy and Grievance Procedure

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Alkek Fountain



Introduction – “Who Are You and Why Are We Here?”

Presenter:

- Darren Gibson: Co-Chair of Littler’s Higher Ed Group

Purpose of today’s presentation:

- Training on BCM’s new Title IX Misconduct Policy and Grievance Procedure.
- Comply with training mandates in new Title IX regulations

See 34 CFR § 106.45(b)(1)(iii).

- ✓ **Key Changes Required by New Title IX Regulations**
- ❑ BCM Title IX Misconduct Policy and Grievance Procedure
- ❑ Title IX Misconduct Procedure
- ❑ Live Hearings
- ❑ Appeals and Other Provisions
- ❑ Intersection with Other BCM Policies and Legal Obligations

Scope of Title IX: “Education Program or Activity”

- Any location, event, or circumstance over which the recipient exercises substantial control over both the respondent and the context in which the sexual harassment occurs.
- Includes all education programs or activities, whether occurring on or off-campus, and any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (such as a fraternity or sorority house).

Heightened Standard for “Sexual Harassment” (i.e. Title IX Misconduct under BCM policy)

- 1) Any instance of quid pro quo harassment by a recipient’s employee;
- 2) Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; or
- 3) Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Additional Key Provisions of Amended Regulations

- Formal Complaint, Actual Knowledge, and Deliberate Indifference.
- Supportive Measures (even if no Formal Complaint filed).
- Uniform evidentiary standard and grievance process for students, staff, and faculty.
- Mandatory dismissal where allegations do not rise to heightened standard of sexual harassment.
- Investigation, notice, parties' rights during investigation, and equitable treatment.
- Rights of parties to inspect and review evidence.

Additional Key Provisions of Amended Regulations

–Continued

- Live Hearing with cross examination by Advisors.
- Exclusion of statements from non-testifying party/witness.
- Independent Decision-Maker(s).
- Mandatory appeal process provided.
- Retaliation included within Title IX policy and can result in violation.
- Informal resolution – discretionary.
- Recording keeping.

- Key Changes Required by New Title IX Regulations
- ✓ **BCM Title IX Misconduct Policy and Grievance Procedure**
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Legal Disclaimer

This training is meant to summarize BCM's Title IX Misconduct Policy and Grievance Procedure and related materials.

- This training should not be a substitute for reading Title IX Misconduct Policy and Grievance Procedure.
- The text of this training does not quote the full language of the Title IX Misconduct Policy, and the language of the policy governs.
- For a complete understanding of the BCM's Title IX Misconduct Policy and Grievance Procedure, please refer to the policy and supporting materials.



BCM Commitment to Address Title IX Sexual Misconduct – Policy IV.A.1.

- “In accordance with Title IX, BCM is committed to providing a safe and supportive environment for all BCM Community Members, who have the right to be free from all forms of sex-based discrimination.”

Purpose of BCM's Title IX Misconduct Policy and Grievance Procedure

- Clearly define what is Title IX Misconduct.
- Provide students and employees with notice of their rights and mechanisms for reporting alleged Title IX Misconduct.
- Describe BCM's centralized investigation and adjudication procedures for prompt and equitable resolution of complaints alleging Title IX Misconduct.
- Provide students and employees with the range of disciplinary actions and remedies applicable to violations of the Policy.

Scope of the Title IX Sexual Misconduct – Policy at Section II

- The Policy applies to all BCM Community Members.
- The Policy applies to allegations of Title IX Misconduct by or against BCM Community Members, which may include a third party unaffiliated with BCM (e.g., patients, guests, invitees) as a Complainant or Respondent.
- This Policy does not apply to allegations of sexual misconduct that may occur in any location that is outside the borders of the United States of America, or to alleged incidents that occur outside the scope of an Education Program or Activity sponsored by BCM, even if a BCM Community Member is involved as a Complainant or Respondent.

Alternative Processes Still Available

- Other misconduct procedures continue to be available to students and employees for matters that are not required to be addressed by Title IX.
- “[Mandatory dismissal of a Formal Complaint] does not preclude action under another provision of the recipient’s code of conduct.” 34 CFR § 106.45(b)(3).
- *However*, “charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances [as a report of sexual misconduct] for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.” 34 CFR § 106.71(a).

Let's Start with Key Definitions



Key Definitions –Policy at Section III

Title IX Sexual Misconduct. Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking that occurs during an Education Program or Activity against an individual in the United States.

Sexual Harassment. Conduct on the basis of sex that satisfies one or more of the following:

- i. **Quid Pro Quo.** An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
- ii. **Severe, Pervasive, and Objectively Offensive Conduct.** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education programs or activities.
- iii. Any instance of "**Sexual Assault,**" "**Dating Violence,**" "**Domestic Violence,**" or "**Stalking**" as defined in the Policy.

Key Definitions –Policy at Section III

Education Program or Activity –

- locations, events, or circumstances over which BCM exercises substantial control over both the Respondent and the context in which the harassment occurs,
- any building owned or controlled by a student organization that is officially recognized by BCM, and
- all of the operations of BCM.

Key Definitions –Policy at Section III

- ***Complainant.*** An individual who is alleged to be the victim of conduct that could constitute Title IX Misconduct under this Policy.
- ***Respondent.*** An individual who has been reported to be the perpetrator of conduct that could constitute Title IX Misconduct.
- ***Reporter.*** A person who provides information to BCM regarding an incident of Title IX Misconduct. A Reporter need not be a Complainant.
- ***BCM Community Members.*** BCM Board of Trustees, faculty, staff, residents/fellows, postdoctoral trainees, contractors, and students enrolled in all schools and programs.

Key Definitions –Policy at Section III

- ***Formal Complaint.*** Document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Misconduct against a Respondent and requesting that BCM investigate the allegation of Title IX Misconduct. As used in this definition, a “document filed by a Complainant” means a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

Key Definitions –Policy at Section III

- ***Advisor.*** (1) an individual chosen by a Complainant or Respondent, at the Complainant's or Respondent's own expense, to provide support during any meetings or hearings related to the investigation and/or adjudication of a reported violation of this Policy and in accordance with the terms and restrictions in this Policy, or (2) if a Complainant or Respondent does not choose an Advisor, an individual provided by the College to the Complainant or Respondent for the sole purpose of cross-examining, as necessary, the other party or witnesses in a Live Hearing.

Where to Report Title IX Misconduct?



Key Principles Regarding Reporting

- BCM recognizes importance of a victim of Title IX Misconduct going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident.
- BCM further recognizes right of a victim of a crime to choose whether to report the crime to law enforcement, to be assisted by BCM in reporting the crime to law enforcement, or to decline to report the crime to law enforcement.
- BCM recognizes the right of a victim of Title IX Misconduct to report the incident to BCM and to receive a prompt and equitable resolution of the report.

Where and How to Report Title IX Misconduct

- Individuals who have experienced Title IX Misconduct may file a report with the BCM Title IX Coordinator online, in person, by telephone, through interoffice mail, U.S. Mail, or email.
- All reports of Title IX Misconduct are forwarded to the Title IX Coordinator for processing.
- Individuals who do not have a duty to report under this Policy and who wish to remain anonymous may report by telephone or in writing via the Integrity Hotline phone or web portals.

Title IX Misconduct Policy, Section IV.D.2.

Mandatory Employee Reporting – SB 212

- *Employee Obligation to Report.* Any BCM employee who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes Title IX Misconduct and is alleged to have been committed by or against a person who was a student enrolled at or an employee of BCM at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.
- Section IV.D.1 of the Policy goes into more detail regarding reporting obligations under state law.

Title IX Misconduct Policy, Section IV.D.1.

Good Faith Actors

- For any person who make a good faith report of Title IX Misconduct, assists in the investigation of the reported Title IX Misconduct, or testifies in the Live Hearing arising out of such report, that person may not be subjected to any disciplinary action by BCM for any violation by the person of BCM's code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment.
- The above statement does not apply to a person who perpetrates or assists in the perpetration of the incident reported.

False Information

- An individual found to have knowingly and in bad faith provided materially false information during any proceeding under this Policy may be subject to disciplinary action up to and including dismissal or separation from the College.
- A determination regarding responsibility alone is not sufficient to conclude that any party or witness made a materially false statement in bad faith.
- Allegations of false information referred under BCM Code of Conduct (31.1.01)



Confidentiality – Formal Complaint vs. Confidential Reports

- Formal Complaints are required for grievance process, and identify of Complainant cannot be maintained.
 - *Complainant has choice to make Formal Complaint.*
- Students may make confidential reports to:
 - *Student and House Staff Mental Health Service, or*
 - *WellConnect.*
- Employees may make confidential reports through EAP.
- The College Ombuds Office provides confidential discussion of any Baylor-related concern, and sharing information regarding Title IX Misconduct to the Ombuds does not constitute notice to the College and will not result in action by the College.

Duty of Confidentiality – Who is Covered?

The confidentiality provisions protect:

- Complainant;
- Reporting Party;
- Individual who sought guidance from the College;
- Individual who participated in the investigation;
and
- Respondent.



Confidentiality – What May Be Disclosed?

- An individual's identity may only be disclosed to:
 - *College Employees who are necessary for an investigation of the report or other related hearings;*
 - *a law enforcement officer;*
 - *a health care provider in an emergency;*
 - *the Respondent, to the extent required by other law or regulation; and*
 - *potential witnesses to the incident as necessary to conduct an investigation of the report and to the extent required by other law or regulation.*
- However, parties not restricted from discussing allegations to gather and present relevant evidence.

Retaliation

- BCM will not tolerate Retaliation, and may impose interim or permanent sanctions against individuals who retaliate.
- Retaliation includes intimidation, threats, coercion, or discrimination to interfere with rights or privileges provided by Title IX Policy, or because individual participated in Title IX Grievance Process.
- BCM may impose interim or permanent sanctions against individuals who retaliate.

*Title IX Misconduct Policy, Sections III.12
and IV.H*



Supportive Measures



Supportive Measures offered by BCM

Supportive Measures offered to parties:

- may be offered before or after the filing of a Formal Complaint or where no Formal Complaint has been filed;
- designed to restore or preserve equal access to BCM's Education Program or Activity; and
- maintained as confidential to the extent that maintaining such confidentiality would not impair the ability of BCM to provide the supportive measures.

Scope of Available Supportive Measures

Supportive Measures can include:

- Counseling;
- Extended deadlines and course adjustments without penalty;
- Modifications of work or class schedules;
- Mutual restrictions on contact between the parties;
- Changes in work, academic, extracurricular or housing locations;
- Leaves of absence;
- Campus escort services and increased security; and
- Access to counseling, medical and/or academic services.

Title IX Misconduct Policy, Section IV.E.

Administrative Leave and Emergency Removal

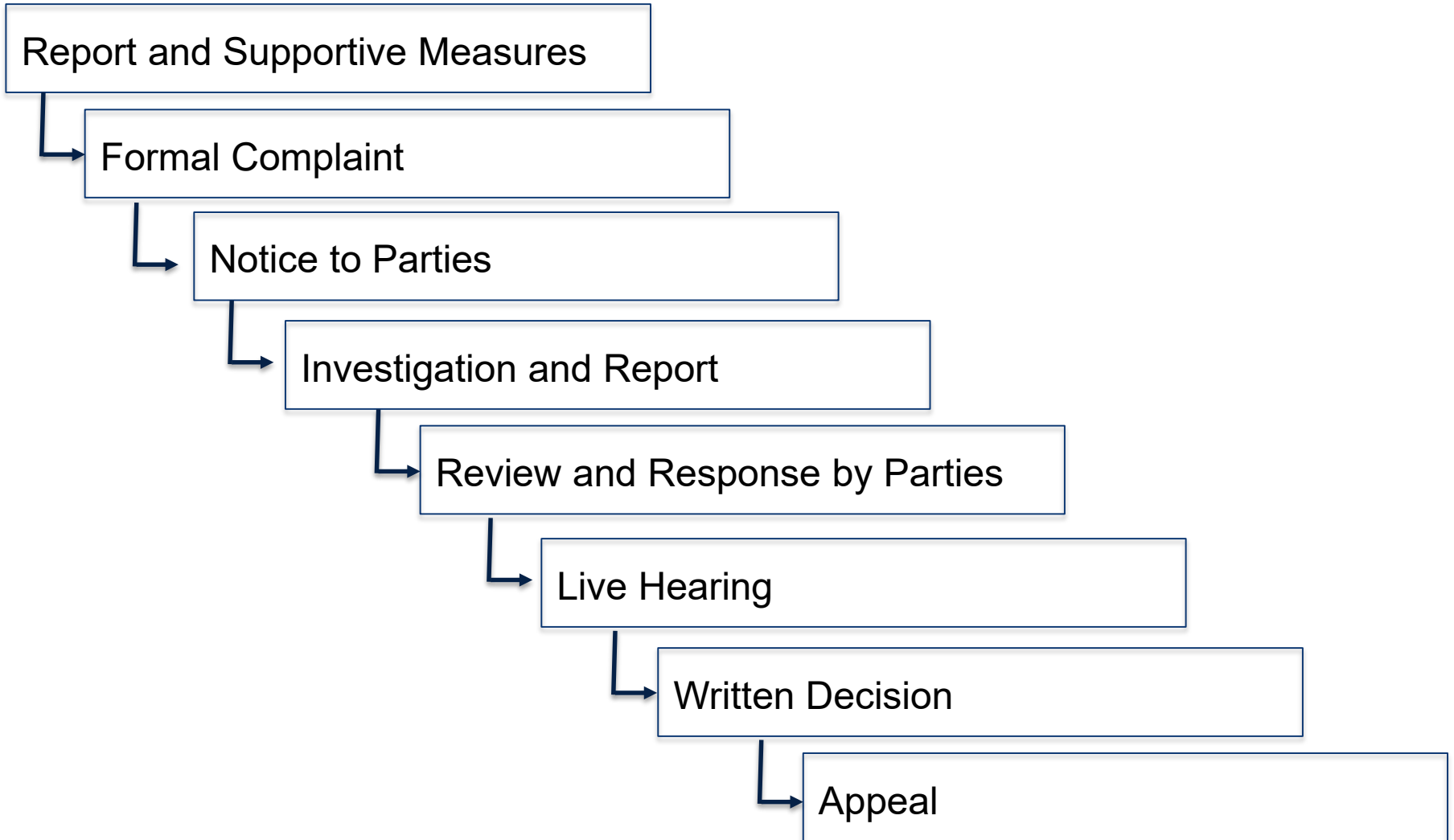
- BCM must conduct individualized safety and risk analysis to determine if individual poses immediate threat.
- If so, BCM may remove Respondent to protect safety of BCM Community.
- BCM must provide notice and immediate opportunity to challenge the removal.
- BCM retains right to place Employee on administrative leave during pendency of grievance process.

Title IX Misconduct Policy, Section IV.F.



- Key Changes Required by New Title IX Regulations
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- ✓ **Title IX Misconduct Procedure**
- Live Hearings
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Title IX Grievance Process



Roles and Responsibilities

- **Title IX Coordinator** monitors compliance with Title IX Policy, including training, education, prevention efforts, communication with stakeholders, and oversight of investigation and adjudication procedures for all reported policy violations.
- **Investigator** will conduct an inquiry into allegations and create an investigative report that fairly summarizes relevant Evidence.
- **Hearing Officer** will conduct the Live Hearing.
- **Decision-Maker** will determine relevance of questions asked by Advisors and make a written determination regarding responsibility and may impose sanctions.
- **Appeal Officer** will make a final determination on appeals.

Title IX Grievance Process – Formal Complaint

- Formal Complaint required to initiate Grievance Process.
- Upon receiving report (or if Actual Knowledge of alleged Title IX Misconduct), Title IX Coordinator will promptly contact Complainant to:
 - (1) discuss the availability of Supportive Measures, which are available with or without Formal Complaint, and
 - (2) explain the process of filing a Formal Complaint.
- At time of filing Formal Complaint, Complainant must be participating in or attempting to participate in BCM's Education Program or Activity.

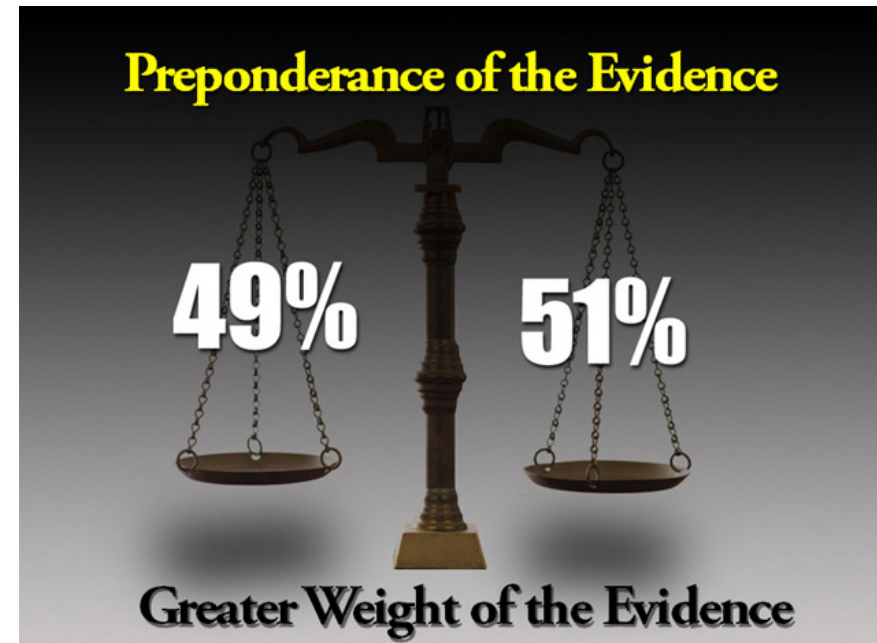
Title IX Grievance Process – Formal Complaint

- Formal Complaint may signed by the Title IX Coordinator.
- Complainant's wishes will be respected, unless the Title IX Coordinator determines that signing a Formal Complaint is not clearly unreasonable in light of known circumstances.
- Title IX Coordinator shall consider:
 1. seriousness of the alleged incident;
 2. whether BCM has received other reports of Title IX Misconduct by the Respondent;
 3. risk of harm to others; and
 4. any other factors BCM determines relevant.

Grievance Process Requirements – Presumption of Non-Responsibility and Standard of Evidence

- The standard of evidence is a preponderance of the evidence.
- Presumption that Respondent is not responsible for the alleged conduct until a determination is made at the conclusion of the Grievance Process.

*Title IX Misconduct Procedures
Section VI.A&B*



Initial Review of a Formal Complaint— Mandatory Dismissal

BCM must dismiss a Formal Complaint if:

- the allegation does not describe conduct that would constitute Title IX Sexual Misconduct;
- the Title IX Sexual Misconduct did not occur in the University's Education Program or Activity; or
- the Title IX Sexual Misconduct did not occur against a person in the United States.

But such a dismissal does not preclude action under another provision of BCM's policies or code of conduct.

Title IX Misconduct Procedures Section VI.F



Initial Review of a Formal Complaint— Optional Dismissal

BCM may dismiss Formal Complaint if:

- Complainant notifies Title IX Coordinator in writing that they wish to withdraw Formal Complaint;
- Respondent is no longer enrolled in or employed by the BCM; or
- circumstances exist that prevent BCM from gathering sufficient evidence to reach a determination

Title IX Misconduct Procedures Section VI.F



Written Notice and Appeal of Dismissal Decision

- If BCM dismisses a Formal Complaint or any allegations therein, BCM must provide written notice of dismissal and reasons simultaneously to all parties.
- Any party can appeal the dismissal.

Title IX Misconduct Procedures Section VI.F

Right to Consolidate Formal Complaints

BCM may consolidate Formal Complaints:

- against more than one Respondent,
- by more than one Complainant against one or more Respondents, or
- by one party against the other party, where the allegations of Title IX Misconduct arise out of the same facts or circumstances.

Title IX Misconduct Procedures Section VI.G



Mandatory Notices to Parties

- BCM must provide initial written notice to both parties on receipt of a Formal Complaint.
- Supplemental notice required if additional allegations later included in scope of investigation.
- Sufficient notice must be given to all parties of hearings, interviews, or meetings. Sufficient notice is defined as a minimum of three business days.

Title IX Misconduct Procedures Section E



Initial Notices to Parties

Initial notice to the parties must include:

- ✓ the identities of the parties involved (if known),
- ✓ a description of the alleged Title IX Misconduct, date and location of the alleged incident(s) (if known),
- ✓ the Policy provisions alleged to have been violated, and information about the grievance process set forth herein,
- ✓ the right of parties to have an advisor of their choice,
- ✓ the right to inspect and review evidence, and
- ✓ that knowingly making false statements or submitting false information may be subject to additional disciplinary action up to and including dismissal or separation.

Prehearing Investigation – Gathering Evidence

- BCM, not the parties, bears burden of proof and burden of gathering sufficient evidence for decision-maker to make a determination regarding responsibility.
- Parties must be given an equal opportunity to identify witnesses and submit evidence.
- Investigation shall consider all relevant evidence –both inculpatory and exculpatory– and credibility determinations may not be based on person’s status as a complainant, respondent, or witness.



Timeframe for the Grievance Process

Generally, BCM will strive to complete investigations in 60 days.

- May be extended “for good cause” and
- Parties must be given notice and justification for the extension.
- Good cause includes:
 - *Absence of party, advisor or witness*
 - *Concurrent law enforcement activity*
 - *Need for language assistance or accommodation*
 - *Overall complexity and volume of evidence*



Grievance Process Requirements – Role of Advisors

- Complainant and Respondent may, but are not required to, have an Advisor of their choosing present throughout the Investigation and during any meetings related to the Investigation and/or adjudication of a report of Title IX Misconduct.
- During the Investigation, Advisors may not ask questions or participate directly in the Investigation.
- Different than role during Live Hearing.



Title IX Misconduct Procedures Section VI.H.1

Inspection and Review of Relevant Evidence

- Prior to issuing Investigative Report, parties must have opportunity to review and inspect evidence directly related to allegations.
- BCM must provide parties at least 10 days to submit a written response to the evidence.
- Evidence may be redacted as necessary to comply with applicable state or federal confidentiality laws (e.g., HIPAA, FERPA).



Grievance Process Requirements – Protection of Privileged Information

- Information protected under a legally recognized privilege may not be used during any part of Grievance Process *unless* person holding such privilege has waived the privilege and BCM has obtained that party's voluntary, written consent to do so.
- For example, documents made or maintained by a physician, psychiatrist, psychologist, or other professional regarding treatment to the party.

Investigative Report

Investigator will prepare a report that includes:

- statement of the allegation(s),
- the persons involved,
- a summary of the Evidence reviewed,
- *preliminary* factual findings with respect to each allegation, and
- a *preliminary* determination as to whether the Policy has been violated.

Report sent to parties and advisors at least 10 days before selecting to proceed with a Live Hearing or alternative resolution.

Title IX Misconduct Procedures Section VI.1



Alternative Resolution

- Title IX Coordinator may offer the Complainant and Respondent an alternate resolution process to the Live Hearing
- Parties participate in an unofficial mediation process with the Title IX Coordinator acting as mediator.
- Both parties must agree to this alternate process, and, in doing so, the parties waive their right to a Live Hearing.
 - *Agreement to proceed with alternative resolution must be in writing, per the regulations.*

Title IX Misconduct Procedures Section VI.I

AGENDA

- Key Changes Required by New Title IX Regulations
- BCM Title IX Misconduct Policy and Grievance Process
- Title IX Misconduct Procedure
- Live Hearings**
- Appeals and Other Provisions
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Live Hearing Procedure

- If the Formal Complaint is not dismissed or resolved by the alternative resolution process, new Title IX regulations require live hearings with cross examination.
- BCM will make all evidence subject to the parties' inspection and review available at the Live Hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Title IX Misconduct Procedures Section VI.J.1.

Live Hearing, Location and Virtual Hearings

- Live hearings may be conducted with all parties physically present in the same geographic location or virtually.
- If the hearing is virtual, or with the parties located in separate rooms, BCM must use technology that enables the Decision-Maker, Hearing Officer, and parties, to simultaneously see and hear the party or the witness answering questions.



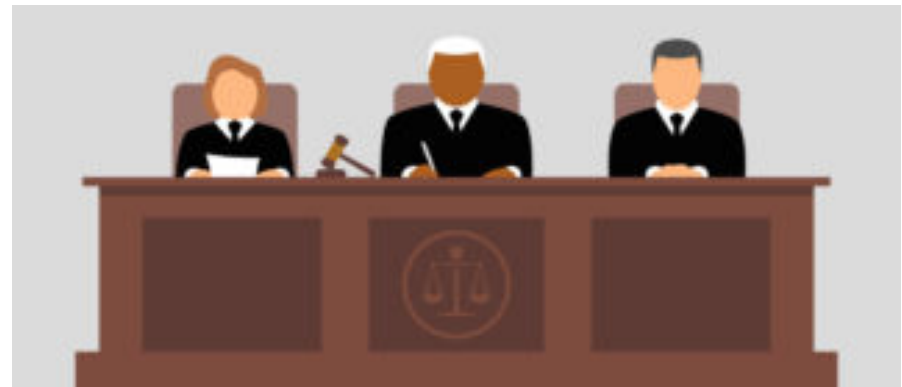
Decorum in Proceedings

- Anyone participating in any proceeding arising out of an alleged violation of the Title IX Sexual Misconduct Procedure is expected to exhibit civility and decorum commensurate with the serious subject matter.
- BCM has the authority and discretion to remove any participant who fails to adhere to this standard of conduct.



Decision-Maker and Hearing Officer

- ***Decision-Maker***. The Decision-Maker will determine the relevance of questions asked by Advisors during Live Hearings, and will make a written determination regarding responsibility by applying the preponderance of the evidence standard and may impose sanctions as appropriate.
- ***Hearing Officer***. The Hearing Officer will conduct the Live Hearing and may perform certain limited tasks, such as maintaining the decorum of the Live Hearing.



Relevance – What is Relevant?

According to Federal Rule of Evidence 401, evidence is relevant if:

- a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- b) the fact is of consequence in determining the action.

RELEVANCE = PROBATIVE + MATERIAL

Specific Information Deemed Not Relevant

Information that will be deemed not relevant includes:

- Information protected by a legal recognized privilege;
- Evidence about Complainant's sexual predisposition or prior sexual behavior
 - Unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
 - If evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and is offered to prove consent.
- Any party's medical, psychological, and similar records (unless the party has given voluntary written consent).

Advisors at Live Hearings

- Each party's Advisor asks the other party and witnesses relevant questions, including those challenging credibility.
- Such cross-examination must be conducted directly, orally, and in real time and never by a party personally.
- Hearing Officer must first determine whether the question is relevant and explain to the party's Advisor any decision to exclude a question as not relevant.
- If a Complainant or Respondent does not choose an Advisor, an Advisor will be provided by BCM, free of charge.
- Only the Hearing Officer and the Advisors are permitted to ask the other party or any witnesses relevant questions and follow-up questions.

Failure to be Subject to Cross Examination

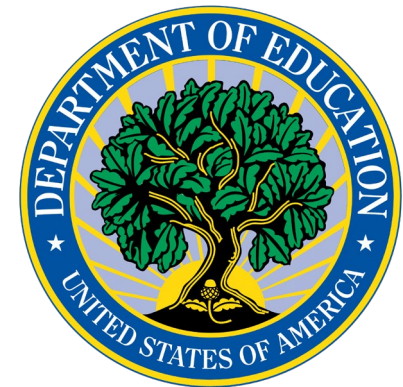
If a party or witness does not submit to cross-examination at the Live Hearing,

- the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility;
- provided, however, that the decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the Live Hearing or refusal to answer cross-examination or other questions.



Excluding Statements If No Cross Examination – OCR Guidance

If a party or witness chooses not to appear or opts not to answer cross-examination questions, the decision-maker merely excludes that party or witness's statements, and evaluates any evidence that does not involve those statements.



[Conducting and Adjudicating Title IX Hearings: An OCR Training Webinar](#),
U.S. Department of Education (July 23, 2020)

Exclusion Does Not Affect Alleged Harassing Statement

OCR Guidance

A Respondent's alleged verbal conduct, that itself constitutes the sexual harassment at issue, is not subject to exclusion for lack of cross-examination.



[Office for Civil Rights Blog](#) (May 22, 2020)

Examples of When to Exclude Witnesses Statements

- ✓ When a witness refuses to submit to cross-examination, even if the witness has already submitted to direct examination.
- ✓ When a witness or party stops responding to cross examination questions.
- ✓ When a witness or party does not appear for the hearing.



Recording or Transcript

- BCM will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review



Written Determination Required Components

Following hearing, the Decision-Maker will issue a written determination that includes:

- 1) identification of the allegations;
- 2) description of the procedural steps in Grievance Process;
- 3) findings of fact supporting the determination;
- 4) conclusions regarding application of BCM's Code of Conduct to facts;
- 5) a determination and rationale regarding responsibility for each allegation;
- 6) any disciplinary sanctions or other remedies; and
- 7) information concerning parties' ability to appeal.

Potential Sanctions and Remedies—Sexual Assault

Respondents found to have engaged in Sexual Assault will be removed from the BCM Community:

- Employees will be terminated.
- Students or trainees will be dismissed.

Title IX Misconduct Procedures Section VI.O.

Potential Sanctions and Remedies—Any other Title IX Misconduct

Possible sanctions or remedies that may be imposed on Respondents can include:

- Mandatory educational programs;
- Mandatory training programs;
- No-Contact Order;
- Administrative leave of absence;
- Restrictions on, or removal from, work or academic environment;
- School or program-specific disciplinary action, including formal warnings and adverse actions (e.g., suspension);
- Employment-focused disciplinary actions, including verbal warning, probation, or termination.

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Appeal Officer

- The Appeal Officer will make a final determination regarding responsibility if either the Complainant or Respondent appeal the written determination.
- For appeals requested by students, the Provost or designee will serve as the Appeal Officer.
- For appeals requested by faculty or staff, the Director of Human Resources or designee will serve as the Appeal Officer.
- The written decision of the Appeal Officer is final and may not be appealed.

Filing an Appeal and Response

- A party must file a written appeal within three (3) days of written determination or dismissal.
- Written appeal must set forth the grounds for the appeal.
- Appeals are not intended for use as a substitute adjudication process, and Complainant and Respondent may not pursue appeals based on mere disagreement with findings or sanctions.
- The non-appealing party must receive notice of the appeal and will have three (3) days from the date of notice to submit a written response to the Appeal Officer.

Title IX Misconduct Procedures Section VI.M

Grounds of Appeal

The parties may appeal a determination or a dismissal based on:

- A procedural irregularity that affected the outcome;
- New evidence not previously available;
- A conflict of interest or bias of the Title IX Coordinator, Investigator, Hearing Officer, or Decision-Maker; or
- Sanctions imposed are disproportionate given the severity of the conduct and the Respondent's previous conduct.

Except where newly discovered evidence is the basis for the appeal, appeals are limited to a review of the Evidence and written documentation from investigation and Live Hearing.

Review and Written Decision

- The Appeal Officer must issue a written decision within 7 days to both parties simultaneous.
- Appeal Officer has the ability to:
 - i. Deny appeal based on no grounds have been plausibly asserted;
 - ii. Affirm the findings, sanctions, and/or remedies;
 - iii. Modify the sanctions and/or remedies;
 - iv. Remand to the Title IX Coordinator and/or Decision-Maker with corrective instructions to address the procedural deviations;
 - v. In the event of new evidence, accept and affirm; or
 - vi. In the event of new evidence, modify finding(s) and remand to the Decision-Maker for new sanctions.

Recordkeeping Obligation

- The College must maintain the following information for a period of 7 years:
 - *Supportive measures*
 - *The investigation and determination*
 - *Any appeal*
 - *Informal resolution*
 - *All training materials*



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Title IX Versus Title VII/State Law – Different Definition of Sexual Harassment

BCM is subject to Title VII and Title IX.

- Title VII defines sexual harassment as “severe or pervasive,” whereas Title IX defines as “severe, pervasive, and objectively unreasonable.”
- Title VII “knew or should have known” versus “actual knowledge” required for Title IX.
- Title VII vicarious liability for acts of supervisors, without exception when the supervisor is the one engaging in the harassment. Not so with Title IX.

Title IX Versus Title VII/State Law – Applicable Policies

1. Title IX – Title IX Misconduct Policy and Grievance Procedure (02.2.20)
2. Title VII – Sexual Misconduct and Other Prohibited Conduct (02.2.26)
 - Misconduct that does not rise to level of “severe, pervasive, and objectively unreasonable” under Title IX or are outside scope of Title IX.
3. Title VII – Discrimination, Harassment and Retaliation (02.2.25)
 - Other types of prohibited discrimination and retaliation.

- If alleged sexual misconduct meets the definition of Title IX Misconduct, must proceed under Title IX Policy (02.2.20).
 - Title IX Policy is the default policy when allegations rise to Title IX Misconduct.
- If alleged misconduct does not fall within definition of Title IX Misconduct, must assess whether the misconduct meets the definition of either (i) sexual discrimination under BCM's Policy Regarding Discrimination, Harassment and Retaliation (02.2.25) or (ii) prohibited conduct under the Sexual Misconduct and Other Prohibited Conduct Policy (02.2.26).
- If so, proceed under applicable policy.

Title IX Misconduct Policy, Sections IV.A.

Mandatory Reporting Obligations Apply Regardless

- Employees must report both sexual misconduct, whether defined as Title IX Misconduct or “sexual discrimination” as defined in Discrimination, Harassment and Retaliation Policy (02.2.25).
- A failure to promptly report is a violation of Texas law.

A New Era in Title IX Enforcement

Questions?