

## TITLE IX: HARASSMENT

Brescia University does not condone harassment of any kind, against any group or individual, because of race, color, religion, national origin, ethnic identification, age, disability, genetic information, gender, or sexual orientation. The University's ability to achieve its mission is dependent on the cooperative efforts of its faculty, staff and students. For such cooperation to exist, an atmosphere of professionalism, marked by mutual trust and respect is essential. Harassment, conduct which violates this atmosphere, is unprofessional, illegal, and unethical. It is unacceptable behavior and will not be tolerated. Brescia University prohibits such conduct by anyone including but not limited to: faculty, staff, students, managers, supervisors, co-workers, or non-employees such as visitors, vendors, and contractors.

Harassment is generally defined as an act or communication causing emotional stress specifically addressed to individuals or groups intended to harass, intimidate, or humiliate an individual or group. Examples of impermissible harassment include, but are not limited to:

1. The use of physical force or violence to restrict the freedom of movement of another person or to endanger the health and safety of another person based on that person's gender, ethnicity, et al;
2. Physical or verbal behavior that involves an express or implied threat to interfere or has as its purpose or has the reasonably foreseeable effect of interfering with an individual's personal safety, academic efforts, employment, participation in University-sponsored extracurricular activities because of that individual's race, color, etc. and which causes that individual to have a reasonable apprehension that harm is about to occur;
3. Any type of conduct that has the effect of unreasonably interfering with an individual's academic performance or creates an intimidating, hostile or offensive learning environment; or
4. Epithets, slurs or derogatory comments based on a person's race, color, etc.

**Sexual harassment** is defined as any unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature, which continues when requested to cease when:

1. Where submission to such conduct is made either explicitly or implicitly a term or condition of a student's academic advancement;
2. Where submission to or rejection of such conduct by an individual is used as a basis for decisions affecting such academic advancement;
3. Where such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive learning environment;
4. Sexual flirtations, touching, advances, or propositions;
5. Verbal abuse of a sexual nature;
6. Graphic or suggestive comments about an individual's dress or body;
7. Sexually degrading words to describe an individual; or
8. The display of sexually suggestive objects or pictures, including nude photographs, in any form, including those accessed or displayed on the University's Network System.

Gender discrimination is defined as differential treatment of others based solely on that person's gender, and includes, but is not limited to, derogatory references made about another person's gender, or characteristics and stereotypes related to that person's gender. Like sexual harassment, gender discrimination will not be tolerated by the University in any form or fashion whatsoever.

### WHAT TO DO IF YOU ARE BEING HARASSED

1. Inform the individual that you feel you are being harassed. Be definitive.
2. If the problem continues, document the facts of the situation and consult the following Title IX Coordinators: Director of Human Resources, (Ultimate over-sight responsibility – student, faculty and other employees), Dean of Students, Director of Residence Life, or the Counseling Director – complaints registered by students. All persons involved in the complaint and the investigation will keep all information related to the complaint and the investigation confidential to the maximum extent possible. This means all persons involved will share such information only with persons who have a need to know.
3. The University will conduct an investigation of any formal complaints of harassment using principles of due process described in the Title IX Investigation section of this handbook.
4. Any proven violation of this policy will result in student conduct sanction.

If you believe you have witnessed harassing behavior, immediately contact the Title IX Coordinator or Dean of Students.

Brescia seeks to eliminate harassment under its jurisdiction by periodically informing students about this policy statement and the obligations hereunder. Brescia University prohibits any type of retaliation against any student who in good faith files a complaint under this policy or against anyone who assists in the complaint investigation. Any student who intentionally makes a false allegation of discrimination or harassment will be subject to disciplinary action, which may include but is not limited to written warning, suspension, or dismissal from the University.

Brescia University complies with Title IX of the Educational Amendments of 1972 to the 1964 Civil Rights Act and its regulations: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance."

## SEXUAL MISCONDUCT, SEXUAL ASSAULT, AND RELATIONSHIP VIOLENCE POLICIES

## INTRODUCTION

*Note: Due to the ever changing law and requirements of Title IX, the Campus SaVE Act, and Violence Against Women Act, the most up to date policies for sexual misconduct, sexual assault, and relationship violence may be found at <https://www.brescia.edu/title-ix-sexual-harassment-misconduct-and-assault> on the Brescia University website. In the event of a conflict between the printed policy and the web policy, the web policy shall supersede the print version.*

Sexual misconduct of any kind is inconsistent with the University's values and incompatible with the safe, healthy environment that the Brescia community expects. All members of this community share responsibility for creating and maintaining an environment which promotes the safety and dignity of each individual. All forms of sexual misconduct are an affront to justice that will not be tolerated at Brescia University. Federal law treats sexual misconduct and sexual assault as forms of sexual harassment, which is prohibited under Title IX. Furthermore, relationship violence such as domestic violence, dating violence, and stalking are violations of Federal law (the Campus SaVE Act) and are not tolerated at Brescia University. Sexual misconduct, sexual assault, and relationship violence also violate state law as well as University policy.

Students found responsible for engaging in or otherwise allowing sexual misconduct, sexual assault, and/or relationship violence to take place will ordinarily face disciplinary sanctions up to and including dismissal from the University.

The University believes that no person should bear the effects of sexual assault alone. When a sexual assault occurs, the University's paramount concern is for the safety, health, and well-being of those affected. To support and assist students, the University promptly provides a wide range of services and resources. Please see the section below on Resources for Medical, Counseling, and Pastoral Care to learn more about these resources.

## SCOPE AND APPLICABILITY

Brescia University's policy applies to:

- all Brescia University employees, whether full-time or part-time staff, faculty, clergy, adjunct faculty, temporary staff, or third-party employees or vendors;
- all persons taking courses at Brescia, whether full-time or part-time, non-degree or degree seeking, or pursuing undergraduate, graduate, or professional studies;
- all persons residing in Brescia residential housing, whether or not currently enrolled or working at Brescia; and
- all members of the Brescia University Board of Trustees.

The individuals listed above are referred to collectively as **Covered Persons**. This policy prohibits sexual misconduct by or against a Covered Person, both on and off the Brescia campus. In addition, this policy prohibits sexual misconduct by all persons visiting or volunteering at or for Brescia and by all persons and entities that provide services to Brescia.

## SEXUAL MISCONDUCT OFFENSES

Prohibited sexual misconduct offenses include, but are not necessarily limited, to the following:

- Non-consensual sexual intercourse, which is any sexual intercourse by any person upon another without consent. It includes oral, anal, and vaginal penetration, to any degree, and with any object. It is referred to as "sexual assault" in this policy; and
- Non-consensual sexual contact, which is any sexual touching with any object, by any person upon another, without consent. Sexual touching is contact of a sexual nature, however slight.

Other forms of sexual misconduct include, but are not limited to:

- Sexual exhibitionism;
- Sex-based cyber-harassment;
- Prostitution or the solicitation of a prostitute;
- Peeping or other voyeurism;
- Stalking, including cyber-based stalking; and
- Going beyond the boundaries of consent, e.g., by allowing others to view consensual sex (e.g. transmission of pictures and/or video via a computer, cell phone or other electronic modes of communication) or the non-consensual video or audio taping of sexual activity.

**Consent means informed, freely given agreement, communicated by clearly understandable words or actions, to participate in any form of sexual activity.** Consent cannot be inferred from silence, passivity, or lack of active resistance. A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. By definition, there is no consent when there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. A person who is the object of sexual aggression is not required to physically or otherwise resist the aggressor; the lack of informed, freely given consent to sexual contact constitutes sexual misconduct. **Intoxication is not an excuse for failure to obtain consent.** A person incapacitated, inebriated, or developmentally impaired by alcohol or drug consumption, or who is unconscious or asleep or otherwise physically impaired, is incapable of giving consent.

**Force** is the use of physical violence to gain sexual access. Force also includes threats, intimidation (implied threats), and imposing on someone physically.

## RELATIONSHIP VIOLENCE

Relationship violence is a dangerous form of violence prevalent within the college student population. Often the victims of relationship violence find it difficult to ask for help or blame themselves for the abuse. No one deserves to be abused for any reason and everyone deserves help if

they are being abused.

**Dating violence** is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be determined based on consideration of the following factors:

- the length of the relationship;
- the type of relationship; and
- the frequency of interaction between the persons involved in the relationship.

**Domestic violence** is a felony or misdemeanor crime of violence committed by the victim's

- current or former spouse,
- current or former cohabitant,
- person similarly situated under domestic or family violence law, or
- anyone else protected under applicable domestic or family violence laws.

Stalking is (1) a course or pattern of unwelcome and unwanted conduct (2) that a person knows or has reason to know (3) would cause the victim under the circumstances to feel frightened, threatened, oppressed or intimidated or to suffer substantial emotional distress.

Stalking behavior includes, but is not limited to:

- repeated, unwanted and intrusive communications by phone, mail, text message, email and/or other electronic communications, including social media;
- repeatedly leaving or sending the victim unwanted items, presents or flowers;
- following or lying in wait for the victim at places such as home, school, work or recreational facilities;
- making direct or indirect threats to harm the victim or the victim's children, relatives, friends or pets;
- damaging or threatening to damage the victim's property;
- posting information or spreading rumors about the victim on the internet, in a public place, or by word of mouth; or
- unreasonably obtaining personal information about the victim by accessing public records, using internet search services, hiring private investigators, going through the victim's garbage, following the victim, or contacting the victim's friends, family, work or neighbors.

Brescia University will assist any student who has been the target of violence, threats of violence or abuse of any kind whether it has taken place on or off campus or been perpetrated by another student or someone else. Students who need assistance are urged to contact the Dean of Students, or the Director of Counseling for assistance. In addition, Brescia's policy is that any student who has been ordered by a court to avoid contact with any other member of the University community may be held subject to the University's emergency suspension policy for as long as the court order is in effect. Students who want to know more about this policy may contact the Dean of Students.

## **REPORTING: RESOURCES**

Brescia University is committed to investigating, resolving, and preventing sexual misconduct, and the law generally requires it to do so. Brescia strongly encourages victims to tell someone about sexual misconduct. As described below, Brescia expects certain Covered Persons to notify the Title IX Coordinator when they become aware of sexual misconduct. This ensures that victims will receive appropriate support. It also enables Brescia to fulfill its commitment to prevent and address sexual misconduct and to comply with applicable law.

### **HOW, WHEN AND WHOM TO TELL**

Individuals who experience or allege sexual misconduct prohibited by this policy are referred to as *Complainants*. Individuals who are alleged to have engaged in sexual misconduct prohibited by this policy are referred to as *Respondents*.

#### **Individuals Who Have Personally Experienced Sexual Misconduct**

If you have personally experienced any form of sexual misconduct, Brescia strongly urges you to tell someone about the incident as soon as possible. There are multiple options to do this, listed below. In an emergency, call 911. If you have concerns about confidentiality, contact a Confidential Resource (see below). To initiate Brescia's response and resolution process, you or another person must notify the Title IX Coordinator. If you want to make a report to police about criminal sexual misconduct, Brescia can assist you in that process (see Reporting Options section).

#### **Individuals Who Become Aware of Sexual Misconduct Incidents or Allegations**

If you become aware of an incident or allegation of sexual misconduct that is prohibited by this policy, contact the Title IX Coordinator, Dean of Students, or a Sexual Assault Resource Coordinator right away for advice and assistance. These resources are referred to as Trained Responders. Trained Responders regularly deal with incidents and allegations of sexual misconduct and have received training on how to handle situations involving sexual misconduct. Trained Responders will provide advice and assistance to Complainants and other individuals who contact them and help ensure that Brescia responds appropriately and in accordance with applicable law.

#### **Responsible Reporters**

All Brescia employees who are not student workers, and all members of the Brescia Board of Trustees, are required to contact the Title IX Coordinator or Dean of Students promptly after becoming aware of an incident or allegation of sexual misconduct.

Brescia encourages, but does not require, all other persons (generally students) who become aware of an incident or allegation of sexual misconduct to contact the Title IX Coordinator or Dean of Students.

Brescia employees who learn of sexual misconduct while serving as a Confidential Resource, as defined below, are not required to notify a

Trained Responder.

To report an incident of sexual misconduct or sexual assault, please notify any of the following resources:

**On-Campus Resources**

**Title IX Coordinator**

Tammy Keller, Director of Human Resources

Room 161 Administration Building

270-686-4246

tammy.keller@brescia.edu

**Title IX Deputy Coordinator**

Joshua Clary, Vice President for Student Development/Dean of Students

Room 213, Campus Center

270-686-4333

josh.clary@brescia.edu

**Sexual Assault Resource Coordinators**

Patricia Lovett, Director of Student Activities and Leadership Development

Room 205, Campus Center

270-686-4336

patricia.lovett.@brescia.edu

Isaac Duncan, Director of Residence of Life

Room 209, Campus Center

270-686-4324

isaac.duncan@brescia.edu

**Brescia Security**

270-686-4300

**On-Campus Support and Confidential Resources**

**Counseling Center**

Eva Atkinson, Director of Counseling Services

Room 230, Science Building

270-686-4282

eva.atkinson@brescia.edu

**Campus Ministry**

Sister Pam Mueller, OSU, Director of Campus Ministry

Room 233, Science Building

270-686-4319

pam.mueller@brescia.edu

**Off-Campus Places to Report Sexual Misconduct**

**Owensboro Police Department**

Emergency- 911

Non-Emergency Reporting: 270-687-8888

**Owensboro Health Regional Hospital- Emergency Room**

1201 Pleasant Valley Road

Owensboro, KY 42303

**New Beginnings- Sexual Assault Support Services**

1716 Scherm Rd, Owensboro, KY 42301

270-926-7273

Crisis Line: 1-800-226-7273

**REPORTING: PRIVACY AND CONFIDENTIALTY**

Confidential Resources

Under Kentucky law, if a student wishes the details of an incident to be kept strictly confidential, she or he can speak with counselors at University Counseling Services, health providers, religious clergy, or off-campus sexual assault crisis resources, such as New Beginnings, the sexual assault crisis center for Owensboro area. These individuals will honor confidentiality unless there is an imminent danger to the student or to others.

### **REPORTING: PARAMETERS OF CONFIDENTIALITY AND MANDATED TITLE IX INVESTIGATIONS**

In all instances and to the extent possible, the University will protect the privacy of all parties to a report of sexual misconduct or sexual assault. That said, under federal law, campus officials (with the exception of those listed under Confidential Resources, above) who receive a report of sexual assault, whether from the student involved or a third party, must share that information with the appropriate University authorities for investigation and follow-up. The University is obligated under the law to investigate the complaint, to take action to eliminate sexual harassment and sexual assault, prevent its recurrence, and address its effects. An administrative investigation under Title IX must be initiated if the University has enough information to reasonably determine key facts, e.g., time, date, location, and names of parties involved in an alleged incident. Ordinarily, this administrative investigation will include a review of statements obtained from either party, interviews with both parties, interviews with witnesses as appropriate and review of relevant documentary evidence, and will be conducted by the Dean of Students or his/her designee. The University is obligated to conduct this investigation regardless of the complainant's requests regarding confidentiality of the process.

In the course of the administrative investigation, information will be shared as necessary with people who need to know, such as investigators, witnesses and the accused. Any response by the University may be hindered by the complainant's requests for anonymity and/or inaction, but the University will strive to keep the matter as confidential as possible under the circumstances.

### **REPORTING: TIMING**

Notifying a Trained Responder, Confidential Resource, law enforcement or other support resources identified in Section IX below promptly after sexual misconduct occurs helps assure the preservation of evidence. It is best for any physical evidence to be collected immediately, ideally within the first 24 hours after the incident occurs. Prompt notice and the preservation of evidence makes it easier to investigate and respond appropriately to the situation.

In order to assure an inquiry and response by Brescia, a Trained Responder must receive notice of sexual misconduct within one calendar year of the incident. Complainants are urged to notify Brescia of an incident regardless of whether the Complainant knows the identity of the Respondent(s). If the Complainant does not know the identity of one or more Respondent at the time of the incident or notice to Brescia and later learns the Respondent's identity, the Complainant should notify Brescia as soon as possible, but no later than one calendar year following the date the Complainant learned the identity. The reason for this timing is that as time passes, evidence and witnesses may become unavailable and Respondents may leave Brescia, making it impractical for Brescia to conduct an effective and equitable response and resolution process.

Incidents reported after the one-year time limitation may be investigated or otherwise addressed at the discretion of the Title IX Coordinator based on the availability of witnesses and other evidence and Brescia's interest in providing a safe, non-discriminatory learning and working environment.

### **REPORTING: POLICE**

Complainants have the right to report to law enforcement all misconduct that may violate criminal laws, and Brescia strongly urges Complainants to make such reports. If a Complainant of potentially criminal sexual misconduct, including sexual assault, dating violence, stalking or domestic violence, wishes to notify law enforcement authorities, Brescia will assist the Complainant to do so.

Upon request by the police, Brescia Security will assist the police in obtaining, securing, and maintaining evidence in connection with sexual misconduct allegations.

### **REPORTING: CLERY ACT**

Under the Clery Act, Brescia has a duty to track and publish information about certain types of sexual misconduct and to report certain information in Brescia's annual Campus Security Report. Personally identifiable information is kept confidential and will not be published.

### **REPORTING: TIMELY WARNING TO CAMPUS**

In an effort to provide timely notice to the Brescia community, and in the event of a serious crime against people that occurs on campus, where it is determined that the incident may pose a serious, ongoing threat to members of the Brescia community, a mass email Crime Alert is sent to all students and employees on campus. Crime alerts are also posted by the Office of Student Development in the residence halls and various other buildings on campus, and are typically posted in the lobby/entrance area of the building(s) for seven days. Updates to the Brescia community about any particular case resulting in a Crime Alert may be distributed via email or may be posted by the Office of Student Development.

### **REPORTING OPTIONS**

A student has the option to pursue a criminal complaint with the appropriate law enforcement agency, to pursue a complaint through the University student conduct process, or to pursue both processes simultaneously. Regardless of the option chosen, the University will initiate an administrative investigation under Title IX. Reports may be filed with the Title IX Coordinator, Tammy Keller, or Deputy Title IX Coordinator, Joshua Clary (see Reporting section of this policy for contact information).

#### **Option 1: Criminal Complaint**

The University encourages students to report all incidents of sexual misconduct or sexual assault to the police. If the incident occurred on Brescia property, Brescia Security is the appropriate agency with which to file a report, but students are free to contact a law enforcement agency of their choosing if they believe for any reason that Brescia Security is not the student's best option (if the student chooses to contact off-campus law enforcement, the University still requests that the student apprise the Office of Student Development of the situation, even if done after initial contact with other law enforcement officials). Off-campus incidents will likely fall in the jurisdiction of the Owensboro Police Departments or

Daviess County Sheriff's Office. Brescia Security can assist with contacting the appropriate agency.

Incidents of sexual misconduct involving students that are reported to Brescia Security will also be referred to the Dean of Students in the Office of Student Development for follow-up and administrative investigation. Similarly, the Dean of Students will follow-up where appropriate in those instances where the University has a report of an incident of sexual misconduct or sexual assault that has been reported to another law enforcement agency.

The administrative investigation conducted by the Dean of Students or his/her designee is separate and distinct from the criminal investigation and flows from the University's obligations under Title IX to ensure that it is providing a safe environment for all students. If a complainant wishes to pursue a criminal complaint exclusively, the complainant may choose to temporarily defer the administrative investigation and/or conduct process by making a formal written request to Dean of Students, which may delay the administrative investigation and the University's ability to respond. The University may continue its administrative investigation where it has reason to believe that the alleged harasser may be an imminent threat to the safety of the complainant and/or other students. At any time, the complainant may choose to rescind the deferral by making a formal written request to the Dean of Students, electing to resume the administrative investigation and/or student conduct process. The University will maintain documentation of the date of deferral. The Office of Student Development for consideration in the University student conduct process may use information obtained through the criminal investigation.

If a student pursues a criminal complaint, a member of the Office of Student Development will request that the Daviess County Prosecutor's Office, or other appropriate local law enforcement agency personnel, keep the University informed and immediately advise of its decision whether to prosecute the complaint. The University will maintain documentation of the date of the request to the Prosecutor's Office. In cases where the Prosecutor's Office declines prosecution, a member of the Office of Student Development will provide written notice to the complainant of the Prosecutor's decision.

### **Option 2: University Student Conduct Process**

Sexual misconduct involving students, including sexual assaults and relationship violence, whether or not they have been reported to a police agency, should also be reported to the University for investigation and resolution through University processes.

If a student reports an incident of sexual misconduct or sexual assault to the University, the Title IX Coordinator and/or his/her designee will conduct an administrative investigation. Ordinarily, an administrative investigation will include a review of statements obtained from either party, interviews with both parties, interviews with witnesses as appropriate and review of relevant documentary evidence. Once the investigation is complete, the Dean of Students or his/her designee will make a determination about whether the case should be referred to the Title IX Hearing Board for resolution. Information obtained through the administrative investigation may be used by the Office of Student Development for consideration in the University student conduct process, with or without the cooperation of the complainant.

### **Option 3: Simultaneous Processes**

A student has the option to pursue a criminal complaint with the appropriate law enforcement agency, to pursue the University's conduct process, or to pursue both avenues simultaneously.

## **WRITTEN NOTICE OF REPORTING OPTIONS**

Students who report alleged sexual misconduct, sexual assault, or relationship violence will be provided with written notice of the above referenced reporting options. The University, through the Dean of Students or his/her designee, must also obtain written acknowledgment from the student of her/his decision regarding which options, if any, the student wishes to pursue.

## **INTERIM ACTION TO PROTECT THE PARTIES AND THE COMMUNITY**

Whenever the University receives a report of sexual misconduct or sexual assault, the complainant will be referred to a Sexual Assault Resource Coordinator (SARC) who will serve as a resource person to the complainant to identify, explain, and navigate the complainant's reporting options and the available support services. This can include referrals to counseling, educational support, pastoral care, and medical treatment, and information about University and legal processes.

The Deputy Title IX Coordinator will consider whether interim action is reasonably necessary or appropriate to protect the parties and the broader Brescia community, pending completion of the response and resolution process. If the Deputy Title IX Coordinator determines that interim action is reasonably necessary and appropriate, the SARCs and their respective designees are authorized to take or direct such action.

Examples of interim actions include, without limitation:

- establishing a "no contact" order prohibiting the Respondent and Complainant from communicating with each other during the response and resolution process;
- prohibiting a Respondent from physically entering or being on Brescia property;
- prohibiting a Respondent from participating in Brescia-sponsored events;
- changing a Complainant's or Respondent's on-campus residency or prohibiting a Respondent from residing in a Brescia residence;
- changing a Complainant's or Respondent's student or employee status, in consultation with appropriate administrator(s);
- changing a Complainant's or Respondent's work or class schedule, in consultation with appropriate administrator(s);
- issuing a timely warning of any substantial threat or danger to the community;
- making information about orders for protection and harassment restraining orders available to a Complainant; or
- notifying and consulting with appropriate Brescia administrators, faculty, and staff members as warranted under the circumstances.

The SARC can also provide assistance in rearranging class schedules, extracurricular activities and housing and on-campus dining

arrangements; to the extent that a student's requests are reasonable and can be accommodated, every effort will be made to do so. Where appropriate, the goal of any adjustment will be to minimize the burden on the complainant's educational program. Similarly, an accused student will also be assigned a SARC, to provide him or her with support, information and assistance.

#### **No Contact Orders Issued to the Complainant and the Accused**

Upon receipt of a report of alleged sexual misconduct in which the accused is a current Brescia student, the Dean of Students, and/or his/her designee shall issue no contact orders to the complainant and accused. If the recipient of a no contact order fails to adhere to the terms and conditions of the no contact order, the student may face disciplinary action, up to and including dismissal from the University.

#### **INTIMIDATION OR THREATS DESIGNED TO INHIBIT REPORTING**

The University strongly encourages students to report any incident of sexual misconduct, sexual assault, or relationship violence. Brescia takes such reports very seriously. Any actual or threatened retaliation or any act of intimidation to prevent or otherwise obstruct the reporting of sexual misconduct, sexual assault, relationship violence or the participation in proceedings relating to sexual misconduct, sexual assault, or relationship violence by an accused student or third party is itself prohibited and will result in student conduct sanctions. A complainant or witness who is threatened in any way should immediately report these concerns to their assigned Sexual Assault Resource Coordinator (SARC) or to the Dean of Students.

#### **OTHER POTENTIAL POLICY VIOLATIONS**

At times, students are hesitant to report the occurrence of a sexual assault to University officials because they are concerned that they themselves, or witnesses to the misconduct, may be charged with other policy violations, e.g., drug or alcohol violations. These behaviors are not condoned by the University, but the importance of dealing with alleged sexual misconduct, sexual assault, or relationship violence outweighs the University's interest in addressing lesser violations. Accordingly, in these cases, the University will not pursue disciplinary action against a student who makes a complaint of sexual misconduct, sexual assault, or relationship violence in connection with the reporting of that incident, or against students named as witnesses to the incident.

#### **STEPS IN A TITLE IX INVESTIGATION**

##### **RIGHTS OF THE COMPLAINANT AND RESPONDENT**

During a Title IX Investigation, the Complainant and Respondent are entitled to:

- equitable procedures that provide both parties with a prompt, fair and impartial investigation and resolution conducted by officials who receive annual training on conduct prohibited by the policy;
- notice of the allegations and defenses and an opportunity to respond;
- an equal opportunity to identify relevant witnesses and other evidence and to suggest possible questions to be asked of witnesses during the formal process;
- present information on their own behalf, including written and oral statements and physical exhibits;
- similar and timely access to information, including a written summary of all allegations and defenses, consistent with the Family Education Rights and Privacy Act (FERPA); and
- have a support person of the individual's choice accompany him or her throughout the response and resolution process. The support person is allowed to consult with and advise the Complainant or Respondent the support person is accompanying, but is not otherwise permitted to participate in any proceedings.

##### **TITLE IX INVESTIGATOR**

The Investigator (who may be an a third party investigator) conducts an investigation into the facts of the incident alleged to have occurred, as further described in these procedures. The Title IX Coordinator may appoint two Investigators to work together when circumstances warrant.

The Title IX Coordinator maintains a list of the individuals who have received appropriate annual training to serve as Investigators.

##### **Notice to Complainant**

The Deputy Title IX Coordinator will contact the Complainant in writing, by letter or email, to inform the Complainant of the name of the Investigator, an estimate of the time required to complete the investigation, and any other information the Deputy Coordinator deems relevant given the particular situation.

##### **Notice to Respondent**

The Deputy Coordinator will contact the Respondent in writing, by letter or email, to inform him or her about the Complaint, the allegations made against the Respondent, his or her rights, the initiation of a formal investigation and the name of the SARC and Investigator, an estimate of the time required to complete the investigation, any conditions that may affect the Respondent's status as a student or employee, and any other information the Deputy Coordinator deems relevant given the particular situation.

##### **Meeting with Respondent**

The Deputy Coordinator will meet with the Respondent. At the meeting, the Deputy Coordinator will:

- Review the allegations of sexual misconduct with the Respondent and obtain additional information from the Respondent as necessary to appropriately advise or support the Respondent with respect to the response and resolution process.
- Inform the Respondent about available resources to support the Respondent and the Respondent's right to access these resources. Ensure the Respondent has the means needed to access appropriate support resources.
- Review the policy and these procedures with the Respondent, specifically noting:

- the Respondent's rights under the policy and procedures;
  - the timing and deadlines for action under the policy;
  - the confidentiality provisions; and
  - the prohibition on retaliation.
- Address the Respondent's questions about the policy, procedures, and the response and resolution process.
  - Set a time for the SARC to follow up with the Respondent.
  - After meeting with the Respondent, the SARC will update the Deputy Coordinator regarding the meeting.

#### **Investigation: Fact finding Process**

The Investigator(s) will conduct a thorough and impartial inquiry into the facts and circumstances surrounding the Complaint. At a minimum, the Investigator(s) will seek to interview the Complainant, Respondent and other key persons who may have relevant information about or related to the incident and will seek to obtain all information, documentation and materials the Investigator(s) deem relevant to the investigation. The Investigator will ensure that, before the conclusion of the investigation, the parties have been provided a written summary of all allegations and defenses and have had an opportunity to respond. The opportunity to respond includes: (1) an opportunity to identify relevant witnesses, documentation, and other physical evidence; (2) to identify questions that may be asked of witnesses; and (3) to provide responsive written or oral statements.

The Investigator(s) have authority to request such information, documentation, and materials from appropriate parties on a need to know basis.

#### **Application of Faculty Rights Relating to Academic Freedom**

If the Respondent is a faculty member alleged to have engaged in sexual harassment of the Complainant, the Investigator(s) will consider, in consultation with the Division Chair of the respective school or division (or, if the Division Chair has a conflict of interest, with the Academic Dean or his/her designee), whether there is a perceived or potential conflict between (a) the limitations on conduct and communications implied by the definition of sexual harassment under the policy and (b) the principles of academic freedom. Brescia University will use as a working definition of academic freedom found in the Faculty Handbook Section 2.11.1.

If a perceived or potential conflict is deemed to exist, the Investigator(s) will work with the Division Chair, Academic Dean or his/her designee (as applicable) to ensure the appropriate application of the Brescia definition of Academic Freedom in conjunction with the response and resolution process.

#### **Investigation: Status Updates**

The Investigator(s) will provide status updates to the Complainant and Respondent at least monthly during the investigation and as necessary to alert them of any delays or changes in time estimates for completing the investigation and to provide notice of any new material allegations or defenses, and the parties will be provided an opportunity to respond to such new allegations and defenses.

#### **Determination of Responsibility**

Upon completion of the formal investigation, the Investigator(s) will weigh the evidence and determine whether it is more likely than not (using a "preponderance of the evidence" standard) that the Respondent is responsible for the misconduct alleged. If the Investigator(s) determine it is more likely than not that the Respondent engaged in sexual misconduct in violation of the policy, then the Investigator(s) will make a determination that the policy has been violated.

#### **Investigation Report**

The Investigator(s) will timely document his or her findings of fact and determination in an investigation report and submit it to the Deputy Title IX Coordinator and Title IX Coordinator.

The Title IX Coordinator will review the investigation report to ensure that the report and determination are consistent with Brescia policies, procedures and practices. If the Title IX Coordinator determines that the report and determination are not consistent with policies, procedures and practices, the Title IX Coordinator has discretion to direct or take appropriate action.

#### **Responsive Action by Brescia University**

The Deputy Coordinator will review the investigation report and will work with the appropriate Brescia administrators, as set forth below, to determine what, if any, sanctions will be imposed or other action will be taken by Brescia. Not all forms of sexual misconduct will be deemed equally serious offenses, and Brescia may impose different sanctions depending on the severity of the offense and taking into account any previous conduct violations. The Deputy Coordinator and administrators are authorized to apply any sanction or other response that they together determine to be fair and proportionate to the misconduct.

<b>If the Respondent is a(n) . . .</b>	<b>Sanctions will be determined by the . . .</b>	<b>Potential Sanctions</b>
Undergraduate student	Dean of Students, in consultation with the Director of the applicable school as	Sanctions may range from a verbal warning to expulsion. The Dean of

If the Respondent is a(n) . . .	Sanctions will be determined by the . . .	Potential Sanctions
	appropriate under the circumstances, such as cases involving students in licensure programs	Students will consider as part of the decision whether the accused student poses a continuing risk to the Complainant and/or Brescia community.
Graduate professional student or	Dean of Students and Director of the applicable school	Sanctions may range from a verbal warning to expulsion. The Dean of Students and the dean of the applicable college or school will consider as part of the decision whether the accused student poses a continuing risk to the Complainant and/or Brescia community.
Faculty member	Division Chair of the applicable school or division, in consultation with Director of Human Resources and the Academic Dean	The application of sanctions will be consistent with the applicable disciplinary policies contained in the Faculty Handbook and, to the extent applicable and not superseded by the Faculty Handbook, the Employee Handbook. The Academic Dean will consider, as

If the Respondent is a(n) . . .	Sanctions will be determined by the . . .	Potential Sanctions
		one factor in the decision, whether the faculty member poses a continuing risk to the Complainant and/or Brescia community.
Staff member	Appropriate member(s) of the President's Cabinet responsible for a Respondent's school or department in consultation with the Director of Human Resources	The application of sanctions will be in accordance with the applicable disciplinary policies contained in the Staff Handbook. The Cabinet Member will consider, as one factor in the decision, whether the staff member poses a continuing risk to the Complainant and/or Brescia community.
Not a student or employee	Deputy Title IX Coordinator and Title IX Coordinator	May include restrictions on the Respondent's presence, enrollment or employment at Brescia

#### Notice of Outcome to Complainant and Respondent

The Investigator's determination or other appropriate notice of the outcome will be explained in a written notification, by letter or email, to the Complainant and Respondent that also includes information about the appeal process and when the outcome will be final. The written notifications must be sent within ten (10) working days of the Deputy Coordinator's receipt of the findings from the Investigator and will be sent to the Complainant and the Respondent at the same time.

Brescia is limited in the information it may share in providing this notice of outcome. In many cases, the outcome letter sent to the Complainant will contain only the following information: whether the Respondent was found to have violated this policy, and any sanctions imposed that directly relate to the Complainant. In sexual misconduct cases involving allegations of a crime of violence or a non-forcible sex offense (such as statutory rape), additional information about sanctions against a Respondent who violated this sexual misconduct policy also may be provided.

The Deputy Coordinator also will ensure that appropriate Brescia administrators, faculty and/or staff members who have a need to know information about the outcome have been or are provided with such information. In most cases, this will include the member(s) of the

President's Cabinet responsible for a Respondent's school or department, and in the case of Respondents who are employees, the Respondent's supervisor.

## APPEAL PROCESS

### Grounds for Appeal

Either the Complainant or the Respondent may appeal the results of the formal process on one or more of the following bases:

1. that a procedural error occurred that substantially affected the outcome of the process;
2. that the decision was arbitrary and capricious or violated academic freedom;
3. that there has been discovery of significant new factual material not available to the Investigator that could have affected the original outcome; however, intentional omission of factual information by the appealing party is not a ground for an appeal; or
4. that the sanction or other response by Brescia under the formal process was excessively severe or grossly inadequate.

### Submitting an Appeal

A signed, written request for an appeal must be submitted to the appropriate Appeal Officer within ten (10) working days following the date that notification of the outcome of the investigation was sent to the Complainant and the Respondent.

If the Respondent is a . . .	The Appeal Officer is the . . .
Student (who is not also a regular faculty or staff member)	Vice President for Student Affairs/Dean of Students
Faculty or staff member (who is not a student worker)	Vice President for Academic Affairs or Vice President for Business and Finance

## TITLE IX APPEAL BOARD: FACULTY & STAFF

In cases in which the Respondent is a staff or faculty member, the Appeal Officer will appoint an appeal board comprising three (3) Brescia employees who do not have a conflict of interest. If the Respondent is a faculty member, the members of the appeal board will be full-time tenured faculty members selected by the Title IX Coordinator and Academic Dean. All appeal board members must receive or have in the past year received training on the policy, procedures, and applicable law.

In cases in which the Respondent is a student and in cases in which the Respondent is another individual who is not a student or employee, the Appeal Officer may consider the appeal directly or the Appeal Officer may, upon consultation with the Title IX Coordinator, appoint an appeal board consistent with the procedures herein.

Either Title IX Coordinator or the Deputy Title IX Coordinator will serve as Advisor to the Title IX Appeal Board and is responsible to ensure that procedures are consistent with faculty, staff, and student appeal boards. The Title IX official will not have a vote on the Title IX Appeal Board.

## TITLE IX APPEAL BOARD: STUDENTS

**Composition and Purpose** The Dean of Students will appoint Brescia University's Title IX Student Appeal Board. The Board will be composed of selected trained professional faculty and staff members who may also serve as members of the Student Conduct Board. The assembled group of five (5) faculty and staff members will select a chair. The Dean of Students will serve as Advisor to the Title IX Appeal Board and is responsible to ensure that all Student Conduct Board procedures are followed. The Dean of Students, as the University's primary conduct officer, will not have a vote on the Title IX Appeal Board.

### Consideration of Appeal

The appeal board (or Appeal Officer, if no appeal board has been appointed):

- Will *not* rehear the case, but will consider whether it is more likely than not that the above-listed grounds for appeal have been satisfied.
- Will review the appeal, the investigation report, and consider any previously undiscovered evidence (if discovery of new evidence is a ground for appeal).
- May choose to meet with the parties and consider other additional information, in its (or his or her) sole discretion.

If an appeal board is used, the appeal board will provide the appropriate Appeal Officer with a written report of its findings of whether the above-listed grounds for appeal have been satisfied and, if so, a recommendation as to whether Brescia should remand the matter or take any different or additional action than was originally determined. Such report shall be provided to the Appeal Officer no later than fifteen (15) calendar days following submission of the appeal, provided that the Appeal Officer may shorten this timeframe depending on the overall timing of the response and resolution process.

The Appeal Officer will give careful consideration to the recommendation of the appeal board, but shall not be bound by it. Within ten (10) working days following receipt of the appeal board's findings and recommendations, the designated Appeal Officer will notify the Complainant and Respondent in writing of the appeal board's findings and recommendation and the final disposition of the appeal. This timing is subject to the overall timing of the response and resolution process; earlier notice may be required depending on the length of the overall process if shortening the timeframe is deemed to be fair to both parties. The Appeal Officer will discuss any such timing considerations with the Title IX Coordinator.

If no appeal board is used, the Appeal Officer will issue a written decision stating the Appeal Officer's findings and the final disposition of the

appeal within ten (10) working days following receipt of the appeal.

The Appeal Officer also will notify appropriate Brescia administrators, faculty, and staff members of the outcome on a need-to-know basis.

#### **No Further Appeal**

Appeals arising out of alleged violations of the policy must be made under this appeal process and are not eligible for consideration under faculty, staff or student grievance policies or processes. The President, however, has discretion to modify a decision in exceptional circumstances.

#### **RESOURCES FOR MEDICAL, COUNSELING, AND PASTORAL CARE**

It is especially important for students who have been sexually assaulted to seek immediate and appropriate medical treatment. Owensboro Health Regional Hospital has a specially trained sexual assault team available 24 hours a day, seven days a week. Emergency Department staff may ask if the student wishes to speak to the police; this decision is up to the student.

Brescia's Counseling Service is staffed by a trained professional who can provide specialized support and assistance to students who have been assaulted. Current students may seek counseling at any time, whether it is days, months, or years after the incident. The confidential services of Counseling are available to the student who was assaulted and her or his friends who may need support in assisting the student. Counseling Services can be reached at 270-686-4282.

There are several community based resources available for students who are victims of sexual misconduct, sexual assault, or relationship violence. Students may contact:

- **New Beginnings:** Sexual Assault Support Services 270-926-7273 or 1-800-226-7273
- **OASIS:** Domestic violence and Substance Abuse Treatment 270-685-0260 or 1-800-882-2873
- **Albion Fellows Bacon Center:** Domestic Violence and Sexual Abuse Shelter 1-800-339-7752 or the Domestic Abuse Crisis Line 812-422-5622 or the Sexual Assault Crisis Line 812-424-7273
- **24 hour Crisis & Information:** 270-684-9466 or 1-800-433-7291

The on-campus resources listed above are available to all Brescia students including accused students and witnesses in sexual misconduct and sexual assault cases.

#### **RECORDKEEPING**

The Title IX Coordinator is responsible for maintaining the official Brescia records of sexual misconduct Assertions and Complaints. When an Assertion or Complaint is pending, each official having a role in the response and resolution process is responsible for handling records appropriate to his or her role. When the process is complete, the official records relating to the Complaint or Assertion will be provided to the Title IX Coordinator, who will maintain such records in accordance with Brescia record retention requirements and applicable law. The official records include:

1. In cases where the informal process is requested by the Complainant, (a) a summary of the Assertion of sexual misconduct and request for resolution via an informal process, (b) a summary of the Title IX Coordinator's and Deputy Coordinator's analysis of whether a formal or informal process should be followed; and (c) a summary of the process used and responsive action taken by Brescia;
2. In cases where the formal process is used, a copy of the Complaint;
3. A description of any interim action taken and copies of correspondence from Brescia to the Complainant and Respondent relating to the interim action.
4. A copy of any Clery Act report submitted by the Deputy Coordinator;
5. Record indicating that the Deputy Coordinator and/or SARC(s) met with the Complainant and/or Respondent and the issues covered;
6. Copies of any notices or summaries given to the Complainant and/or Respondent;
7. The investigation report and accompanying documentation relied upon by the Investigator(s) in reaching conclusions;
8. Copies of statements provided by the parties or witnesses;
9. Documentation indicating the decision reached and sanctions imposed;
10. Copies of the notice of outcome provided to the parties;
11. Appeal statement, if any;
12. Documentation demonstrating appointment of appeal board, if applicable;
13. Report of appeal board, if applicable;
14. Decision of Appeal Officer and copies of notices sent to parties regarding appeal, if applicable; and
15. A timeline of communication with the parties.

Each official having a role in the response and resolution process may elect to send additional records to the Title IX Coordinator depending on the particular facts and circumstances. Personal notes of officials involved in the response and resolution process generally will be maintained in the sole possession of the official who took the notes according to the official's normal recordkeeping practices, any applicable Brescia record retention requirements and applicable law.

Records related to sexual misconduct Assertions and Complaints will be treated as confidential and shared only on a need-to-know basis or as required by law.