

Effective Date: October 15, 2024

PROCEDURE

ACADEMICS, EMPLOYMENT, SAFETY, STUDENT LIFE

# Interim Equal Opportunity and Title IX Procedures

RESPONSIBLE OFFICE

Equal Opportunity Office

*\* Note: This Interim Equal Opportunity and Title IX Procedures document and corresponding Interim Equal Opportunity and Title IX Policy are effective October 15, 2024 and apply to conduct that occurs on or after October 15, 2024. Reports of discrimination, harassment, sexual misconduct and retaliation alleged to have occurred under a University Program or Activity prior to October 15, 2024 are addressed under prior policies and procedures identified in Section VI of these Procedures. Allegations of disability discrimination brought by students are reviewed under a different process, Student Grievance Procedure in Cases of Alleged Disability Discrimination, administered by BU's Disability & Access Services.*

Boston University's goal is to provide an equitable process and to help Community Members obtain the assistance they need. These Procedures and Appendices A, B, and C describe the University's process for reporting potential Prohibited Behavior; the rights of participants in the administrative resolution process, including supportive measures and advisors; and the three types of investigation and resolution processes used by the University when addressing

reports and complaints of Prohibited Behavior.

These Procedures and [Appendices A, B, and C](#) reflect legal and regulatory requirements and necessarily contain much detail. Please contact EOO for assistance in understanding them, including what to expect during the processes described below.

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# I. Scope and Jurisdiction of the Procedures

*These Procedures apply only to reports of Prohibited Behavior involving BU Community Members alleged to have occurred on or after October 15, 2024.* **Section VI** of these Procedures provides information regarding the policies and procedures applicable to incidents of discrimination, harassment, and retaliation occurring prior to October 15, 2024. Note also that allegations of disability discrimination brought by Students are reviewed under the **Student Grievance Procedure in Cases of Alleged Disability Discrimination**, managed by the Office of Disability & Access Services in the Dean of Students Office.

All other incidents of misconduct by Students or Employees that are not Prohibited Behavior may be addressed through other applicable University processes, including, for example, the Student Code of Responsibilities, the Faculty Handbook, the Staff Non-Represented Employee Handbook, or any applicable collective bargaining agreement.

# II. Reporting

## A. Reporting an Incident

### BU Employee Reporting Obligations

BU recognizes that individuals may prefer to discuss allegations with BU employees whom the individual knows well. All BU employees, except for confidential employees receiving the disclosure in the context of their confidential job duties, are considered Mandated Reporters. Mandated Reporters must report any information that reasonably may constitute

Prohibited Behavior to the University Title IX Coordinator. They must also provide the individual with information about how to contact the Title IX Coordinator and make a complaint. As detailed below, in [Sections II.C.](#) and [II.D.](#), the University endeavors to respect the privacy of the Parties and carefully considers any request not to proceed with an investigation and/or a complaint.

## How to Report

Community Members may report an alleged violation of the Policy in several ways: online, in person with a member of the Resolution Team (defined below) or a Mandated Reporter (non-confidential employee), by email, or by phone.

Reports of 2020 Sexual Misconduct must be in writing.

[\[1\]](#) Student complaints of alleged disability discrimination should be reported to the Director of Disability & Access Services in accordance with the [Student Grievance Procedure in Cases of Alleged Discrimination](#). The University's Disability & Access Services is located at 25 Buick Street, Suite 300, Boston, Massachusetts 02215, and may be reached by phone at 617-353-3658 or email at [access@bu.edu](mailto:access@bu.edu)

## Online Reporting

Fill out the [Incident Report Form](#) to report Prohibited Behavior.

## In Person, Email, or Phone Reporting

Report Prohibited Behavior to the Equal Opportunity Office ("EOO") and/or University Title IX Coordinator at:

### [Equal Opportunity Office](#)

888 Commonwealth Ave., Suite 303

Boston, MA 02215

617-358-1796

[eeo@bu.edu](mailto:eeo@bu.edu)

Title IX Coordinator

Jean Pryor Estevez, Executive Director of Equal Opportunity & Title IX Coordinator

888 Commonwealth Ave., Suite 303  
Boston, MA 02215  
617-358-1796  
[titleix@bu.edu](mailto:titleix@bu.edu)

Community Members may also report Prohibited Behavior to any Mandated Reporter or Deputy Title IX Coordinator via email, phone, or in person. A list of the University's Deputy Title IX Coordinators may be found [here](#).

## Response to a Report

The University encourages any Community Member who has concerns about Prohibited Behavior to seek the assistance of the Resolution Team. A member of the Resolution Team will meet with any person, including a Complainant, Respondent, or Reporter, to discuss Supportive Measures, resources, and procedural options for on- and off-campus reporting. The Resolution Team will:

- Review Administrative Resolution options, including the Grievance Process and Alternative Resolution Process, and the impact of each option;
- Provide referrals for counseling services available on campus and, in cases involving sex-based harassment, through local community-based rape crisis or domestic violence centers (see [Appendix B](#) for available resources);
- Provide referrals for medical and health services available on and off-campus;
- Identify available school- or work-based Supportive Measures related to academic and residence life, and employment;
- Explain BU's disciplinary process under these Procedures;
- Explain how the legal process is carried out through local law enforcement agencies, if applicable; and
- Notify the reporting party of their rights and BU's responsibilities in obtaining a criminal protection order (M.G.L. c. 209A/258E), BU No Contact Directive, BU No Trespass Order, and other lawful orders from law enforcement, if applicable.

## B. Anonymous or Historical Reports of Prohibited Behavior

Anyone may make an anonymous report regarding Prohibited Behavior. In cases where the report is made anonymously or by a person to whom a disclosure of potential Prohibited Behavior has been made, the Policy and these Procedures will be applied in the same

manner as if the Complainant had made the initial report. EOO will attempt to meet with the Complainant to discuss available options, including Supportive Measures, as well as on- and off-campus resources.

The nature and level of the University's response to such reports is at EOO's discretion. For example, EOO may document allegations for future reference, offer Supportive Measures, and/or engage in informal or formal action. In cases where the Complainant wishes to remain anonymous, but the Resolution Team determines it necessary to file a Formal Complaint to initiate the complaint resolution process, the University is obligated to disclose details about the allegations to the Respondent, including the Complainant's identity, if known.

There is no time limit for submission of a report. However, BU's ability to investigate, respond, discipline, and/or provide remedies for anonymous or historical reports of Prohibited Behavior will be impacted by a number of factors. These include the level of information available about the incident and the individuals involved, whether the parties are subject to BU's jurisdiction, the Complainant's willingness to participate in the Administrative Resolution Process, and whether significant time has passed since the incident(s) described in such a report. Cases in which BU no longer has jurisdiction include, for example, when the parties are no longer enrolled at or employed by the University, or the parties are no longer participating in an Education Program or Activity.

## C. Privacy

BU understands that Community Members' willingness to disclose information about Prohibited Behavior may depend on the extent to which the information they provide will not be broadly disclosed. At the same time, BU wants all Community Members to seek the assistance they need. In service of that goal, BU will work to maintain the privacy of information shared with the EOO, and will not disclose personally identifiable information (as defined under FERPA, the Family Educational Rights and Privacy Act) received during the course of an Administrative Resolution Process except in the following circumstances: (1) prior written consent from the person who has the authority to consent; or (2) when EOO shares the information with a confidential resource or someone who has permission to receive the information (such as an advisor or confidential resource provider); or (3) when the information is provided to people involved in the Procedures, including Parties, as well as other Employees as needed to effectuate the Procedures; or (4) as required by federal

law or the terms of a federal grant; or (5) when the disclosure is not prohibited by Applicable Law. The Resolution Team will inform all University personnel participating in an investigation, proceeding, or hearing that they are expected to maintain the privacy of the process.

BU will take reasonable steps to: (i) maintain the privacy of the Parties and witnesses, in a manner that does not restrict the Parties' ability to gather and present evidence, speak to witnesses (provided that this conduct is not retaliatory), consult with family members, confidential resources, or Advisors, or otherwise prepare for or participate in the Administrative Resolution Process (including the Grievance Process and Alternative Resolution Process, all as described further below); and (ii) to prevent and address the Parties' and their Advisors' unauthorized disclosure of information and evidence obtained solely through the Grievance Process. (For example, BU may seek the Parties' written agreement to refrain from disclosing information obtained solely through the Administrative Resolution Process and/or may evaluate whether a Party's unauthorized disclosure may violate the [Policy](#)'s prohibition against Retaliation and, if so, to take action to address such disclosure using these Procedures).

## **D. Complainant Request for Confidentiality and Community Safety Concerns**

A Complainant making a Complaint and pursuing an investigation, and witnesses participating in those processes, cannot remain anonymous because all parties have a right to know who is providing evidence relevant to the allegation(s). If the Complainant requests confidentiality or expresses a desire for the report or Complaint not to be pursued, and if the Alternative Resolution process has not been initiated or the process began but was terminated, EOO will assess the Complainant's request for anonymity and/or not to proceed. In conducting this evaluation EOO will consider various factors, including but not limited to:

- The Complainant's request not to proceed with the initiation of a complaint;
- The Complainant's reasonable safety concerns regarding initiation of a complaint;
- The risk that additional acts of Prohibited Behavior would occur if a complaint was not initiated, including whether there were other reports of alleged Prohibited Behavior involving the same Respondent;



- The seriousness of the alleged Prohibited Behavior and whether, if established, the Respondent would be removed from campus or some other serious sanction would be necessary;
- The Respondent has a history of arrests or records from a prior school indicating a history of violence;
- The Respondent threatened further Prohibited Behavior or other violence against the Complainant or others;
- The Respondent is a BU Employee;
- The Prohibited Behavior was committed by multiple Respondents;
- The Prohibited Behavior was perpetrated with a weapon;
- The age and relationship of the parties, including whether Complainant is a minor;
- BU possesses other relevant evidence (e.g., security camera footage, security personnel observations, physical evidence);
- Applicable legal requirements;
- The Complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular person or group or ongoing Prohibited Behavior; or,
- Whether BU could end the Prohibited Behavior and prevent it from recurring without initiating a complaint.

If, based on EOO's assessment, it determines that Complainant's request for confidentiality or decision not to participate in an investigation will be honored, BU's ability to meaningfully investigate the incident or take action against the Respondent(s) may be limited.

In extraordinary cases, EOO may initiate the Grievance Process without the cooperation of the Complainant. For example, EOO may do so, after considering the factors listed above, in response to a Report of Prohibited Behavior that presents an imminent and serious threat to the health or safety of the Complainant or BU Community Members, or when the conduct alleged in the report prevents BU from ensuring equal access to the University's Education Program or Activity. (However, if the allegations involve 2020 Sexual Misconduct, the University is obligated to disclose details about the allegations to the Respondent, including the Complainant's identity, if known.) EOO would become the Complainant in this instance. EOO will notify the impacted person who requested anonymity or declined to participate that EOO is commencing the Grievance Process. EOO will give the impacted person an opportunity to review any concerns with EOO and receive Supportive Measures, and will provide case progress updates, including how the investigation concludes, on request.

## **E. Emergency Removal of Student Respondent**

BU may remove a Student Respondent from its campus(es) on an emergency basis if it determines, after an individualized safety and risk review, that: (i) a Student Respondent poses an immediate threat to the physical health or safety of any Complainant or any student, employee, or other person(s) based on the allegations of Prohibited Behavior; and (ii) the threat arises from the allegations of Prohibited Behavior. Such removal may include a temporary suspension or leave of absence. In such cases, the University will provide the Student Respondent with notice and the opportunity to challenge the decision immediately following the removal.

## **F. Administrative Leave for Employees**

BU may place an Employee Respondent on administrative leave from their employment responsibilities at any time, including while an Administrative Resolution process is underway. Any such action will not be considered an emergency removal under these Procedures, and Employees will not be provided with the opportunity to appeal that decision. Any notification of administrative leave will occur outside of EOO and the Procedure.

# III. Preliminary Matters

## A. Effect of Pending Administrative Resolution on the Respondent

If the Respondent is a current Student or Employee, no notation of a Complaint, Formal Complaint, ongoing Administrative Resolution Process or pending disciplinary action will be placed on the Student Respondent's transcript or in the Employee Respondent's personnel file, as applicable, prior to the conclusion of the Administrative Resolution Process, including any appeal and/or other internal process. However, if a Student Respondent withdraws from BU while the Administrative Resolution Process is pending, the Student Respondent's transcript will reflect a withdrawal and a notation of pending disciplinary action, subject to modification to reflect its outcome. If the Respondent is a current Employee, no notation of an ongoing investigation will be placed in the Employee's personnel file prior to the conclusion of the Procedures and any applicable appeals or further internal process stemming from the Administrative Resolution Process unless the Employee resigns from their position at BU prior to the conclusion of the Administration Resolution Process, in which case the Employee's personnel file will reflect their resignation and a notation of a pending Administration Resolution Process, subject to modification to reflect the outcome of the Administrative Resolution Process, if there is an outcome.

## B. Rights of the Complainant and Respondent During Administrative Resolution Process

Throughout the Administrative Resolution Process described in [Section IV](#), both the Complainant and Respondent are entitled to the following:

- Equitable treatment.
- Access to the Policy and Procedures applicable to their case, including information about available Supportive Measures and the process for submission and consideration of evidence that may be used during an investigation.
- An Advisor or support person of their choice who may accompany and consult with the Parties throughout the proceedings, provided the Advisor cooperates with the rules established by the EOO about participation in the Administrative Resolution Process,

including that the availability of an Advisor may not significantly delay any meeting. EOO will make reasonable efforts to accommodate an Advisor's schedule.

- Notice of an allegation of the Prohibited Behavior that will include the date, time, and location, if known, of the alleged incident, including a specific statement of policies allegedly violated.
- An Administrative Resolution Process, including the Grievance Process, Informal Resolution Process, and appeals, that is impartial and conducted by an individual who does not have a conflict of interest or bias and who will have not less than annual training on the Policy and Procedures.
- A presumption that the Respondent is not responsible for the alleged Prohibited Behavior until a determination regarding responsibility has been made by a Preponderance of the Evidence at the conclusion of the Grievance Process or the Complaint or Formal Complaint is resolved through the Alternative Resolution Process.
- To decline to participate in the complaint resolution process. Based on the circumstances, the University may continue the complaint resolution process without the Complainant's and/or Respondent's participation. Doing so, however, may impact the availability of evidence and the University's ability to proceed fairly and effectively.
- Simultaneous written notice of the outcome of an Investigation of a Complaint (alleging General Sexual Misconduct) or Formal Complaint (alleging 2020 Sexual Misconduct), including Sanctions (if any), not later than seven (7) days after a final determination of a Complaint addressed through the Administrative Resolution Process (not including time for an appeal), unless good cause for additional time is shown.
- Information about any appeal rights and procedures, including that both Parties are permitted the opportunity to appeal determinations regarding responsibility or sanctions.
- Non-disclosure of the identity of the Parties by the University, except as necessary for BU to carry out the Administrative Resolution Process under the Policy and Procedures, or as permitted under state or federal law.

As explained in [Section IV\(D\)\(2\)](#), during the Administrative Resolution Process, both the Complainant and Respondent are entitled to:

- Equal opportunity to inspect, review, and respond to evidence obtained in an investigation of a Complaint or Formal Complaint.
- Equal opportunity to present evidence and witnesses on their behalf during an investigation and hearing (conducted in cases involving allegations of 2020 Sexual

Misconduct), and each party will be provided with timely and equal access to evidence that will be used during the Administrative Resolution Process.

- Restrictions on the types of evidence considered by the Investigator, including evidence regarding prior sexual history or character evidence.
- Provide any questions to the Investigator to ask the other Party, because Parties may neither personally nor indirectly question each other during an investigation. However, if a specific question cannot be asked, the Investigator will provide a rationale for the decision.

BU is committed to providing reasonable accommodations and support to qualified BU Community Members with disabilities to ensure equal access to the Administrative Resolution Process. Any person needing such accommodations or support during the Administrative Resolution Process should contact the EOO at [accomm@bu.edu](mailto:accomm@bu.edu), who will review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full participation in the process.

## C. Supportive Measures

After EOO receives a Report of alleged Prohibited Behavior under the Policy, or at any point during the Administrative Resolution Process, Supportive Measures are available to the Parties. Supportive Measures are individualized measures offered as appropriate and as reasonably available and will not unreasonably burden a Complainant or Respondent. They are offered to protect the safety of the Parties and/or BU Community Member(s) by preserving access for BU Community Member(s) to BU's living, learning, and working environment, and are not offered or implemented for disciplinary or punitive reasons. It is not necessary for a Complainant to proceed with an Administrative Resolution Process to use Supportive Measures and they are available at no cost to the Parties. EOO works with the Parties to ensure their wishes are considered with respect to any planned and implemented Supportive Measures. EOO will consult with the relevant school, college, or administrative unit (and Disability & Access Services, when appropriate) when planning and implementing Supportive Measures.

# 1. Factors Considered When Implementing Supportive Measures

In determining whether to implement one or more Supportive Measures, EOO will consider the following:

- ages of the parties involved;
- the nature of the alleged Prohibited Behavior and any continuing effects on the Complainant or Respondent;
- whether the Parties continue to be enrolled or employed, or otherwise engaged in classes, work, or an Education Program or Activity; and
- whether a no-contact and/or no-trespass order, or other steps, have already been taken to mitigate any harm from the Parties' interactions.

If the Respondent is unknown or is not a BU Community Member, EOO may assist the Complainant in identifying appropriate institutional and local resources and support options. If criminal conduct is alleged, BU may assist the Complainant in contacting BUPD or other applicable law enforcement to file a police report, seek a restraining order, or obtain other support. Further, even when the Respondent is not a BU Community Member, or the alleged Prohibited Behavior occurs outside of the United States or outside of a BU Education Program or Activity, Supportive Measures may be provided to the Complainant by contacting the EOO.

To the extent possible, BU will maintain the confidentiality of the Supportive Measures, including as between the Parties, provided that confidentiality does not impair BU's ability to implement those Supportive Measures.

## 2. Appeal Of Supportive Measures

If a Party believes any Supportive Measure offered under these Procedures does not meet their needs, they may appeal the Supportive Measure(s).

The appeal is limited to the Supportive Measures that are applicable to the Party itself, and the scope of the appeal is limited to seeking a modification or reversal of the decision to provide, deny, modify or terminate Supportive Measures.

The appeal must be made directly to the Title IX Coordinator or Executive Director of EOO (“TIXC/EOD”) using the Supportive Measure Appeal Form available through EOO. The TIXC/EOD or, in the case of a conflict, a Resolution Team member (other than the member implementing the Supportive Measures) will decide the appeal and provide a decision (including a rationale) within 14 days. The decision will be final, although an additional appeal will be permitted if circumstances impacting the Complainant or Respondent change materially after the decision on the original appeal.

### **3. Duration of Supportive Measures**

Supportive Measures may be modified, terminated, or continued at the conclusion of the Administrative Resolution Process by EOO.

## **D. Advisors**

Parties may each choose and be accompanied to any meeting or interview related to these Procedures by one person serving as an Advisor. During meetings and interviews, the Advisor may provide support by quietly conferring with or passing notes to the Party in a non-disruptive manner. The Advisor may not ask questions of any Party or witness or provide evidence. Consistent with BU’s commitment to promptly resolving complaints, EOO reserves the right to proceed with any meeting or interview regardless of the availability of the party’s selected Advisor.

During the hearing phase of the 2020 Sexual Misconduct Procedures (explained further in [Section IV.D.3.c](#)), each Party is required to have a Hearing Advisor during the hearing who will question the other Party and witnesses at the hearing. Otherwise, a Hearing Advisor may not speak on behalf of a Party or otherwise participate in, or in any manner delay, disrupt, or interfere with the hearing. If a Party does not have a Hearing Advisor to serve on their behalf during the hearing, the Party should immediately (and at least 2 days in advance of the hearing date) contact the Hearing Facilitator assigned to the matter at [titleix@bu.edu](mailto:titleix@bu.edu) to discuss the appointment of a Hearing Advisor by the University to conduct the questioning at the hearing on behalf of that Party. The University may provide a Party with a different Hearing Advisor if the Party’s selected Hearing Advisor does not comply with the rules and expectations described in this section.



Advisors are expected to advise ethically, with integrity, and in good faith. Advisors are also expected to maintain the privacy of the records shared with them.

Choosing an Advisor who is also a witness in the process creates the potential for bias and conflict of interest. Given this, the University advises against selecting a witness as an Advisor.

If an Advisor disrupts the Administrative Resolution Process or otherwise fails to respect the limits of the Advisor role, EOO may suspend the meeting or interview, or implement other appropriate measures, including requiring the party to use a different Advisor.

If a Complainant or Respondent elects to have an Advisor in an Administrative Resolution Process, they must submit an [Advisor Designation Form](#) available at [www.bu.edu/eoo](http://www.bu.edu/eoo). Parties should submit the Advisor Designation Form in advance of any interview in which the Advisor attends as part of the EOO Administrative Resolution Process.

## **E. Timeframe for Complaint Resolution**

EOO will seek to resolve each Complaint and Formal Complaint through the Grievance Process or Alternative Resolution Process in 150 Days.

Time frames may vary depending on the complexity of a case, availability of witnesses, and the time of the academic year (for example, during breaks, study periods or final exams, some delay may be inevitable). EOO may extend any time frame for good cause and will provide a written explanation to the Parties. In the case of significant delay, the Parties will be informed in writing and provided an estimate of the anticipated additional time needed as a result of the delay.

## **F. Concurrent Criminal or Civil Processes**

The filing and processing of a Complaint or Formal Complaint of Prohibited Behavior with EOO is separate from and independent of any criminal law enforcement investigation or court proceeding.

EOO's action(s) 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. On a case-by-case basis, however, EOO may briefly delay its investigation (several days to weeks) when law enforcement is investigating criminal charges based on the same Prohibited Behavior. Neither law enforcement's decision whether to prosecute a Respondent nor the outcome of a criminal prosecution determines whether a violation occurred under the Policy.

## **IV. Administrative Resolution Process**

The Administrative Resolution Process at BU is the process used to address reports, Complaints, and Formal Complaints of Prohibited Behavior, including 2020 Sexual Misconduct. The Administrative Resolution Process consists of the Alternative Resolution Process and the Grievance Process, both described in detail below.

The process for resolving Formal Complaints alleging 2020 Sexual Misconduct differs in some important ways from the process used to resolve all other Complaints including, for example, whether the Alternative Resolution Process is available, the process for dismissal of Complaints, the types of evidence available during the proceedings, and whether findings are made by an investigator or a hearing panel. The distinctions are explained in detail below.

### **A. Report Submitted and Intake**

After receiving a Report of alleged Prohibited Conduct, the Resolution Team will contact the Complainant and conduct an intake. During an intake, EOO will:

- Explain the availability of Supportive Measures;
- Describe the processes available to the Complainant, including Supportive Measures, filing a Complaint or Formal Complaint, Alternative Resolution, and the Administrative Resolution Process;
- Assist the Complainant in determining which process they prefer; and
- Explain the process for filing a Complaint or Formal Complaint.

## B. Initial Assessment

Following completion of an intake, EOO conducts an initial assessment. The steps in an initial assessment include:

- Determination of appropriate Supportive Measures, if any, as described in [Section III.C](#), above.
- Assessment of the allegations to determine whether the Complaint or Formal Complaint should be dismissed because of any one or more of the following four reasons described in the Dismissals section below, [Section IV.D.5](#). EOO will follow the dismissal process outlined in that section when dismissing a Complaint or Formal Complaint.
- If the allegations allege a potential violation of the Policy, the EOO works with the Complainant to determine which of three options to pursue:
  - **Supportive Measures** (described in [Section III.C](#)) – Supportive Measures offered to protect the safety of the Parties and/or BU Community Member(s) and to help restore or preserve equal access for both Parties to the living, learning, and working environment, not for disciplinary or punitive reasons.
  - **Alternative Resolution Process** (described in [Section IV.C](#)) – Available only with the University's agreement, and either: (1) with voluntary consent by the Parties to Alternative Resolution; or (2) when the Respondent is willing to accept responsibility for violating the Policy.
  - **Grievance Process** (described in [Section IV.D](#)) – Investigation of alleged Policy violation(s) resulting in a finding of whether the Policy was violated, determination of a sanction by an administrator, remedies, and the opportunity to appeal in accordance with these the Procedures. *The Grievance Process for Formal Complaints alleging 2020 Sexual Misconduct requires a hearing in addition to an investigation and the opportunity to appeal*

- Other steps deemed appropriate by EOO, based on the circumstances of each case.

## **C. Alternative Resolution Process**

In the Alternative Resolution Process, the Parties seek a resolution of a Complaint or Formal Complaint using an alternative resolution mechanism, including but not limited to, mediation, restorative practices, facilitated dialogue, or accepted responsibility.

### **1. Initiating the Alternative Resolution Process**

Complainant or Respondent may request to the Resolution Team that a Complaint or Formal Complaint be resolved using the Alternative Resolution Process at any point prior to any finding under these Procedures that a Policy violation has or has not occurred. *To engage in the Alternative Resolution Process in a case involving allegations of 2020 Sexual Misconduct, a Formal Complaint must be filed prior to initiating the Alternative Resolution Process.*

The Alternative Resolution Process may be requested to resolve any Complaint or Formal Complaint alleging Prohibited Behavior except for any Formal Complaint in which a student alleges a University employee engaged in 2020 Sexual Misconduct.

### **2. When The Alternative Resolution Process Is Permitted**

Following a request by one or both Parties, EOO will review the request to determine whether the Alternative Resolution Process is appropriate in the case and, if so, which form of Alternative Resolution may be most successful for the Parties, based on the following factors:

- Likelihood of potential resolution, considering any power dynamics between the Parties;
- The nature and severity of the alleged Prohibited Behavior;
- Parties' motivation to participate;
- Civility of the Parties;

- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history of the Respondent;
- Whether Administrative Leave for a BU Employee or leave of absence for a Student is needed;
- Skill of the Alternative Resolution Process facilitator with the type of Complaint (the nature of the alleged Prohibited Behavior);
- Complaint complexity;
- Emotional investment/capability of the Parties;
- Goals of the Parties;
- Whether the Alternative Resolution Process would conflict with any federal, state, or local law; and
- Whether EOO has adequate resources available to support the Alternative Resolution Process.

In some circumstances, the Respondent may be willing to accept responsibility for all or part of the alleged Prohibited Behavior, which would initiate a form of Alternative Resolution called Accepted Responsibility. When a Respondent wishes to pursue Accepted Responsibility, EOO will determine whether it is an appropriate mechanism to resolve a Complaint or Formal Complaint and initiate the process as detailed below.

For all other forms of Alternative Resolution, EOO must obtain confirmation that the parties voluntarily wish to resolve the matter through the Alternative Resolution Process. If both Parties agree, EOO will consult with the Parties to determine what mechanism, including but not limited to, mediation, or restorative practices, is most appropriate under the circumstances.

EOO will not pressure the Parties to participate in the Alternative Resolution Process or condition their continued enrollment or employment on participation. EOO may decline, at its discretion, to offer the Alternative Resolution Process, even if one or both of the Parties request it. EOO may also terminate the Alternative Resolution Process after it has begun and refer the matter to the Grievance Process if, in its sole discretion, any material factors leading to its decision to permit Alternative Resolution have changed, and it no longer appears that the Alternative Resolution Process is appropriate or will be successful.

Parties are not required to engage in the Alternative Resolution Process prior to pursuing the Grievance Process, and either Party participating in the Alternative Resolution Process may stop the process at any time and begin or resume the Grievance Process. If the Parties are already engaged in the Grievance Process at the time the Alternative Resolution Process begins, EOO will determine whether the Grievance Process will be paused, continued, or limited in some fashion while the Alternative Resolution Process is underway.

EOO is authorized to facilitate a resolution achieved through the Alternative Resolution Process that is acceptable to the Parties, and/or to accept or reject a resolution that is proposed by the Parties, including terms of confidentiality, release, and non-disparagement.

### **3. Notice of the Alternative Resolution Process**

If BU and the Parties agree to engage in the Alternative Resolution Process, EOO will provide parties with written notice of the following:

- The alleged Prohibited Behavior;
- The requirements of the Alternative Resolution Process, including conditions for withdrawing from it and initiating or resuming the Grievance Process;
- That the TIXC/EOD must take appropriate prompt and effective steps to ensure that discrimination does not continue within the University's Education Program or Activity;

- Conditions for any resolution agreement at the conclusion of the Alternative Resolution Process;
- Potential terms that may be requested or offered; and,
- Information about any Alternative Resolution Process records that may be maintained by EOO or shared by EOO in any Grievance Process that may be initiated or resumed.

## **4. Recordkeeping, Determination Of Sanctions, And Enforcement Of Resolution Agreement**

The EOO maintains records of any resolution reached through the Alternative Resolution Process.

The relevant Administrator(s) is responsible for implementing restrictions and remedies agreed upon by the Parties in a Resolution Agreement obtained through the Alternative Resolution Process, and determines the appropriate sanction(s) in coordination with EOO, as necessary. Any terms of a resolution agreement achieved during Alternative Resolution are not subject to appeal once the parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Administrative Resolution Process may continue.

When a resolution is accomplished, the appropriate disciplinary sanctions, remedies, and/or responsive actions will be promptly implemented by the Administrator(s) or their designee(s) to effectively stop the Prohibited Behavior, prevent its recurrence, and remedy the effects of the Prohibited Behavior, both on the Complainant and the BU Community Members. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral to the Administrative Resolution Process or to the applicable disciplinary process (Student Code of Responsibilities, Faculty Handbook, Non-Represented Staff Handbook, and/or collective bargaining agreement) for failure to comply).

## **5. Accepted Responsibility**

Accepted Responsibility is another form of Alternative Resolution, which occurs when a Respondent accepts responsibility for all or part of Prohibited Behavior alleged in a Complaint or Formal Complaint. The Respondent may accept responsibility at any point prior to any finding under these Procedures that a Policy violation has or has not occurred.

If a Respondent is willing to accept responsibility for all or part of the alleged Prohibited Behavior, the Administrative Resolution Process will be paused and EOO will determine whether the Alternative Resolution Process is appropriate based on the factors listed above. If EOO deems Accepted Responsibility as an appropriate mechanism to resolve the Complaint or Formal Complaint, it will consult with the Parties regarding responsibility, restrictions and/or remedies. EOO will then implement the accepted finding that the Respondent is in violation of the Policy and refer the matter to the Administrator(s) to determine sanctions, marking the end of the Administrative Resolution Process.

## **D. Grievance Process**

The Grievance Process described below is used for resolving Formal Complaints (alleging 2020 Sexual Misconduct) and Complaints (alleging any other form of Prohibited Behavior). Certain aspects of the Grievance Process differ for Complaints and Formal Complaints. These differences are identified below.

### **1. Filing a Complaint or Formal Complaint**

*A Formal Complaint is necessary to initiate the Grievance Process applicable to allegations of 2020 Sexual Misconduct; a Complaint is necessary to initiate the Grievance Process applicable to allegations of all other forms of Prohibited Behavior.*

A Complainant may submit an [Incident Report Form](#) to the Title IX Coordinator or their designee to initiate a Complaint or Formal Complaint, but is not required to do so. This Form is available online, and through the Title IX Coordinator, the Dean of Students Office, or EOO.

As explained above, in extraordinary circumstances, the TIXC/EOD may sign a Complaint or Formal Complaint to initiate the Grievance Process.

A Complaint or Formal Complaint must contain sufficient information to permit the Respondent to understand and respond adequately to the allegations, but need not reflect every detail. Additional information may be discovered during the investigation.

## **2. Notice of Investigation and Allegations**

After determining an investigation of a Complaint or Formal Complaint is warranted, EOO will provide written notice of the investigation and allegations (“NOIA”) to the Parties. The NOIA facilitates the Parties’ ability to prepare for an interview, to identify and choose an Advisor to accompany them, and to request Alternative Resolution. The NOIA may be delivered by one or more of the following methods: (a) mailed to the Complainant and Respondent’s respective designated addresses, (b) emailed to the Complainant and Respondent’s BU-issued email or designated accounts, or (c) delivered in person. Once mailed, emailed, and/or received by a party in-person, the NOIA is presumed delivered.

Based on an individualized safety and risk analysis, EOO may reasonably delay providing the NOIA to the Parties to address safety concerns of any



person which may arise because of providing the NOIA.

The NOIA will contain the following information and statements:

- Copy of the Policy and these Procedures.
- Explanation of the process for investigating and adjudicating Complaints and Formal Complaints under these Procedures, including the Administrative Resolution Process (Grievance Process and Alternative Resolution Process), and appeals.
- Summary of the Complaint or Formal Complaint which will provide sufficient information to allow the Parties to respond to the allegations, including the (a) identities of the Parties involved, (b) conduct that forms the basis for the alleged Prohibited Behavior, and (c) date(s)/time(s) of the alleged Prohibited Behavior (if known to the University).
- The Respondent is presumed not responsible for the Prohibited Behavior until a determination is made by the Preponderance of the Evidence at the conclusion of the Grievance Process or the Complaint or Formal Complaint is resolved through the Alternative Resolution Process.
- The Parties may have an Advisor of their choice, who may be an attorney, during the Administrative Resolution Process, including during any meeting, interview, or hearing.
- The University's rules regarding the participation of the Advisor during the process.
- The Parties will have equal opportunities to inspect, review, and present to a trained, impartial decisionmaker certain types of evidence depending on the nature of the allegations and the stage of the Grievance Process:
  - ***For Formal Complaints alleging 2020 Sexual Misconduct***, the Parties may inspect and review any evidence obtained as part of the investigation that is directly related to the allegations in the Formal

Complaint, and to present at a hearing Relevant and not otherwise Impermissible Evidence; and

- ***For Complaints alleging all other forms of Prohibited Behavior***, the Parties may inspect, review and present to an impartial decisionmaker all Relevant and not otherwise Impermissible Evidence.
- The University will identify in writing to the Parties the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient time for the party to prepare to participate.
- An explanation of the prohibition against Retaliation.
- If Supportive Measures have been implemented, an explanation of the scope of those measures, the parties' respective duties to comply with them, and appeal rights.

Amendments and updates to the NOIA may be made at any point during the Administrative Resolution Process if additional information becomes available regarding the addition or dismissal of allegations in the Complaint.

### **3. Investigation of Complaints and Formal Complaints**

If EOO determines that the alleged Prohibited Behavior rises to a potential violation of the Policy, EOO will initiate the Grievance Process by appointing an impartial Investigator(s). Concerns regarding bias or conflict of interest related to the Investigator may be raised with the TIXC/EOD, who will determine whether the concern is reasonable and supportable. If so, a different Investigator(s) will be assigned.

#### **a. Preliminary Matters**

## Preponderance Of The Evidence Standard of Proof

Throughout the Grievance Process, the Respondent is presumed not responsible for the alleged Prohibited Behavior unless and until the Respondent is determined, under these Procedures, to be responsible for a Policy violation by the Preponderance of the Evidence standard of proof (more likely than not) as defined in [Appendix A](#).

### *Consolidation of Complaints*

When allegations of Prohibited Behavior arise out of the same facts or circumstances and are asserted by (i) one Complainant against more than one Respondent, (ii) more than one Complainant against one or more Respondents, or (iii) one Party against another Party, EOO may, in its discretion, consolidate the allegations into one Complaint or Formal Complaint.

### *Unauthorized Disclosure of Information and Evidence By The Parties*

As stated above in [Section II.C](#), BU may seek the Parties' written agreement to refrain from disclosing information obtained solely through the Grievance Process and/or may evaluate whether a Party's unauthorized disclosure violates the Policy's prohibition against Retaliation. If so, BU may take action to address such disclosure using these Procedures. In addition, the EOO will take reasonable steps to prevent and address the Parties' and their Advisors' unauthorized disclosure of information and evidence obtained solely through the Grievance Process.

### *Use Of Evidence During The Investigation Process*

The types of evidence that may be accessed, reviewed, and considered by the Parties, an Investigator, and a decisionmaker during the Grievance Process differ between cases alleging 2020 Sexual

Misconduct and cases alleging any other form of Prohibited Behavior. In all cases, the Parties are expected to provide all available relevant evidence to the Investigator during an investigation.

▪ ***Complaints alleging Prohibited Behavior other than 2020 Sexual Misconduct***

The Investigator will collect, consider, and share evidence (only when necessary), and the Parties are entitled to review, only relevant and not otherwise Impermissible Evidence.

EOO may redact certain information from documents or evidence collected during an investigation prior to sharing such information, such as (i) information that is irrelevant, but contained in documents or information that are relevant; (ii) Impermissible Evidence; or (iii) information that may violate the privacy rights of another Student, Employee, or Community Member and is not relevant to the issues at hand.

▪ ***Formal Complaint alleging 2020 Sexual Misconduct***

The Investigator will collect, consider and share (only when necessary), and the Parties will have an equal opportunity to inspect and review, any directly related evidence obtained during the investigation. Directly related evidence includes, for example: (i) evidence that is directly related to the allegations in a Formal Complaint, even if the University does not intend to rely upon the evidence in reaching a decision about responsibility, and (ii) inculpatory or exculpatory evidence that is directly related to the allegations, whether obtained from a party or another source. Directly related evidence does not include Impermissible Evidence.

EOO may redact certain information from documents or evidence collected during an investigation of a Formal Complaint, such as information that is not directly related evidence, and

## Impermissible Evidence.

In addition, any relevant evidence not submitted during the investigation of a Formal Complaint may be excluded from consideration at the Hearing by the Chair if it is determined that such evidence was available to the party prior to the Hearing.

### *Impermissible Evidence*

The following types of evidence, and questions seeking that evidence, are impermissible during the Grievance Process for cases involving all forms of Prohibited Behavior:

- Information protected under legal privilege or provided to a Confidential Employee, unless the person who is owed confidentiality voluntarily waives the privilege or confidentiality.[\[2\]](#)
- Records made or maintained by a physician, psychologist, or other recognized professional or paraprofessional while treating a Party or witness, unless EOO obtains the written, voluntary consent from the Party or witness to use the records in the Grievance Process.
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless the evidence about the Complainant's prior sexual conduct is:
  - offered to prove that someone other than the Respondent engaged in the Prohibited Conduct, or,
  - about specific incidents of the Complainant's prior sexual conduct with the Respondent and offered to prove consent to the alleged Sexual Misconduct. Any prior consensual sexual conduct between the Complainant and Respondent does not, standing alone,

demonstrate or imply Complainant consented to the alleged Prohibited Misconduct or preclude a determination that the Prohibited Behavior occurred.

[2] As explained further in **Appendix B**, BU designates certain employees as Confidential Resources under this Policy, meaning that information provided to a Confidential Resource is considered Impermissible unless the person to whom the confidentiality is owed gives permission in writing for such information to be disclosed. Please note that not all information provided to a Confidential Resource is privileged or confidential under federal or state laws and thus may be admissible in criminal or civil proceedings.

### *Witness Participation*

Witnesses who are BU Community Members are expected to cooperate with, and participate in, BU's Administrative Resolution Process with honesty and in good faith. Non-cooperation or untruthfulness by an Employee or Student witness may result in disciplinary action under the applicable conduct code.

### *Remote Processes*

EOO may conduct any meeting under these Procedures remotely by phone, video conferencing, or similar technologies if EOO determines that timeliness, efficiency, or other cause establishes a need for remote interviewing.

### *Recording*

No unauthorized audio or video recording of any kind is permitted during any meeting conducted as part of these Procedures. If Investigator(s) elect to audio and/or video record interviews, all

involved parties must be made aware of and consent to audio and/or video recording.

### *Previous Allegations/Violations*

While previous disciplinary violations by Respondent are not generally admissible as information supporting the current allegation, Investigator(s) may consider previous violations of the Policy when the information suggests a potential pattern and/or predatory conduct.

Previous disciplinary action of any kind involving Respondent may also be considered in determining appropriate Supportive Measures, whether emergency removal ([Section II.E](#)) or administrative leave ([Section II.F](#)) are appropriate, and disciplinary sanction(s) ([Section IV.D.4](#)).

## **b. Investigation Process**

Investigations will be conducted in cases alleging any form of Prohibited Behavior. The investigation process differs slightly based on whether the allegations involve 2020 Sexual Misconduct or any other form of Prohibited Behavior. The differences are identified below.

Investigations conducted under the Grievance Procedures involve interviews with all relevant parties and witnesses as well as obtaining available evidence. Throughout the investigation, Parties will be provided regular status updates and a full and fair opportunity to:

- Suggest witnesses;
- Propose questions for a Party or witness and have those questions asked during individual meeting(s) with the Investigator;
- Provide evidence; and,
- Fully review and respond to all evidence on the record

(the types of evidence that will be made available to the Parties will depend on the nature of the allegations) (See [Section IV.D.3.a](#), above).

#### *Preliminary Investigation Report and Review Period*

Prior to the completion of the Final Investigative Report, the Investigator will draft a Preliminary Investigation Report summarizing either (a) all Relevant and not otherwise Impermissible Evidence (for Complaints), or (b) directly related evidence for Formal Complaints alleging 2020 Sexual Misconduct. The Preliminary Investigation Report will not include any factual findings or credibility assessments. Both parties (and Advisors, if any) may inspect and review the Preliminary Investigation Report and relevant and not otherwise Impermissible Evidence (for Complaints) and directly relevant evidence (for Formal Complaints) obtained as part of the investigation.

EOO will make the Preliminary Investigation Report and appropriate evidence available to each party (and their Advisor, if any) in electronic format or by hard copy. The Parties will have 10 Days from receipt of such evidence to submit to the Investigator a written response, which may include a request to review additional evidence based on the nature of the Prohibited Behavior. The Investigator will provide the other Party(ies) with a copy of any response submitted. The Investigator will review the Parties' respective written responses (if any) and may take additional investigative steps, as needed. The Investigator may allow the Parties an additional period to respond, in writing, to the written responses of the other party, including any new evidence provided.

#### *Finalizing the Investigation Report – Complaints Alleging Prohibited Behavior Other Than 2020 Sexual Misconduct*

Following completion of the preliminary review period and any additional investigatory steps, the Investigator will draft a Final



Investigation Report. In cases alleging Prohibited Behavior other than 2020 Sexual Misconduct, the Final Investigation Report will:

- Adequately assess a Party's or witness's credibility, if credibility is in dispute and relevant to evaluating one or more allegations of Prohibited Behavior;
- Evaluate the relevant and not otherwise Impermissible Evidence and factual findings for all relevant allegations;
- Analysis of the relevant and not otherwise Impermissible Evidence in accordance with definitions of Prohibited Behavior as described in the Policy;
- Set forth findings regarding responsibility on the basis of the Preponderance of the Evidence; and
- Provide information regarding Appeal rights of the Parties.

The Final Investigation Report will be shared with the relevant Administrator for review and decision as to the appropriate Sanction, if any. For more information regarding Disciplinary Sanctions, see [Section IV.D.4](#) below.

Following the Administrator's review, the Parties will be provided simultaneous notice of the outcome of the investigation and access to the Final Investigation Report, including all relevant and not otherwise Impermissible Evidence. The Parties will also be provided information regarding their rights to an appeal, discussed in further detail in [Section IV.D.6](#) below.

#### *Final Investigative Report For Cases Alleging 2020 Sexual Misconduct*

The Investigator will create a Final Investigative Report summarizing the relevant evidence for Formal Complaints alleging 2020 Sexual Misconduct. The Final Investigative Report will include appendices containing all relevant evidence made available to the parties for

inspection and review. This evidence may be used by the parties at the Hearing. As noted above in [Section IV\(D\)\(3\)\(a\)](#), the Investigator may redact certain information contained in documents or evidence that are or is otherwise relevant and included in the Final Investigative Report.

In the Final Investigative Report, the Investigator will not make a final determination as to whether a violation of the Policy occurred, or an appropriate sanction, reserving those decisions for the decision-maker during the hearing process.

After completing the Final Investigative Report, the investigator will simultaneously send to each party (and their Advisor(s), if any) a copy of the Final Investigative Report in electronic format or by hard copy. A Complainant or Respondent may submit a written response to the Final Investigative Report to the investigator within seven (7) Days of the issuance of the Final Investigative Report. A Party's written response to the Final Investigative Report may include any objections to the Investigator's determinations about relevance of the evidence referenced in the Report. Parties' responses will be provided with the Final Investigative Report to the Hearing Panel for pre-hearing review.

### **c. Hearing Process For Formal Complaints Alleging 2020 Sexual Misconduct**

After completion of the investigation and the Final Investigative Report, the University will conduct a live hearing ("Hearing") to adjudicate the allegations of 2020 Sexual Misconduct detailed in the Formal Complaint. A Hearing Panel will hear the relevant evidence, make a final determination as to whether the conduct alleged in the Formal Complaint constitutes 2020 Sexual Misconduct and, if so, impose sanctions as appropriate. EOO will designate a Hearing Facilitator to coordinate all aspects of the Hearing for the parties, their

advisors, witnesses, and the Hearing Panel.

### *Hearing Panel Selection / Conflict Checking*

A Hearing Panel or Hearing Officer will conduct the Hearing.

If a Hearing Panel is available, it will include three BU Community Members trained on all aspects of the Policy and these Procedures. Each Hearing Panel will have a chair, selected by a member of the Resolution Team, who is also responsible for ensuring the Hearing proceeds in accordance with these Procedures and for making relevancy determinations with respect to each question asked during the Hearing.

The Hearing Panel will not include any person who has participated in any effort to resolve the Formal Complaint prior to the Hearing stage of the Grievance Process. The Hearing Panel members will receive the names of the Complainant, the Respondent, and all witnesses, and must withdraw from the proceedings if their relationship to a Party or witness, or other circumstances leads them to believe that they cannot judge the matter fairly, without a conflict of interest, and without a bias for or against Complainants or Respondents, both generally and as to the particular Formal Complaint being resolved.

### *Notification of Panel and Hearing*

The Hearing Facilitator will send a notice to the Complainant and Respondent with the date of the hearing and the names of the Hearing Panel members and informing them of their right to object to the participation of a Hearing Panel member. The objection must be in writing to the Title IX Coordinator at [titleix@bu.edu](mailto:titleix@bu.edu) and received within two (2) Days of the date of the notice and must state the Party's reasons for believing the Hearing Panel member has a conflict or is otherwise incapable of fairly judging the matter.

The Title IX Coordinator will decide whether an objection based on conflict or potential bias is justified. That decision is final. When necessary, the Title IX Coordinator will select a replacement Hearing Panel member. Parties will have an opportunity to object to any Panel member selected as a replacement.

A Hearing may be conducted with all parties physically present in the same geographic location or, alternatively, with some or all parties, witnesses, and other participants appearing at the Hearing virtually but in different geographic locations, by using a visual screen, videophone, closed circuit television, videoconferencing, or similar technology allowing the parties to simultaneously see and hear each other.

Upon timely request by the Complainant or Respondent, the Chair may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the Complainant or Respondent during the Hearing by providing separate facilities, provided the Parties are able to simultaneously see and hear each other as described above.

### *Pre-Hearing Procedures*

The Hearing Facilitator will notify the Complainant, Respondent, and any witnesses of the time and location of the Hearing and will convene the Hearing Panel within fourteen (14) Days of the issuance of the

Final Investigative Report. The Parties are expected to cooperate in the scheduling of the Hearing.

Prior to the Hearing, the Hearing Panel will review all the written materials provided (in electronic format) by the Hearing Facilitator, including the Final Investigative Report and all appendices; the written response(s) (if any) from the Complainant or Respondent to the Final Investigative Report; and any other documents not previously submitted by the Parties (except that the Parties will not be permitted to submit any new or additional evidence at the Hearing without a showing that such evidence was not previously available to the Party prior to the Hearing). All materials provided by the Hearing Facilitator to the Hearing Panel will also be shared in electronic format with the parties.

Prior to the Hearing date, the Hearing Facilitator may schedule individual meetings between the Chair and each of the Parties and their respective Advisors. At the meeting, the Chair will review the Hearing Panel procedures. In addition, the Complainant and Respondent (and their Advisors) will be provided with a list of witnesses, documents, and other evidence that the Hearing Panel may consider at the Hearing. The University reserves the right, through the Chair, to add witnesses to the witness lists with reasonable notice prior to the Hearing.

### *Structure of Hearing*

The Chair will preside at the Hearing. No one other than the Hearing Panel members, the Complainant and Respondent, their respective Advisors, witnesses (when called), and necessary University personnel may be present in the Hearing room or rooms during the proceeding. EOO will work with other University personnel so that any witness or other person whose presence is required may participate in the Hearing.

The Complainant and Respondent will each be permitted to present a brief opening statement (10-15 minutes).

Before a Complainant, Respondent, or witness answers any question at the Hearing, the Chair will first determine whether the question is Relevant and provide an explanation for any decision to exclude a question on the grounds that it is not Relevant.

The Hearing Panel is permitted to ask questions of any Party or witness participating in the Hearing. A Party's Advisor is permitted to ask questions of the Party they are advising, or a witness called by that Party. The Chair may disallow or reframe any questions that are redundant, irrelevant, abusive, disrespectful, or unduly harassing.

Neither Party may ask questions of the other Party or any witness during the Hearing. Only a Party's Advisor may do so. The Advisor's questions must be asked directly, orally, and in real time. If a Party does not have an Advisor present at the live hearing, the University will appoint an Advisor who may, but is not required to be, an attorney to conduct cross-examination on behalf of that Party.

### *Questioning at the Hearing*

Both Parties shall have the right to decline to answer questions during the Hearing; however, the exercise of that right shall not preclude the Hearing Panel from proceeding and evaluating the Formal Complaint

on the basis of the Final Investigative Report and other relevant evidence submitted during the Hearing, subject to the following:

- The Hearing Panel will decide how much weight to give to statements made or information provided by any Party or witness who did not submit to cross-examination at the Hearing. The Hearing Panel can consider the reliability of the statements or information, the reason the individual did not participate in cross-examination, and any other factors the Hearing Panel considers relevant.
- The University may still proceed with a Hearing in the absence of a Party and may reach a determination of responsibility in their absence.
- The Hearing Panel is not permitted to draw an inference about responsibility for a violation of the Policy based solely on the Respondent's or witness's absence from the Hearing or refusal to answer cross-examination or other questions during the Hearing.

The Hearing will not follow a courtroom model, and the rules of evidence and civil or criminal procedure do not apply. The Chair has the sole discretion to commence, recess, and reconvene the Hearing, and may suspend the Hearing at any time. The Chair will make any procedural decisions during the Hearing that they deem necessary to safeguard the integrity and fairness of the Hearing and to avoid undue delay. The Chair will determine the admissibility, relevance, and materiality of the testimony and information offered and may exclude any testimony or evidence determined cumulative or irrelevant. The Hearing Panel may take notice of facts or information within the knowledge of the University community or based on University records.

The Hearing Panel may set reasonable time limits for any part of the Hearing. In cases where either the Complainant or Respondent opts not to participate in the Hearing, the Hearing Panel may still hear from

the other.

If, prior to the conclusion of the Hearing, the Hearing Panel determines unresolved issues exist that would be clarified by the presentation of additional evidence, the Chair may suspend the Hearing and reconvene it in a timely manner to receive such additional information. A suspension of the Hearing may not be based on a Party's proposed introduction of documents or other evidence that could have been presented prior to the Hearing.

### *Audio Recording*

The Hearing will be audio recorded. The Title IX Coordinator or designee may arrange for the preparation of any transcript of the recording they deem appropriate. The Complainant and Respondent will have the right to access a copy of the recording without cost or to obtain a copy of the recording at their expense. The Hearing Panel's post-Hearing deliberations will not be recorded. Personal cell phones and recording devices may not be used in the Hearing room to record the Hearing unless approved by the Chair in advance.

The audio recording of the Hearing, together with the documents, information and other evidence presented at the Hearing, will serve as the record of the Hearing proceedings and will be maintained by the Title IX Coordinator as part of the Respondent's disciplinary record.

### *Privacy*

The Hearing is not open to the public. Accordingly, documents prepared in anticipation of the Hearing (including the Final Investigative Report, the Parties' respective responses to the Final Investigative Report (if any), documents, testimony, or other information introduced at the Hearing, and any recording or transcripts of the Hearing) may not be disclosed outside of the Hearing



procedures, except as may be required or authorized by law.

## **4. Disciplinary Sanctions**

Disciplinary sanctions may be imposed after a finding that the Respondent engaged in Prohibited Behavior in violation of the Policy is made by an Investigator in the Final Investigation Report, or by a Hearing Panel in the Hearing Report. This section applies to cases involving any form of Prohibited Behavior.

### **a. Responsibility to Determine Disciplinary Sanctions**

The relevant Administrator(s) who is responsible for determining appropriate sanctions depends on the identity of the Respondent. For a Student Respondent, the relevant Administrator is the Dean of Students; for a faculty Respondent, the dean of the school or college in which the faculty member has their primary appointment; and for staff, the applicable vice president for the administrative unit in which the staff member works.

If the Investigator or Hearing Panel determines the Respondent is responsible for violating the Policy, it will provide the relevant Administrator(s) with the Final Investigation or Hearing Report, respectively, to determine the appropriate sanction. After reviewing the material so provided, the relevant Administrator will determine the appropriate sanction and prepare a sanction report that will include the statement of, rationale for, and duration of the disciplinary sanction, any conditions to be observed during the sanction period, and the conditions for termination of the sanction (the "Sanction Report"). The Sanction Report and Hearing Report are combined by EOO and referred to as the Final Report.

As part of the sanctioning process, EOO or the Hearing Panel may, in consultation with the relevant Administrator, determine that existing Supportive Measures should stay in place for a prescribed period of time or impose new remedies or administrative actions based upon the investigation and/or hearing of the case.

#### **b. Factors Considered By An Administrator In Determining Disciplinary Sanctions**

The sanctioning Administrator will determine the sanction based on the evidence collected during the investigation and detailed in the Final Investigation or Hearing Report. The factors considered when determining any sanction(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- Previous violations of the Policy by the Respondent that involve similar conduct;
- The need for sanctions/responsive actions to bring an end to the Prohibited Behavior;
- The need for sanctions/responsive actions to prevent the future recurrence of the Prohibited Behavior;
- The impact on the parties and the BU Community; and/or
- Any other information deemed relevant by the Administrator.

The sanction(s) will be implemented as soon as is feasible. The sanctions described below are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

## **c. Range of Disciplinary Sanctions**

A range of sanctions for a BU Community Member who engaged in Prohibited Behavior in violation of the Policy includes, but is not limited to:

- Verbal or Written Warning;
- Enhanced Supervision, Observation, or Review;
- Counseling;
- Training or Education Programs;
- Probation;
- Denial of Pay Increase/Pay Grade;
- Loss of Oversight or Supervisory Responsibility;
- Demotion;
- Transfer;
- Reassignment;
- Delay of Tenure Track Progress;
- Assignment to New Supervisor;
- Restriction of Stipends, Research, and/or Professional Development Resources;
- Suspension;
- Degree Withholding or Revocation (students); and/or
- Termination (employees) or expulsion (students).

In addition to or in place of the above Sanctions, BU may prescribe other responsive actions as deemed appropriate, including the continuation or modification of existing, or addition of, new Supportive Measures.

## **d. Failure to Comply with Sanctions/Supportive Measures**

All Respondents are expected to comply with the Sanctions

imposed within the timeframe specified by the resolution process.

Failure to abide by the Sanction(s)/Supportive Measures imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional Sanction(s), including termination (employees) or expulsion (students) from BU. Administrators are expected to enforce completion of Sanctions/Supportive Measures for their Employees.

## **5. Dismissals**

### **a. Permissive Dismissal**

One or more charges within or the entirety of a Complaint or Formal Complaint may be dismissed by EOO at any point during the Administrative Resolution Process under these Procedures, for any one or more of the following five reasons:

The Respondent cannot be identified after EOO makes reasonable attempts to do so;

The University does not have jurisdiction over a Complaint or Formal Complaint because, for example, Respondent is not participating in a University Education Program or Activity or is not employed at BU;

The allegations of Prohibited Behavior do not rise to the level of a Policy violation, even if proven (EOO will attempt to clarify the allegations with the Complainant prior to dismissal on this basis); Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Complaint or Formal Complaint (or any part(s) of the Complaint or Formal Complaint); and/or,

If the Complainant, in writing, voluntarily withdraws some or all of the allegations of Prohibited Behavior in the Complaint and the

Title IX Coordinator decides not to initiate a Complaint, and any remaining allegations of Prohibited Behavior do not rise to the level of a Policy violation.

#### b. Mandatory Dismissal – Formal Complaints Alleging 2020 Sexual Misconduct

For Formal Complaints alleging 2020 Sexual Misconduct, the Formal Complaint (in its entirety or one or more charges) will be dismissed if:

The alleged misconduct, even if proved, would not constitute a violation of any charge of 2020 Sexual Misconduct under the Policy;

The alleged misconduct did not occur in the University's Education Program or Activity;

The alleged misconduct did not occur against a person in the United States; or

The Complainant is not participating in or attempting to participate in an Education Program or Activity at BU at the time the Formal Complaint was filed.

All or some of the allegations in a Formal Complaint that are dismissed for any of the reasons listed above may also be referred by the Title IX Coordinator for resolution through the portions of the Administrative Resolution Process applicable to other forms of Prohibited Behavior or through any other applicable University processes.

#### c. Dismissal and Appeal Process

When EOO dismisses a Complaint or Formal Complaint (or one or more charges therein), it will simultaneously provide the Parties with written notice of the dismissal and the reason(s) for

doing so, and will offer any appropriate Supportive Measures to the Parties (“Dismissal Notification”). If the NOIA has not yet been issued to the Respondent at the time of the dismissal, the Dismissal Notification will be provided only to the Complainant. In addition, the TIXC/EOD will take any other appropriate prompt and effective steps that may be necessary to ensure that the alleged sexual misconduct, harassment, discrimination, and/or retaliation does not continue or recur within the University’s Education Program or Activity.

If the Respondent was issued an NOIA at the time of the dismissal, both Parties will be given an opportunity to appeal and to provide a written response to the appeal filed by the other Party. If the dismissal was issued before the NOIA was issued to the Respondent, then only the Complainant may appeal, and the Respondent will neither be notified of the dismissal nor provided an opportunity to appeal.

The Parties will have the opportunity to appeal the dismissal of a Complaint, or allegations based only on the following grounds:

Procedural error or omission that would change the dismissal decision;

The discovery of new, relevant evidence that was unavailable to the appealing party when the Complaint or allegation was dismissed; and,

The TIXC/EOD, Investigator, or other member of the Resolution Team had a conflict of interest or bias.

An appealing party must request an appeal using the Dismissal Appeal Form. This Form must be submitted by the appealing party to EOO within seven (7) Days from the date of the Dismissal Notification. The TIXC/EOD will review the request and provide a decision, including a rationale, within 14 Days from

receipt of the Dismissal Appeal Form or the non-appealing party's written response, whichever is later.

## **6. Appeals of Findings and Disciplinary Sanctions in Final Investigative Report and Final Report**

Parties have the right to appeal the Investigator or Hearing Panel's findings that the Respondent violated the Policy and the Administrator's Sanction, if any, set forth in the Final Investigation Report or Final Report. The Investigator or Hearing Panel's determination as to whether a Respondent's conduct violated the Policy will be presumed to have been reached reasonably and appropriately, by a Preponderance of the Evidence.

### **a. Grounds for Appeal**

An appeal of the findings or sanctions is available only on the following grounds:

1. Insufficient evidence to support the Investigator's findings;
2. The discovery of new, relevant evidence that was unavailable to the appealing party during the investigation that would change the outcome of the case;
3. A procedural error or omission occurred that would change the outcome (e.g., substantiated bias or conflict of interest on the part of the Investigator or material deviation from established procedures); and/or,
4. The Sanction is disproportionate to the violation of the Policy.

Any appeal must be in writing, on the Appeal Request Form, and filed with EOO within seven (7) Days of the date of receipt of the Final Investigative Report. In rare cases, EOO may accept a late submission under extenuating circumstances.

## **b. Appeals Decision-Maker**

The Appeals decision-maker differs based on the identity of the Respondent. EOO will consult with the University Provost, Vice President of Human Resources, or Dean of Students to identify the appropriate appeals decision-maker. In all Complaints or Formal Complaints decided under these Procedures, the Appeal will be decided by a panel comprised of one to three people, with the number at the discretion of EOO. Once the appeals decision-maker is determined, the EOO will direct the appeal to the appropriate appeals decision-maker for review and disposition.

## **c. Sharing Appeal with the Parties**



When any Party requests an appeal, EOO will share the Appeal Request Form with the other Party or other appropriate persons, such as the Investigator(s). The non-appealing Party may file a written response to the appeal within seven (7) Days of receipt. EOO will forward the response to the appeal decision-maker. All Parties will be offered an opportunity to meet with the appeal decision-maker to provide further clarification on their response or request for appeal. An Advisor may accompany the Party to this meeting.

## **d. Initial Review of Appeal**

The appeal decision-maker will typically review and conclude the appeal within thirty (30) Days of completing the pre-appeal exchange of materials. The appeal decision-maker will determine, applying a Preponderance of the Evidence standard, whether the appeal(s) contain sufficient grounds for consideration. If grounds are not sufficient for an appeal, or the appeal is not timely, the appeal decision-maker may dismiss the appeal. When the appeal decision-maker finds that at least one of the grounds is met by at least one Party, the appeal decision-maker will conduct a full review of the appeal.

## **e. Full Review of Appeal**

When conducting a full review of the appeal, the additional principles governing the appeal review include the following:

- Decisions by the appeal decision-

maker are to be deferential to the original decision, making changes only when there is clear error in the decision.

- Appeals are not intended to be full re-hearings of the allegation(s). Absent exigent circumstances, appeals are confined to a review of the Final Investigative Report (and all appendices) or Final Report (and all appendices), the transcript of the Hearing (if any), the appeal documents and other pertinent documentation regarding the grounds for appeal, and response to appeal. The decision-maker may also consider any statements made during meetings with the Parties regarding the request or response to appeal.
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the appeal decision-maker.
- In rare cases when a procedural error cannot be cured by the original Investigator (as in cases of bias), the appeal decision-maker may recommend a new investigation and/or resolution process.
  - The results of a new Investigation can be appealed

once by either or both Parties, on any of the four applicable grounds for appeals.

- In cases in which the appeal results in Respondent's reinstatement or resumption of access to all or any aspect of the University's Education Program or Activity, 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.

## E. Special Situations

BU retains the right to determine, in its sole discretion, if it will depart from these Procedures to address a report of Prohibited Behavior administratively. BU may do so, for example, when the safety of the community is at risk, the material facts are undisputed, there are extenuating circumstances involving either of the Parties, or the TIXC/EOD, in consultation with appropriate administrators, determines, in their sole discretion, that it is in the best interest of BU and/or the community to do so. Without limiting the foregoing:

- When an investigation in a matter indicates there may be one or more possible violations of any other BU policy, rule or requirement in addition to an alleged violation of the Policy, the TIXC/EOD will review such material and consult with appropriate BU administrators. In these situations, the Administrative Resolution Process

may follow the Procedures to determine whether such other alleged violation(s) took place in addition to the alleged violation of the Policy or may be addressed separately as determined by the TIXC/EOD.

- If, following the receipt of an alleged violation of the Policy, the Complainant declines to participate in the investigation or resolution process, the TIXC/EOD may decide, in their sole discretion, to administratively close the investigation at any point in the investigation or resolution process.

## V. Prevention and Education

Boston University expects all BU Community Members to take reasonable and prudent actions to prevent or stop an act of discrimination, harassment, retaliation, or other conduct prohibited by the Policy. Actions may include direct intervention, calling law enforcement, or seeking assistance from a person in authority. Members of the BU Community who intervene to prevent or stop discrimination, harassment, retaliation, or other conduct prohibited by the Policy will be supported by the University and protected from retaliation. Read more about [SARP's education, awareness, and training program](#).

The University has an online training program for Employees and Students to assist them with:

- Recognizing Prohibited Behaviors including, in particular, Sexual Misconduct;

- Understanding their obligations as Mandatory Reporters;
- Responding to reports of Prohibited Behaviors; and,
- Ensuring they are aware of available on- and off-campus resources.

Employees and Students are expected to complete this training on an annual basis and promptly on hiring or a change in position that alters their Title IX duties.

In addition, the Executive Director of Equal Opportunity, Title IX Coordinator, Deputy Title IX Coordinators, Investigators, Administrators, decision-makers, and any person who facilitates the Administrative Resolution Process under these Procedures receives training annually and promptly on hiring or a change in position that alters their Title IX duties in at least the following general areas:

- The definition of Prohibited Conduct;
- The scope of the University's Education Program and Activities;
- How to conduct an investigation and the University's Administrative Resolution process including investigations and appeals, and its Alternative Resolution Process, as described in these Procedures;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and,
- Issues of relevance to assist them in their preparation of a Preliminary Investigative Report, Final Investigative Report, Hearing Report, Sanction Report, and Final Report

which fairly summarizes relevant evidence. The University’s training materials do not rely on sex or other stereotypes and promote impartial investigations and adjudication of Complaints. The training materials are available on the University’s website here: <https://www.bu.edu/eoo/training/title-ix-participant-training-resources/>.

## VI. University Policies Applicable Prior to October 15, 2024

Complaints and Formal Complaints of Prohibited Behavior occurring prior to October 15, 2024 are addressed under the following policies and procedures. EOO may, in its discretion, apply the current Procedures to Complaints arising under previous policies.

Policy	Procedures	Applicable To	Type of Disciplinary Harassment (further defined in relevant Policy)
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Sexual Misconduct Policy

*Applicable to incidents occurring between August 14, 2020 and October 14, 2024 [3]*

[3] Allegations of sexual harassment occurring on or before August 13, 2020 are addressed under the Boston University Sexual Misconduct/Title IX Policy and two corresponding Complaint Procedures. Contact EOO with questions about which policy or procedures apply and to obtain copies.

Procedures for the Resolution of Title IX Misconduct Complaints Against Students, Faculty, Staff, Affiliates and Non-Affiliates

Students, Faculty, Staff, Affiliates and Non-Affiliates

Title  
Har

<p>Equal Opportunity/ Affirmative Action Policy</p> <p><i>Applicable to incidents of discrimination and harassment (excluding sexual harassment) occurring prior to October 15, 2024</i></p>	<p><u>Procedures for the Resolution of Non-Title IX Complaints Against Faculty, Staff, Affiliates and Non-Affiliates</u></p>	<p>Faculty, Staff, Affiliates, and Non- Affiliates</p>	<p>Non- Sex Har</p>
	<p><u>Procedures for the Resolution of Complaints Against Students</u></p>	<p>Students</p>	<p>Non- Sex Har</p>
	<p><u>Complaint Procedures in Cases of Unlawful Discrimination and Harassment</u></p>	<p>Students and Employees</p>	<p>All f exce Misc and Disc</p>

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END OF POLICY TEXT

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# Additional Resources Regarding This Policy

## History

This [Interim Equal Opportunity and Title IX Procedures](#) and corresponding [Interim Equal Opportunity and Title IX Policy](#) are effective October 15, 2024 and apply to conduct that occurs on or after October 15, 2024.

## Appendices To This Policy

- [Interim Equal Opportunity and Title IX Policy Appendices](#)

## Policy and Procedures Related to this Policy

- [Equal Opportunity/Affirmative Action Policy](#) - This Policy was replaced on October 15, 2024 by the [Interim Equal Opportunity and Title IX Policy](#) and corresponding [Interim Equal Opportunity and Title IX Procedures](#), which are effective October 15, 2024 and apply to conduct that occurs on or after October 15, 2024.
- **[Sexual Misconduct Policy and Procedures that applies to conduct that occurred on or after August 14, 2020 through to October 14, 2024](#)**
  - Policy: [Sexual Misconduct Policy](#)
  - Procedures:
    - [Procedures for the Resolution of Non-Title IX Sexual Misconduct Complaints Against Students](#)
    - [Procedures for the Resolution of Non-Title IX Sexual Misconduct Complaints Against Faculty, Staff, Affiliates, and Non-Affiliates](#)
    - [Procedures for the Resolution of Title IX Sexual Misconduct Complaints Against Students, Faculty, Staff, Affiliates, and Non-Affiliates](#)
- **[Sexual Misconduct Policy and Procedures that applies to past conduct that occurred on or before August 13, 2020](#)**
  - [Sexual Misconduct/Title IX Policy and Procedures](#) - Applying to conduct occurring on or before August 13, 2020

## Other Related Policies

- [Boston University Notice of Nondiscrimination](#)
- [Policy on Consensual Relationships with Students](#)
- [Sexual Misconduct Hiring Disclosure Policy](#)
- [Code of Ethical Conduct](#)
- [Policy on Responding to Employer Inquiries Regarding Sexual Misconduct](#)

## Forms

### [Incident Report Form](#)

## Resources

- [Title IX Flow Chart](#)
- [Non-Title IX Flow Chart](#)
- [Sexual Misconduct Gender Based Misconduct Resource Guide](#)
- [BU Free Confidential Resources On and Off Campus](#)

## Related BU Websites

- [Equal Opportunity Office](#)
- Training on Sexual Misconduct
  - Employees: [University-wide Online Sexual Misconduct Prevention and Harassment and Discrimination Prevention Training for Employees](#). This webpage contains information, updates, and instructions for the Sexual Misconduct/Harassment and Discrimination Prevention trainings for faculty and staff. The Equal Opportunity Office offers in-person departmental training for faculty and staff on a variety of topics, including Sexual Misconduct and Title IX; discrimination and harassment; and accommodation of employees with disabilities. [Please request a training using the form](#) on their website.
  - Students: [Sexual Misconduct Prevention Training for Students](#). This webpage contains information and frequently asked questions about the Sexual Misconduct Prevention Training.
- [Judicial Affairs Office](#)
- [Dean of Students Office](#)

- [Office of the Provost](#)
- [Human Resources](#)
- Sexual Assault Response & Prevention Center - [SARP](#)
- Faculty & Staff Assistance Office - [FSAO](#)

## BU Memorandums and Information

- Provost & Senior Vice President for Operations Memorandum, [Important Information about Sexual Misconduct Prevention Training Requirements at BU](#), October 28, 2024
- Provost Memorandum, [Important Updates to BU's Nondiscrimination and Harassment Policies and Procedures](#), October 17, 2024
- Provost Memorandum, [Formation of the Bias Review Team at Boston University](#), October 4, 2024
- Provost Memorandum, [BU Sexual Misconduct Policy](#), August 20, 2024

Categories: Academics, Employment, Faculty Handbook: Human Resources, Harassment and Discrimination, Safety, Sexual Misconduct, Student Life, University Policies Affecting Student Life  
 Keywords: accommodation, advisor, advisors, alternative resolution, complaint, complaint resolution, disciplinary sanction, disciplinary sanctions, discipline, discrimination, eeo, filing complaint, grievance, grievance process, grounds for appeal, harassment, investigation, misconduct, prohibited behavior, resolution, sexual harassment, sexual misconduct, supportive measure, supportive measures, Title IX