

## Appendix C: Investigation and Adjudication Procedures and Protocols for Incidents Involving Students

### I. Introduction and Overview:

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of Title IX and Gender-Based Harassment and Discrimination Policy (“the Policy”).

Under Title IX Regulations, Universities are required to distinguish between prohibited conduct that is “under Title IX” and prohibited conduct that is a violation of other University policies. Therefore, the University uses two processes to resolve formal reports of prohibited conduct under this Policy:

- 1. The First Process** is defined as the “Title IX Process” and will **only** apply to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in the Policy) involving students. The Title IX Process involves an investigation, a live hearing (with cross-examination), adjudication, and, if appropriate, the imposition of sanctions.
- 2. The Second Process** is defined as the “Gender-Based Harassment and Discrimination Process,” known as the “GBHD Process” and **will apply** if other allegations are invoked under this policy, based on other protected class harassment and discrimination that is not covered in the Title IX Process. Such allegations include, but are not limited to, sexual exploitation, harassment based on sexual orientation, gender or gender identity, online misconduct, and other gender-based harassment and discrimination as defined in the Policy. The applicable resolution of such offenses, known as the GBHD Process, can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within the Title IX Process, as determined by the Title IX Coordinator. The GBHD Process involves an investigation, a three-person panel hearing, adjudication, and, if appropriate, the imposition of sanctions.

The primary difference between the two processes is the manner in which the hearing will be conducted during the Adjudication Process. This distinction which will be discussed in further detail in this Appendix

All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student, faculty, and staff handbooks, as discussed in Section V. of the Policy.

Additionally, there may be an option for resolving reports through an **Alternative Resolution**. This process includes informal options for resolving reports. The Title IX Coordinator will determine if this is an appropriate option for resolution after making

an initial assessment of the reported information, considering the stated interests of the Complainant and Respondent, campus safety, and the University's obligation to maintain an environment free from harassment and discrimination.

Impacted individuals may also report to law enforcement by filing a police report with the Bentley Police Department at 781-891-2201 or to the City of Waltham Police Department 781-893-1212 or to other local law enforcement authorities.

The processes under this policy are separate and distinct from Massachusetts' criminal process. Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus. Neither a decision by law enforcement regarding prosecution nor the outcome of any criminal proceeding will be considered determinative of whether a violation of this policy has occurred.

Furthermore, if there is a Concurrent Criminal or Civil Proceedings, the University will not, as a matter of course, wait for the outcome of a concurrent criminal or civil justice proceeding to take action on a Formal Complaint in a University Adjudication Process. The University has an independent duty to respond to Formal Complaints of sexual harassment, and discrimination under this Policy.

Bentley also reaffirms the rights of Complainants to decide whether they wish to be involved in any of the University's processes to address sex- and gender-based harassment or discrimination. The University encourages those who wish to receive confidential support services regarding sex- and gender-based discrimination to seek assistance from staff in the Counseling Center, the Health Center, the Boston Area Rape Crisis Center, REACH Beyond Domestic Violence, and/or seek medical attention.

## **II. Additional Preliminary Information**

- A.** Compliance with Bentley University's Title IX and Gender-Based Harassment and Discrimination policies and adjudication processes is a community-wide responsibility. Therefore, the University expects all members of the University community to cooperate fully with the investigation and resolution procedures, including but not limited to attending all requested meetings with the Title IX Team, investigators, providing all requested information (e.g. schedules, evidence, etc.) in a timely manner, and active participation in a hearing, where applicable. In an instance where a Complainant fails to comply with the stated Adjudication process, the University reserves the right to dismiss the reported allegations. Should a Respondent fail to comply with the stated Adjudication process, the University will continue to reserve the right to render a formal decision based on the information provided by the complainant and witnesses. Witnesses are encouraged to cooperate and speak the truth. In accordance with the University's core value of

honesty, witnesses who fail to comply with any portion of an adjudication process may receive appropriate administrative action.

- B. False Information and False Complaints.** Any person, who in bad faith, knowingly files a false complaint under this Policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from the University. A determination that a Respondent is not responsible for allegations of Sexual Misconduct does not imply a report, Formal Complaint, or information provided was false. Similarly, a determination that a Respondent is responsible for a policy violation does not imply that a Respondent's statements disclaiming responsibility were false.

Additionally, participants in the Title IX and Gender-Based Discrimination Adjudication Process must present, in good faith, truthful and accurate information to those involved in ensuring a fair process (including Title IX and Deputy Title IX coordinators, Independent Investigators, and the Title IX Panel). Knowingly making false statements or presenting inaccurate information is unacceptable and will result in a separate disciplinary action regarding that conduct.

- C. Counterclaims.** The University is obligated to ensure that the adjudication process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the adjudication procedures below. Investigation of such claims may take place after the resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

- D. Retaliation.** Any person who retaliates against:
- i. anyone filing a report of under this Policy or a Formal Complaint,
  - ii. the parties or any other participants (including any witnesses or any University employee) in the Adjudication Process relating to a Formal Complaint,

- iii. any person who refuses to participate in the Adjudication Process, or
- iv. any person who under this Policy opposed any unlawful practice is subject to disciplinary action up to and including dismissal or separation from the University. If any participant in the Adjudication Process believes they have been subject to Retaliation (as defined in this Policy), they should immediately report the alleged retaliatory conduct to the Title IX Coordinator.

**E. Advisors.** Throughout any investigation or resolution, each party has the right to consult with an advisor of their choosing. The advisor may be any person chosen by the party or appointed by the University. The parties may be accompanied by their respective advisor at any meeting or proceeding related to the investigation or resolution of a report under this policy. While the advisor may provide support and advice to the parties at any meeting and/or proceeding, the University may establish restrictions regarding the extent to which the advisor may participate in the proceedings. Advisors may not speak on behalf of the parties or otherwise participate in, or in any manner, delay, disrupt, or interfere with meetings and/or proceedings. Generally, the Title IX Office and investigator will communicate directly with the Complainant or Respondent, and any communications with an advisor may only occur after a FERPA waiver has been executed. An advisor should plan to make themselves reasonably available, and the University will not unduly delay the scheduling of meetings or proceedings based on the advisor's unavailability.

### **III. Title IX Coordinator Response**

#### **A. Notice of Complaint/Reporting Incidents**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy from a Complainant or reporting party, the University will begin a prompt initial assessment to determine the next steps the University needs to take.

#### **B. Initial Assessment**

After receiving a report of prohibited conduct, the Title IX Office will gather information about the reported conduct and respond to any immediate health or safety concerns raised by the report. The Title IX Office will assess the Complainant's safety and well-being, offer the University's support measures and assistance. The Title IX Coordinator will assess the nature and circumstances of the report to determine whether the reported conduct raises a potential policy violation, whether the reported conduct is within the scope of this Policy, and the appropriate manner of resolution under this Policy.

The Title IX Coordinator may consult with the University's Threat Assessment Group, or other University administrators as part of the initial assessment.

As part of the initial assessment, the Title IX Office will:

- Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that identifies the complainant, the respondent, any witness, and/or any other individual with knowledge of the reported incident;
- Provide the Complainant with written information about on-and off-campus resources; notify the complainant of the range of supportive measures available (regardless of whether they choose to participate in a University or law enforcement investigation and adjudication process); and their right to an Advisor.
- Provide the Complainant with an explanation of the procedural options, works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option (if available), or a formal investigation and adjudication process through the University.

At the conclusion of the initial assessment, the University will proceed with one of the following options:

1. **Provide supportive measures as a response.** This will occur when the Complainant identified their wishes to received supportive measures as a response. The Title IX Coordinator will then seeks to facilitate implementation. The Complainant always has the ability to elect or initiate an investigative and adjudication later, if desired.
2. **Proceed with an investigation under the Title IX Process.** This will occur when a Complainant requests an investigation, and the Title IX Coordinator determines the misconduct alleged falls within the scope of Title IX.
3. **Proceed with an investigation under the GBHD process.** This will occur when a Complainant requests an investigation, and the Title IX Coordinator determines that Title IX Process does not apply (and result in "dismissing a formal complaint under Title IX Process") and then refer the matter for appropriate resolution under the GBHD Process.
4. **Proceed with an investigation initiated by the Title IX Coordinator.** This will occur when the Title IX Office determines that an investigation must be pursued even when a Complainant requests that no investigation or adjudication process be pursued; or when Alternative Resolution is not appropriate or available.
5. **Proceed with Alternative Resolution.** This option will be available after the

Title IX Coordinator determines if the complaint is suitable for informal resolution, (and which informal mechanism may serve the situation best or is available under the circumstances). The Title IX Coordinator will seek to determine if the Respondent is also willing to engage in informal resolution.

6. **Refer the matter to another appropriate office or department for resolution.** If the nature of the allegations is outside the scope of this policy, the matter will be referred to another appropriate office or department for resolution under the relevant University policy.
7. **Close the report with the option to re-open it at another time.** If the Complainant requests resolution or if the University subsequently determines there is a need to further investigate the alleged misconduct. This option could include notifying the Respondent of the alleged misconduct. The level of detail shared will be at the discretion of the Title IX Coordinator. In these instances, the Respondent will not be required to make a statement or accept/deny responsibility for the alleged conduct.

Please note that dismissing a complaint under Title IX Process is just procedural, and does not limit Bentley's authority to address a complaint with an appropriate process and remedies. This process is described in more detail in Section C of this Appendix.

When the Title IX Coordinator decides to initiate an investigation, impose supportive measures, or take any other action that impacts a Respondent, the Title IX Coordinator will also ensure that the Respondent is notified and receives written information on available resources and options, consistent with the list outlined above, as applicable.

The Title IX Coordinator will inform and explain the University's policy prohibiting retaliation to all parties involved, that the University will take prompt action when retaliation is reported, and how to report acts of retaliation.

#### **IV. The Investigation and Adjudication for the Title IX Process**

##### **B. Formal Complaint**

1. The Complainant must sign a Formal Complaint requesting an investigation and submit it to the Title IX Coordinator. The Complainant must submit a written statement setting out the known details of the alleged conduct that is the subject of the Formal Complaint, including the following:
  - Complainant's name and contact information;

- Respondent's name;
- Detailed description of the alleged conduct or event that is the basis of the alleged violation under this Policy;
- Date(s) and location(s) of the alleged occurrence(s); and
- Names of any witnesses to the alleged occurrence(s); the resolution sought.
- The Complainant may also submit any documents or information that is relevant to the Formal Complaint.

The statement and information provided must be written by the Reporting party.

2. The Title IX Coordinator may also sign a Formal Complaint against a Respondent (requesting an investigation) and, in doing so, will initiate the Adjudication Process.

### C. Mandatory and Discretionary Dismissals of Formal Complaint

Under Title IX Regulations, Universities are required to distinguish between prohibited conduct that is "under Title IX" and prohibited conduct that is a violation of other University policies. Under Title IX, the University **must dismiss** a Formal Complaint or the part of the allegations in a Formal Complaint, if applicable, during the investigation or hearing where it determines that:

- The conduct alleged in the formal does not meet the definition of sexual harassment as defined in this policy;
- The alleged conduct did not occur in the University's education program or activity; or,
- The alleged conduct did not occur against a person in the United States.

It is important to note that a dismissal under this provision only applies to allegations of sexual harassment under Title IX. In such an instance, the University may still investigate a Formal Complaint about allegations of sexual harassment as defined under this Policy. The University may also investigate allegations of prohibited conduct under this Policy, but it will not technically be "under Title IX Process."

The University **may dismiss** a Formal Complaint, at its discretion, under this Policy's Adjudication Process for any of the following circumstances:

- If the Complainant requests in writing to dismiss a Formal Complaint

(e.g., withdraws the Formal Complaint or any allegations therein),

- If the Respondent is no longer enrolled or employed by the University at the time the Formal Complaint is filed;
- Any specific circumstances that prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or any allegations therein; or
- The conduct alleged does not meet the definition of any prohibited conduct under this Policy.

If the University dismisses a Formal Complaint, the University must provide both parties with written notice of the dismissal and the reason(s) for the dismissal.

#### **D. Notification of Formal Complaint to Respondent**

The Title IX Coordinator will provide written notice of a Formal Complaint to the Respondent when a formal report has been filed against them. The Respondent will be allowed a reasonable time to respond in writing and through an interview with the investigator.

**Initial Meeting.** Notice that a formal report has been filed against a Respondent will be provided to that student in person. The Respondent is welcome to bring a support person or an advisor to this initial meeting. At this meeting, the Title IX or Deputy Title IX Coordinator will discuss the nature of the report, explain the rights and responsibilities of the Respondent and explain the prohibition against retaliation, review the investigation and Adjudication Process and give the responding party a copy of the relevant policies. The University will provide written notice to a party whose participation is invited or expected of the date, time, location, participants, and purpose of all meetings, investigative interviews, or other proceedings in the Adjudication Process.

**Confidentiality/Non-Retaliation Acknowledgment.** The Respondent will be able to discuss the facts underlying the subject of the Formal Complaint with counselors, clergy, other therapeutic professionals, and family. The Respondent should refrain from discussing the Formal Complaint itself and/or the adjudication process with anyone affiliated with Bentley not related to the Formal Report. This is to preserve the integrity of the investigative process and also to prevent allegations of retaliation. Through this acknowledgment, the Respondent also agrees to refrain from any

retaliatory conduct against the Complainant or any witnesses in the matter and may be responsible for any retaliation by persons affiliated with the Complainant (i.e., a friend or family member).

**Responding Party's Statement.** The Respondent will be allowed a reasonable time to respond in writing and through an interview with the investigator. The Respondent may choose to provide a written response to the Formal Complaint. The Respondent's Statement will be submitted to the independent investigator and serves as an opportunity to respond to the allegations made by the Complainant. This statement should provide as much detail as possible about the facts surrounding the alleged misconduct and must be written by the Respondent.

#### **E. Alternative Resolution Option of Certain Formal Complaints- Optional**

After the parties have been provided a copy of the written notice of a Formal Complaint, both parties may, in writing, voluntarily agree to use this Alternative Resolution option, if applicable, at any point prior to reaching a determination regarding responsibility, but the parties are not required to do so. The Alternative Resolution entails the parties forgoing the Investigation and Adjudication Process (including the investigation, report, hearing, adjudication, and sanctions, if applicable) depending on when the parties agree to engage in an Alternative Resolution). For example, the Alternative Resolution may include a mediation process.

At any point prior to agreeing to an Alternative Resolution, each party has a right to withdraw from the Alternative Resolution process and resume the Investigation and Adjudication Process with respect to the Formal Complaint.

#### **F. University Officials in the Investigation and Adjudication Process.**

- 1. Title IX Coordinator.** The Title IX Coordinator is the senior University administrator who oversees the University's compliance with Title IX. The Title IX Coordinator is responsible for the administrative response to reports and Formal Complaints of harassment, discrimination, retaliation, and other conduct prohibited under this Policy. The Title IX Coordinator is available to discuss the Adjudication Process, coordinate supportive measures, explain University policies and procedures, and provide education on relevant issues. The Title IX Coordinator may designate one or more Deputy Title IX Coordinators to facilitate these responsibilities. Any member of the University community may contact the Title IX Coordinator with questions.

- 2. Investigator.** The University will ensure that Formal Complaints are properly investigated under this Policy by investigators assigned to the Formal Complaint. The investigators are neutral and impartial fact-finders and gather evidence during the investigation. The investigators are responsible for completing an investigation report at the conclusion of the investigation. The Title IX Coordinators may supervise and advise the investigators when conducting investigations and to ensure compliance with Title IX.
- 3. Hearing Officer.** The hearing officer is responsible for conducting the hearing in an orderly manner, controlling the conduct of all participants and attendees of the hearing, and rendering a written determination regarding the responsibility of the Respondent's alleged conduct charges in an impartial, neutral, and objective manner.

Any of the University Officials and individuals listed above who are materially involved in the administration of the resolution, investigation, and adjudication process may not have or demonstrate a conflict of interest or bias towards any of the parties.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another member will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Associate Dean of Student Affairs, John Piga.

The Formal Adjudication Process involves an objective evaluation of all relevant evidence obtained, including inculpatory evidence which supports that the Respondent engaged in a policy violation and exculpatory evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

### **III. Investigation of the Formal Complaint – Gathering of Evidence.**

After both parties have submitted their statements, Title IX Coordinator will initiate an investigation, utilizing neutral, external investigators retained by Bentley. These investigators have been vetted by the University, are determined to be free from bias, and well-trained in conducting Title IX investigations. If a party has concerns regarding the Independent Investigators' ability to conduct an unbiased investigation, those must be raised within 72 hours of notice of the Independent Investigator's name and place of employment.

It is the responsibility of the investigator, not the parties, to gather the evidence relevant to the formal report and the facts raised in the parties' statement, to the extent reasonably possible. During the course of the investigation, the investigator may utilize some or all of the following procedures, in whatever order the Investigator deems most appropriate. The scope of the independent investigation will not be limited to information provided by the parties or to the violations outlined in the Formal Complaint. In all cases, the investigator will conduct an adequate, reliable, and impartial investigation into the allegations of the report, reviewing all evidence deemed to be relevant. Parties and Witnesses should make themselves reasonably available to the Investigator. The Bentley Core Values compel all students to act with integrity and honesty in their academic, personal, and professional lives. Students who refuse to cooperate with the Investigator in the independent investigation, as determined by the Title IX Coordinator, are in opposition to this core belief and may face disciplinary action for their refusal to cooperate.

#### **A. Evidence.**

The parties in the investigation may present any information and evidence that may be relevant to the Formal Complaint and may have an advisor of their choice attend any related interview, meeting, or proceeding in the Adjudication Process. Advisors are not permitted to actively participate in meetings or proceedings in the Adjudication Process unless explicitly outlined in this Policy regarding the Hearing. The parties may present the names of any fact or expert witnesses who may provide relevant information, and how the witnesses may be relevant to the Formal Complaint. The parties may submit to the investigator any questions they would like asked of any known potential witnesses or parties.

#### **B. Witness Interviews.**

The investigators will interview relevant and available witnesses or expert witnesses identified by the parties or that the investigator deems to be relevant to the resolution of the Formal Complaint. Neither the Complainant nor the Respondent will attend these interviews.

Witnesses may request from the Title IX or Deputy Title IX Coordinator a University Advisor to be present with them during their interview. Prior to being interviewed, a witness will be required to agree and acknowledge the privacy/non-retaliation agreement not to disclose or discuss anything relating to the formal report and their interview with anyone. Through this acknowledgment, the witness will also agree to refrain from any retaliatory conduct against the parties or any witnesses in the matter and may be responsible for any retaliation by persons affiliated with them (i.e., a friend or family member). The investigator will employ best efforts to interview relevant witnesses who are no longer on campus or in the Boston area, attempting to contact them by phone or email.

The investigator reserves the right to consult with any experts, which they deem necessary to the determination of the facts of this case. An expert witness could be consulted to review or provide a professional opinion regarding evidence discovered in the independent investigation.

### **C. Investigation Timeframe.**

The investigation of a Formal Complaint can take 90 days to resolve from the filing of a Formal Complaint. There are always exceptions and circumstances that can cause an investigation to take longer. There may be delays such as gathering evidence, availability of the parties and/or witnesses, and University breaks or vacations. The University will strive to complete the investigation and avoid delays that are within its control. The parties will be provided updates on the progress of the investigation, as needed.

### **D. Access to Evidence.**

Once the independent investigation has been completed, the investigator will evaluate the information obtained during this process. Prior to the completion of the investigation report, the investigators will provide access to all evidence obtained (whether relevant or not) as part of the investigation to both parties (and the party's advisor, if any, upon a party's signed information release for their advisor of choice). Both parties will have ten (10) days to inspect, review, and respond to the evidence. All responses to the evidence must be submitted by the party in writing to the investigator. Advisors are not permitted to submit written responses to the evidence on their own or on behalf of the party they are advising. The investigators will consider all timely responses submitted by the parties.

### **E. Investigation Report.**

The completed investigation report will outline each of the allegations that potentially constitute prohibited conduct under this Policy, provide the timeline of the investigation, fairly summarize the relevant evidence, participant statements, and responses to questions. The investigator may draw conclusions and make recommendations regarding the credibility of all testimony and the reliability of documentation. The investigator will provide a completed investigation report to the Title IX Coordinator for review and feedback. The Title IX Coordinator will then provide the investigation report concurrently to both parties and each party's advisor, if any, upon a party's signed information release for their advisor of choice at least ten (10) days prior to the date of the scheduled hearing to review and provide a written response at the hearing. The Title IX Coordinator will provide a copy of the completed investigation to the hearing officer assigned for the hearing.

**V. Standard of Evidence and Presumption of Not Responsible.**

The University's Adjudication Process will use the preponderance of the evidence standard, which is defined as whether it is more likely than not that the Respondent violated the Policy as alleged. By law, it is presumed that the Respondent is not responsible for the alleged conduct unless that determination regarding responsibility is made at the conclusion of the Adjudication Process.

**VI. Referral for Hearing**

Provided that the Formal Complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing. A hearing is a Panel that will consist of three individual members drawn from a standing pool of panelists. The Panel may consist of faculty or staff from Bentley University. One of the members will be the chairperson and will be deemed the Hearing Officer.

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

The Title IX Coordinator will select an appropriate Hearing Officer from the Pool depending on whether the Respondent is an employee or a student.

**VII. Live Hearing – Determination of Responsibility for Title IX Process (ONLY)**

- A. The University will provide a live hearing for all Formal Complaints subject to the Adjudication Process as outlined in this Policy under the “Title IX Process.”
- B. **Written Notice of the Hearing.** The University will provide at least ten (10) days written notice to participants of the hearing (and the participant’s advisor, if any, upon a participant’s signed information release for their advisor of choice), including the date, time, location, names of all participants of the hearing (including the Panel Members and hearing officer), and all parties and participants in the investigation report), the purpose of the hearing, a statement of the alleged conduct charges, and a summary statement of the evidence gathered.
- C. **Challenges to the Panel Members and Hearing Officer.** Either party may challenge the fairness, impartiality, or objectivity of the Panel Members and the Hearing Officer. The challenge must be submitted in writing to the Title IX Coordinator within 4 (four) days after notice of the identity of the Panel Members and Hearing Officer and must state the reasons for the challenge. The Title IX Coordinator will be the sole judge as to whether members can serve with fairness, impartiality, and objectivity. In the event that the Panel Members or Hearing Officers recuses themselves, an alternative Panel Member or Hearing Officer will be assigned in accordance with the University procedures.
- D. **Hearing Officer Duties at the Hearing.** The Hearing Officer will rule on all procedural matters and on objections regarding exhibits and testimony of participants at the hearing, may question participants who testify at the hearing, and is entitled to have the advice and assistance of legal counsel from the Bentley’s General Counsel.
- E. **Access to Evidence.** Each party will have access to all of the evidence from the investigation, including a copy of the completed investigation report.
- F. **Separate Rooms and Virtual Participation.** At the request of either party, the University will provide the hearing to occur with the parties located in separate rooms with technology, enabling the hearing officer and the parties to simultaneously see and hear the participants answering questions. Participants may appear at the hearing virtually and are not required to be physically present at the same physical location of the hearing.
- G. **Opening and Closing Statements:** Each party may make opening and closing statements if they wish.
- H. **Privileged Information Excluded.** No person will be required to disclose information protected under a legally recognized privilege. The hearing officer must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
- I. **Advisor of Choice.** Each party is required, under the Title IX Regulation, to have an advisor of their choice at the hearing. If a party does not have an advisor for the

hearing, the University will provide one. The University will appoint a trained Advisor for the limited purpose of asking questions of the other party and witnesses necessary at the Hearing. Advisors are not permitted to actively participate in the hearing, except for asking questions of the other party and any other witnesses. In addition, witnesses may have an advisor of their choice at the hearing.

**J. Questioning of the participants at the hearing.** The Hearing Officer may, at the hearing officer's discretion, ask questions during the hearing of any party or witness and may be the first person to ask questions of any party or witness. Each party's advisor will have an opportunity to ask relevant questions and follow-up questions of the other party and of any witnesses that participate in the hearing, including questions that challenge credibility. Each advisor has the ability to ask questions directly, orally, and in real-time at the hearing. The parties will not be permitted to personally ask questions of the other party or any witnesses that participate in the hearing. The advisors may ask questions under the following procedure:

- The advisor will ask a question of the applicable participant.
- Before the participant answers a question, the hearing officer will rule as to whether the advisor's question is relevant to the alleged conduct charges.
- If the Hearing Officer rules the advisor's question as not relevant, then the hearing officer must explain any decision to exclude a question as not relevant. If the hearing officer allows the question as relevant, the participant will answer it.

**K. Prior Sexual History.** A Complainant's sexual predisposition or prior sexual behavior is not relevant except where questions and evidence about a Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct charged by the Complainant, or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove the Complainant's consent of the alleged conduct.

**L. Not submitting to Cross-Examination.** If a party or witness refuses to submit to any cross-examination questions during the hearing, the hearing officer will not rely on any statement of that party or witness, when reaching a responsibility determination. The hearing officer will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.

**M. The hearing will be recorded in audio or audiovisual format** and may be transcribed at the discretion of the University. The recording or transcript, if applicable, will be available for the parties to inspect and review, upon request.

**VIII. Interference with the Adjudicatory Process.** Any person who interferes with the

Adjudication Process this Policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with the Adjudication Process may include, but is not limited to:

- i. Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- ii. Removing, destroying, or altering documentation relevant to the Adjudicatory Process; or
- iii. Knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.

#### **IX. Hearing Officer Determination.**

After the panel convenes, the hearing officer will issue a written determination, which must include the following:

- The allegations that potentially constitute prohibited conduct under this Policy;
- A description of all of the procedural steps of the Adjudication Process under this Policy (from receipt of a Formal Complaint to the determination regarding the responsibility of the Respondent, including any notifications of the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held);
- The findings of fact supporting the hearing officer's determination;
- The conclusion(s) and a rationale as to whether the Respondent is responsible for each allegation;
- The disciplinary sanctions, if applicable;
- The remedies, if applicable, designed to restore the Complainant's access to the education program or activity; and
- The institution's procedures and permissible bases for the parties to appeal, if applicable

The hearing officer will send a copy of the written determination to the Title IX Coordinator. The Title IX Coordinator will then share with the parties simultaneously.

#### **X. Sanctions**

Where there is a finding of responsibility, the sanctions and remedies that are listed below may be considered by the hearing officer in accordance with this Policy. The hearing officer may impose one or more sanctions.

The policy prohibits a broad range of conduct, all of which are serious in nature. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the hearing officer has great latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the Complainant, surrounding community, and accountability for the Respondent. The imposition of sanctions is designed to eliminate prohibited conduct, prevent its recurrence, and remedy its effects while supporting the University's educational mission and federal obligations.

#### **A. Possible Sanctions for Student Respondents:**

1. **Written Warning:** A formal admonition which appears in an individual's disciplinary record at the University. Any further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.
2. **Educational Training/ Counseling:** A requirement to meet with and engage in a Bentley-sponsored training designed to help the party become aware of University rules, policies and regulations, and or external counseling to help students better comprehend the misconduct and its effects.
3. **Probation:** A more serious admonition, assigned for a definite amount of time that identifies a student's status is no longer in good standing. Probation may also include exclusion from Bentley-owned or operated property and/or Bentley sponsored events. It also implies that any future violation, of whatever kind, during that time, may be grounds for suspension, suspension with conditions, or, in especially serious cases, expulsion from the University. Probation will be taken into account in judging the seriousness of any subsequent infraction, even if the probationary period has expired.
4. **Suspension:** Termination of student status for a specific period of time. A party suspended from the university is not to be on campus unless they received permission from the Office of the Dean of Student Affairs or the appropriate Vice President. Additional action will be taken against those who trespass, and/or criminal prosecution for trespassing is possible.

5. **Expulsion:** A permanent termination of student status at the University. A party expelled will not have an opportunity for readmission or a right to be on campus for any reason or to attend any University activity or program. The individual may not be in or on any University-owned or leased property. Additional action will be taken against those who trespass and/or criminal prosecution for trespassing is possible. Students expelled from the university are not eligible for a refund of their tuition.
6. **Withholding of Degree:** In cases involving seniors or graduate students in their final semester, the University may withhold a student's Bentley degree for a specified period of time and/or deny a student participation in commencement activities. This penalty is imposed instead of suspension at the end of senior year or final year of graduate study when all other degree requirements have been met.
7. **Revocation of Degree:** The University reserves the right to revoke a degree previously awarded from the University for fraud, misrepresentation, and/or other violation of Bentley's policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
8. **Other Sanction(s)/Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate under the circumstances.
9. **Suspension of rights and privileges:** Including but not limited to the restriction of access to space, a prohibition from participating in athletic or extracurricular activities.
  - a. **University Residential Housing/Other Facilities:** When appropriate to the infraction, removal from University housing or relocation within University housing, or restrictions other campus facilities.
  - b. **Sanctions will be imposed immediately.** The Title IX Coordinator will review the sanctions recommended by the hearing officer and will consider the appropriateness of continuing supportive measures on an ongoing basis. Extended supportive measures may be included in the sanctions. Students who receive sanctions are not eligible for a refund of their tuition or housing costs.

#### **B. Possible Sanctions for Employee Respondents:**

The appropriate disciplinary authority will determine the sanction, which may include (in accordance with the employment policies governing the employee in question):

1. Counseling or Training
2. Warning
3. Employment probation;
4. Job demotion or reassignment of duties;
5. Suspension with or without pay for a specific period of time;
6. Dismissal or termination;
7. Ineligible for rehire; and/or
8. Other sanction(s) or remedies as deemed appropriate under the circumstances

Sanctions will be determined based on the seriousness of the misconduct and on the individual's prior disciplinary history if any. Sanctions will be communicated to the parties, as appropriate, in writing by the Vice President and Chief Human Resources Officer or designee. The notification will include the parties' rights of appeal if any. In all cases involving sex discrimination or sexual misconduct, the file will be archived by the Title IX Coordinator.

## **XI. Appeals**

Either party may appeal in writing the hearing officer's determination regarding a Respondent's responsibility under the Adjudication Process or from the University's dismissal of a Formal Complaint (or any allegations in the Formal Complaint) within seven (7) days of notification of such a determination.

Appeals are limited on the following bases:

- A procedural irregularity that affected the outcome of the matter;
- There is new evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; or
- The Title IX Coordinator, Investigator(s), or Hearing Officer had a conflict of interest or bias for or against the parties (generally, or specifically in this matter) that affected the outcome of the matter.

The written appeal must specifically state the grounds under which the appeal has been filed and must be submitted within the seven (7) day time limit after their notification of such determination. The written appeal must set forth the information/evidence to support the appeal. Appeals that do not comply with these requirements may not be considered. The appeal is not an opportunity to argue that the initial decision was wrong or because they disagree with the finding(s) or sanction(s). The appeal is not a new fact-finding process.

The opposing party will be notified if an appeal has been filed. In some situations, both parties may file an appeal. In this situation, the appellate administrator will consider and review both appeals together. Any non-appealing party will have seven (7) days from the notification of an appeal to submit a written statement.

Both parties will be notified in writing when an appeal is filed, and the appeal procedures will apply equally for both parties. The person filing the appeal is the Appellant. The appellate officer will be considered by an impartial and well-trained administrator, or administrators, who were not part of the initial Investigation and Adjudicatory Process. In considering the appeal, the appellate administrator(s) will be given the written appeal, the Investigative Report, including the statements of the Complainant and Respondent, and the Hearing Officer decision to review.

Once the appellate process has been complete, the final decision will be provided to both parties.

To submit a written appeal, an Appellant should write a letter to the Appellate Administrator, the Vice President of Student Affairs, or their designee, outlining their reason for appeal. The appeal letter should be submitted via e-mail to:

J. Andrew Shepardson, Ph.D.

Vice President of Student Affairs/Dean of Students at Bentley University

[ashepardson@bentley.edu](mailto:ashepardson@bentley.edu)

781-891-2161

The Appellate Officer will release a written appeal decision within 10 (ten) days from the date of the appeal. The Appeal Decision will be sent in writing to all parties simultaneously. The Appeal Decision will specify the finding on each ground for appeal and specify instructions to:

- Affirm the hearing officer's determination regarding the Respondent's

responsibility and affirm the disciplinary sanctions and remedies, if applicable;

- Affirm the hearing officer's determination regarding the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable;
- Remand the adjudicatory process back to the hearing stage for the hearing officer to remedy any procedural irregularity or consider any new evidence;
- Reverse the hearing officer's determination of the Respondent's responsibility and amend the disciplinary sanctions and remedies, if applicable; or
- Affirm or amend the sanctions and/or remedies outlined in the administrative disposition issued under this Policy.

Any sanctions imposed as a result of the hearing will remain in place during the appeal process. Any supportive measures may also be reinstated.

### **VIII. Other Information About Adjudication Process**

**A. Adjudication Process Documentation/Record Keeping.** The University's Title IX Office will retain all of the documentation included in the Adjudication Process for seven (7) years, in accordance with state and federal records laws and University policy. All documentation of records is private and confidential to the extent possible under the law. Student records of the Adjudication Process are disciplinary records under FERPA.

**B. Adjudication Process Timeframe.** The entire Adjudication Process, as outlined in this Policy, including any appeal, will be completed in no more than 120 days from the filing of the Formal Complaint. However, the circumstances may require a temporary delay in this timeframe, and the University may extend this timeframe for a good cause. In such an instance, the University will provide written notice to the parties of the delay or extension and the reason(s) for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or an accommodation of disabilities. The time period in this section does not include the period the parties attempted but failed to reach an agreement in the Alternative Resolution Process, if applicable, and in such a case, the Adjudication Process timeframe will be extended by the period the parties attempted to reach an Alternative Resolution.

**C. Safeguarding the Privacy of Complainants and Respondents**

Individuals involved in proceedings under this policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation. While discretion regarding the process is important, complainants and respondents are not restricted from discussing and

sharing information with others who may support or assist them during the process. All parties, however, are encouraged to maintain the privacy of FERPA-protected and/or sensitive information gathered or learned in the process.

In the course of the Adjudication Process, the University may share information only as necessary with people who need to know in compliance with the law, which may include but is not limited to the investigators, witnesses, Complainant, Respondent, parties' advisors, hearing officer, and the appellate officer—if applicable. The University will take all reasonable steps to ensure there is no retaliation against the parties or any other participants in the investigation or in any other part of the Adjudication Process.

## **XII. The Gender-Based Harassment and Discrimination (GBHD) Adjudication Process (Alternative Adjudication Process for Students)**

The GBHD Adjudication Process will apply in Formal Complaints where the Respondent is a student at the time of the alleged conduct, and the alleged conduct did not meet the requirements under the Title IX Process (as defined by Title IX Regulations and this Policy). The GBHD Process involves an investigation, a three-person panel hearing, adjudication, and, if appropriate, the imposition of sanctions.

The primary difference between the two processes (Title IX Process and the GBHD Process) in this Policy is the manner in which the Hearings are to be conducted. Therefore, all other relevant sections of the Title IX Process Adjudicatory Process described above apply to the GBHD Process, with the exception of the Live Hearing described in Section VI.

### **The details of the Hearing under the GBHD Process is detailed below:**

- A. Investigation Report.** Once the independent investigation has been completed, the Investigator will present the investigation report to Title IX Coordinator for review and feedback, and then the investigation report will be reviewed by the GBHD Panel. Both the Complainant and Respondent will be allowed to review the investigation report prior to the Panel Hearing.
- B. Rebuttal Documentation.** After reviewing the investigation report, the parties have the opportunity to provide any rebuttal statements, documents, or other new information regarding the sources of potentially relevant information and/or witnesses in writing to the Title IX Coordinator within three (3) days of the GBHD Panel. Any information that is submitted will be made available to the other party for review and will be provided to the panel.
- C. Composition of the Panel Members.** The Panel will consist of three individual members drawn from a standing pool of panelists. The Panel may consist of faculty or staff from Bentley University. All members of the Panel will receive

annual training on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking and on how to conduct a hearing that is fair and impartial and provides parties with notice and a meaningful opportunity to be heard. Members of the Panel will be impartial and free from conflict of interest or actual bias. Parties will be notified of the identities of the panelists selected for their Hearing, and parties will have an opportunity to challenge participation by the panelists on the basis of a conflict of interest or actual bias. Parties and their advisors are prohibited from contacting panelists for any reason prior to the full conclusion of the resolution process. In addition, parties and their advisors are prohibited from contacting panelists about the resolution process after its completion.

**D. Hearing.** The hearing is an opportunity for the parties to address the Panel Members in person privately. The parties may address any information in the final investigative report, supplemental statements submitted in response to the final investigative report, or provide impact and mitigation statements. Each party has the opportunity to be heard and to respond to any questions of the Panel Members. The parties may not directly question one another, although they may proffer questions for the Panel, who may choose, in their discretion, to pose appropriate and relevant questions.

**E. The Panel Hearing will proceed in the following manner:**

- The three members of the panel will meet with the independent investigator to address any questions they may have regarding the investigation or investigative report.
- The panel will then meet (individually) with the Complainant (first) and then the Respondent (second) to hear final statements.

Although, as a general rule, the University will expect that the Complainant will participate in the hearing, the Panel may proceed without the Complainant after considering the Complainant's stated reason for not participating.

**F. Standard of Review.** The Panel Hearing is not intended to serve as an additional investigatory process. If either party provides any new and relevant information during their final statements, it will be referred to the Title IX Coordinator who will determine, with input from the Panel Chair, whether or not to implement a supplemental investigation or separate investigation where the other party will have a fair opportunity to respond.

**G. Supplemental Investigation Procedures.** After meeting with the parties and reviewing any additional information submitted for consideration, the panel may determine that additional inquiry is needed in order for a decision to be rendered regarding the Formal Complaint. If so, the Panel chair will ask that the investigator conduct a supplemental investigation regarding the areas of

concern. The investigator will focus any additional investigation on the specific inquiries made by the Panel. The Investigator will then prepare and submit a supplemental investigation report addressing the findings as to the issues raised by the Panel. Under ordinary circumstances, any additional investigation and supplemental investigation report should be completed and submitted to the Panel within 30 days of the request for the supplemental investigation. The Panel Chair reserves the right to schedule a subsequent Panel Hearing to address the findings from the supplemental investigation with the parties separately, at its discretion, should the Panel feel that such a meeting would be helpful to the process.

#### **H. Withdrawal/Acceptance of Charges**

- a. **Complainant May Withdraw the Report:** Prior to the Panel's Decision, the Complainant may withdraw the Formal Complaint. Withdrawal of the report will, under most circumstances, end the GBHD Adjudication Process for that Formal Complaint. Once a Formal Complaint has been withdrawn, it cannot be filed again by the Complainant within this process. The University reserves the right to move forward with the Formal Complaint, even after the Complainant decides to withdraw it, in order to protect the interests and safety of the Bentley community.
- b. **Respondent May Accept Responsibility:** Prior to the Panel's decision, the Respondent may accept responsibility for the misconduct alleged in the Formal Complaint. This acceptance, under most circumstances, will end the GBHD Adjudication Process, and the matter would then be referred to the Panel to decide the issue of the appropriate disciplinary action for the Respondent. The Panel may take the Respondent's acceptance of responsibility into consideration in determining the appropriate sanction. Once the Respondent accepts responsibility, such acceptance cannot be withdrawn. A written finding of the accepted report and the resulting disciplinary action will be issued by the Panel, which will become part of the Respondent's student records and will be shared with the Complainant.
- c. **Respondent May Withdraw:** At any time up until three (3) days after the Panel Hearing, the Respondent has the right to withdraw as a student from Bentley University. In such a case, the Respondent will leave the University with the notation "Student Withdrew with Disciplinary Charges Pending" on their disciplinary record. After withdrawing, the Respondent will not be eligible to return to the University. A Respondent's withdrawal will end the Adjudication Process for that report. On the fourth (4th) day after the Panel Hearing, the Respondent will no longer be allowed to withdraw, as the pending decision from the panel and disciplinary action will determine their status with the University. Under certain circumstances, and at the discretion of the Panel, the time period for the Respondent to withdraw may be extended if a supplemental fact-finding investigation has been requested.

by the Panel. In that case, the Respondent's right to withdraw would expire three (3) days after any subsequent Panel Hearing is held, or after notice that a subsequent Panel Hearing will not be scheduled.

- I. **The Panel's Decision.** Upon determining that all of the issues regarding the formal report have been fully investigated and adequately addressed, the Panel will issue its decision. The decision will be made on the preponderance of the evidence standard – which means whether the facts presented in the investigation report support a finding that it is more likely than not that University policy has been violated. The decision of the panel will be reached by a majority. The panel will base its decision on the information presented in the investigation report and any supplemental investigation report. Under ordinary circumstances, the Panel's decision will be issued in writing within 10 (ten) business days after the Panel Hearing. The Panel Chair will draft the Panel's written decision and submit it to the Title IX Coordinator. The Panel may issue the following decisions to a Formal Complaint:

- A finding that a University policy was violated. The panel will then determine the appropriate sanction(s) for the prohibited conduct.
- A finding that a University policy was not violated as there is insufficient evidence to support a finding that the Respondent violated these policy allegations based on the Formal Complaint. Based on this finding, the matter will be considered resolved, and the investigation will be closed. Appropriate remedial measures (including but not limited to supportive measures issued to both parties) may, however, remain in effect.

Where possible, the parties will receive an immediate notification of the Review Panel's determination. Written notice of the outcome, sanction (if appropriate), and rationale for each will typically be provided within five business days of the hearing

Once the Panel's decision has been issued, both the Complainant and the Respondent will be notified by the Title IX staff. Each party will meet with the Title IX staff separately to receive a copy of the Panel's decision, referencing the supporting information that the Panel relied on from the investigation report. The Panel's decision is a confidential document that can only be shared with authorized persons, as noted in this process (i.e., advisor, support persons, attorneys, counselors, or clergy). Anyone disclosing the Panel's decision to a person not authorized to see it shall be subject to disciplinary action. If the Panel's decision results in disciplinary action which includes separation from campus, that sanction will be imposed immediately, regardless of whether an appeal has or will be filed.

