

### Date Updated and Published:

Review: Annually

Last Date Reviewed: May 26, 2022

### Revision History:

- July 20, 2019
- July 31, 2020
- July 16, 2021
- May 26, 2022

## Introduction

Bethel University is committed to the principles of equal opportunity and seeks to establish and maintain a safe and healthy environment for all members of the University community, guests, and visitors. The University provides programs, activities, and a campus environment that foster courtesy and respect. The University seeks to eliminate and, by this policy, prohibits all forms of sexual discrimination and misconduct, including sexual harassment and sexual assault, and other forms of relationship violence, which includes dating violence, domestic violence, and stalking. Under federal law, including Title IX of the Education Amendments of 1972 ("Title IX"), Bethel has a duty to prevent and redress sexual discrimination, misconduct, and relationship violence. Such conduct is contrary to Bethel's mission, values, standards, and expectations and will not be tolerated. This policy addresses Bethel's obligations under Title IX, the Violence Against Women Act, and the Violence Against Women Reauthorization Act of 2013.

This policy outlines the procedures that the University will follow for promptly, thoroughly, and equitably investigating and resolving reports of sexual discrimination, misconduct, and relationship violence involving students and employees. The policy sets forth the specific types of conduct that are prohibited, explains options for reporting such conduct, and details the resources and support services available to those in the Bethel community who have been impacted by sexual discrimination, misconduct, and relationship violence. Bethel encourages reporting of violations of this policy. Any reports received beginning on August 1, 2021 for conduct that occurred on or after August 1st, 2021 will fall under the policy set out below. Any reports received beginning on August 1st, 2021 for conduct that occurred before August 1st, 2021 will fall under the policy active at the time the events occurred. The University will take prompt and effective action to address complaints of sexual discrimination, misconduct, and relationship violence and will resolve complaints in a timely and fair manner.

Questions about the policy may be directed to Bethel University's Title IX and Prevention Services Coordinator, who oversees compliance with applicable sexual discrimination policies, including this policy:

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## **Relationship Between this Policy & Other University Policies & Procedures**

This policy supplements existing University standards of conduct for students and employees. Students and employees who violate this policy will be subject to disciplinary action, up to, and including termination and/or expulsion. In the event of a conflict between this policy and another University policy or procedure, this policy shall control. If this policy does not supply a substantive or procedural rule or provision then another policy or procedure, if applicable, may supply the rule. A non-exclusive list of other policies and procedures that in some cases may apply to the investigation and/or resolution of a report of sexual misconduct or relationship violence involving a University student or employee and whose application will be determined on a "case-by-case" basis includes, but is not limited to, the following:

- Anti-Harassment Policies
- Sexual Harassment Policies
- Termination of Tenure or Employment
- Employee Handbook
- Faculty Handbooks
- Family Educational Rights and Privacy Act (FERPA)
- Student Code of Responsibility
- Student Conduct and Discipline
- Student Bullying and Harassment Policy
- Student Complaint Policy
- Campus Wide Student Life Policies and Regulations

## **Jurisdiction**

### Title IX

Regarding Title IX jurisdiction, this policy applies to any person who must be participating or attempting to participate in a Bethel University education program or activity. Bethel's education programs or activities include locations, events, or circumstances over which Bethel University exercised substantial control over both the Respondent (the alleged perpetrator of sexual misconduct or relationship violence) and the context in which the sexual misconduct or relationship

violence occurred. Bethel's education programs or activities also includes conduct that happened in buildings owned or controlled by student organizations that are officially recognized by Bethel University or were recognized by Bethel University at the time of the alleged conduct. Additionally, regarding Title IX jurisdiction, this policy only applies to conduct which took place in the United States of America.

### Other Sexual Misconduct and Relationship Violence

This policy also applies to other sexual misconduct and relationship violence that does not fall within Title IX but, nevertheless, violates Bethel University's standards and expectations. The policies and procedures set out below fully apply to the investigation and adjudication of allegations of sexual misconduct and relationship violence that, while not meeting Title IX's definition of "sexual harassment" (e.g., an alleged sexual assault of one student by another at a private off-campus apartment) and related jurisdiction, constitute unacceptable conduct under the standards and expectations of Bethel University.

### **Presumption of Non-Responsibility**

This policy presumes that the Respondent is not responsible for the alleged conduct, and that presumption remains in place until a determination regarding responsibility is made at the conclusion of the process set out in this policy.

### **Prohibited Conduct & Definitions**

#### **A. Offenses**

The conduct prohibited under this policy, includes, but is not limited to:

- Rape
- Fondling
- Sexual Harassment: Quid Pro Quo and Hostile Environment
- Sexual Exploitation
- Sexual Discrimination
- Incest
- Statutory Rape
- Stalking
- Dating Violence
- Domestic Violence
- False Imprisonment
- Retaliation

#### **B. Definitions of Specific Offenses**

- **Sexual Assault** is an offense classified as a forcible or non-forcible sex offense and meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
- **Rape** is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity. Private body parts include the breast, buttocks, and groin.
- **Sexual Harassment/Quid Pro Quo** is when an employee of the University conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct. Sexual harassment/quid pro quo may be based on or result from power differentials or retaliation.

An aid, benefit, or service under sexual harassment/quid pro quo may include, for example, an internship, award, housing privileges, access to a student organization, additional research time in a laboratory, benefits, promotions, travel accommodations, and food stipends.

- **Sexual Harassment/Hostile Environment** is:
  - unwelcome words and/or conduct, on the basis of sex,
  - determined by a reasonable person
  - to be so severe, pervasive, and objectively offensive
  - that it effectively denies a person equal access to a Bethel University educational program or activity.

Sexual Harassment/hostile environment may include, for example, online harassment using social media, unwelcome sexual advances, requests for sexual favors, Sexual Assault, and Sexual Exploitation. To determine whether words and/or conduct constitute Sexual Harassment, Bethel will consider the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred; and the frequency, nature, and severity of the words and/or conduct. Depending on the severity of the words and/or conduct, a single incident (e.g., Sexual Assault) may be considered Sexual Harassment.

With respect to conduct by an employee or other non-student, "Sexual Harassment" means words and/or conduct of a sexual nature prohibited by Bethel University's Employee Handbook, Bethel University's Sexual Misconduct & Relationship Violence Policy, or both and the applicable policy will be determined on a "case-by-case" basis.

For employees reporting sexual harassment, Bethel will respect the choice of the reporting employee when it comes to whether such a report is governed by Title IX or Title VII. Claims of sexual harassment first reported to the Title IX Coordinator will proceed under Title IX. Claims of sexual harassment first reported to Bethel's Human Resources Department will proceed under Title VII. In general, most employees choose to report sexual harassment claims to Bethel's Human Resources Department, but nothing in this policy prohibits employees from reporting sexual harassment claims to the Title IX Coordinator. In the event that a report to the Title IX Coordinator by an employee does not fall within Title IX, the Title IX Coordinator will relay the report to the Human Resources Department. Under all circumstances, retaliation is equally prohibited under Title IX and Title VII.

- **Sexual Discrimination** is conduct directed at a specific person or a group of identifiable persons that subjects the person or group to treatment that adversely affects their employment, education, or ability to participate in or benefit equally in any University program or activity, on the basis of sex. Sex Discrimination may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. Sexual Harassment, Sexual Assault, Sexual Exploitation, and discrimination involving pregnancy or parenting are all types of Sex Discrimination. A complaint of prohibited conduct will be treated as a complaint of Sex Discrimination in violation of Bethel's Non-discrimination Statement if it was based on the sex of the Complainant (the alleged victim of sexual misconduct or relationship violence). Complaints of Sex Discrimination will be handled in accordance with the procedures outlined below in this section of the Policy. Bethel prohibits Sex Discrimination in any Bethel University education program or activity, including employment and admissions.
- **Sexual Exploitation** is non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other improper purpose. Examples of Sexual Exploitation include, without limitation: observing or audio or videotaping of persons who are undressing or undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons involved, and prostituting another person.
- **Sexual Misconduct** is a term that encompasses (1) sexual harassment, (2) sexual exploitation, (3) sexual violence, including sexual assault and other non-consensual sexual contact (forcible or not), (4) sexual discrimination; (5) and all other words and/or conduct that constitute a sexual violence crime under this Policy. Forms of sexual misconduct include, but are not limited to, the following: attempts to commit sexual misconduct and facilitating, aiding, encouraging, and/or assisting a violation of this policy.
- **Sexual Violence** is engaging in any physical sexual act perpetrated against a person without that person's effective consent.

- **Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by the laws of the state in which the incident occurred.
- **Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent under the laws of the state in which the incident occurred.
- **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to **(A)** fear for his or her safety or the safety of others; or **(B)** suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates with or about a person, or interferes with a person's property.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other treatment or counseling.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the Complainant.
- **Relationship Violence** is a term that encompasses Dating Violence, Domestic Violence, and Stalking.
- **Dating Violence** means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on the Complainant's statements with consideration of the following factors: (i) the length of the relationship, (ii) the type of relationship, and (iii) the frequency of interaction between the persons involved in the relationship. This can include, but is not limited to, such actions as grabbing, slapping, hitting, and pushing. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.
- **Domestic Violence** is a term that includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. Domestic violence can include such actions as grabbing, slapping, hitting, and pushing.

- **False Imprisonment** is the detaining of a person without the person's consent and/or against the person's will to leave. False imprisonment can apply to any physical act, threat, or intimidation in which a person intentionally restricts another person's freedom to move or to leave without consent. This can also include, but is not limited to, removing that person's means of leaving (e.g., taking and/or holding someone's keys, wallet, phone, or other means that would provide that individual with the means to leave the vicinity). This policy does not apply to authorized personnel acting within the scope of their responsibilities, such as Resident Life Staff.
- **Retaliation** is intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purposes of interfering with any right or privilege secured by the Title IX statute or regulations. Because retaliation does not constitute sexual discrimination or sexual harassment under Title IX, retaliation claims will fall under the jurisdiction of "Other Sexual Misconduct and Relationship Violence" reports.

### C. Additional Definitions

- **Force** includes physical force (such as pushing, hitting, pinning down), threats (direct or indirect expressions of intent to inflict harm to self or others), intimidation (implied or indirect threats), and/or other forms of control.
- **To coerce** is to attempt to cause another person to act or think in a certain way by use of duress, compulsion, force, pressure, threats, or intimidation; to compel is to coerce. Positions of power may contain an element of coercion within the relationship and will be considered. The following factors will be taken into account to determine if someone was coerced: duration, frequency, isolation, and intensity.
- **Blacking out** is an amnesia-like state that may be brought on by drugs, heavy drinking, or intoxication; blacking out is not necessarily incompatible with the ability to engage in simple or even complex behavior. Afterwards, the person has no recollection of all or part of the events that occurred during the blackout. There is a distinction between passing out (falling asleep or becoming unconscious) due to drug or alcohol use and blacking out in that a person in a blackout remains conscious and operative.
- **Incapacitation** includes the inability to make a rational, reasonable decision. Incapacitation can result from the taking of GHB, Rohypnol, Burundanga (Scopolamine), Ketamine, or other sedatives or "date-rape" drugs, or excessive use of alcohol or other drugs. Evidence of incapacitation may include, but is not limited to, one or more of the following:

- sleep
  - slurred speech
  - bloodshot eyes
  - the smell of alcohol on the breath
  - shaky equilibrium
  - lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance)
  - lack of awareness of circumstances or surroundings
  - vomiting
  - outrageous or unusual behavior
  - unconsciousness
  - elevated blood alcohol level
  - blacking out
- **Intoxication refers** to a state of stupefaction, exhilaration or euphoria resulting from the ingestion of alcohol or other chemical substances.

## **Effective Consent**

Bethel prohibits all forms of sexual violence. Any sexual acts without effective consent may be considered sexual assault. Failure to obtain effective consent greatly increases the risk of sexual assault. Engaging in any sexual activity with a person whom one knows or reasonably should know is incapacitated or otherwise unable to give consent is prohibited.

### **A. Essential elements of Effective Consent**

- *Informed*: both parties demonstrate a clear understanding of exactly what they are consenting to.
- *Freely and voluntarily given*: there is no coercion, such as force, threats, intimidation, or pressuring.
- *Active, not passive*: expressed in words or actions that indicate a clear willingness to do the same thing, at the same time, in the same way, with each other.
- *Ongoing*: furthermore, consent may be withdrawn at any time, and at that time all sexual activity must cease unless and until additional effective consent is given.

### **B. What is NOT Effective Consent**

- *Silence does not equal consent*. A lack of verbal resistance does not, by itself, constitute consent.

- *Resistance is not required.* A lack of physical resistance does not, by itself, constitute consent.
  
- *Incapacitated or Underage persons cannot give consent.* Incapacitation is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). Under Tennessee law, persons who are (a) under the age of eighteen (18); (b) mentally defective; (c) mentally incapacitated; and/or (d) physically helpless, are incapable of giving consent. A person is considered “mentally incapacitated” if they are rendered temporarily incapable of appraising or controlling their conduct due to the influence of a narcotic, anesthetic, or other substance (voluntarily or involuntarily), or due to any other act committed upon that person without their consent. A person is considered “physically helpless” if they are unconscious, asleep, involuntarily restrained, or for any other reason are physically or verbally unable to communicate unwillingness to do an act. **Anyone who engages in sexual activity with another whom one knows or should reasonably know is incapable of giving consent, according to these standards, may be charged with a criminal offense relating to sexual activity under Tennessee law and will have violated this policy.** The question of what the Respondent should have known is objectively based on what a reasonable person in the place of the Respondent – sober and exercising good judgment – would have known about the condition of the Complainant.
  
- *Alcohol and other drug use:* Because the use of alcohol and other drugs over time can have a cumulative effect, a person who may not have been incapacitated at the beginning of a sexual activity may become incapacitated and therefore unable to give effective consent as the sexual activity continues. See the definition of “Incapacitation” for evidence of incapacitation from alcohol or drug use. *Bethel strongly encourages careful communication between individuals considering sexual activity of any kind, and in particular when considering sexual activity between persons who are under the influence of alcohol and other drugs—especially between persons who do not have a well-established, current sexually intimate relationship.* Such sexual activity is inherently complicated and potentially fraught with misunderstanding.
  
- *No “Implied Consent” for Sexual Encounters.* Previous sexual relationships and/or a current sexual relationship may not, in and of themselves, constitute effective consent. One should not infer effective consent as a function of attire, flirtation, the buying of dinner or the spending of money on a date, etc. Intentional use of alcohol/drugs may not, in and of itself, be taken to imply consent. Consent to sexual activity may be withdrawn at any time, and at that time all sexual activity must cease unless and until additional effective consent is obtained. Consent is not an open-ended condition and once obtained, does not carry past the current sexual activity.

**\*\*Bethel strongly encourages careful communication between individuals considering sexual activity of any kind.\*\***

**BLACKING OUT, INCAPACITATION, AND INTOXICATION DO NOT PROVIDE  
A VALID EXPLANATION OR EXCUSE FOR VIOLATING THIS POLICY.**

## **Intent**

*Depending on the facts and circumstances, proof of intent may or may not be required to find a violation of this policy. For example, engaging in intercourse without obtaining effective consent constitutes a violation of the policy regardless of intent. On the other hand, intent may be an appropriate consideration in some complaints (such as when one person brushes up against another person in a crowded room).*

## **Reporting an Incident**

Bethel takes reports of sexual misconduct and relationship violence seriously. How the University responds to such complaints depends upon a variety of factors, including the wishes of the Complainant, the facts and circumstances of the specific incident, to whom it was reported, and the University's obligations under applicable federal and state laws. Complainants are not required to report sexual misconduct or relationship violence to the University if they do not want the University to provide supportive measures or to be able to respond to the incident. However, reporting a violation of this policy to the University enables the University to respond appropriately by providing supportive measures to the Complainant (and Respondent, as needed) and giving the University an opportunity to respond to the report, including conducting a prompt, thorough, and equitable investigation when a formal complaint is filed and, if warranted, taking disciplinary action against the Respondent if the complaint is substantiated. Whenever a report is made under this Policy, a Complainant is entitled to supportive measures, regardless of whether a formal complaint is filed.

### **A. How to Report to the University**

The University recommends that complaints of sexual misconduct or relationship violence be made to the Title IX Coordinator, but if a person chooses to make an initial complaint to any other responsible employee of the University, that person will refer the matter to the Title IX Coordinator. Retaliation against any person who files a complaint, participates in an investigation, encourages the filing of a complaint, or opposes sexual misconduct and relationship violence is prohibited. Complaints may be filed at any time in person, by phone call, or in writing by email or letter, but the University encourages community members to report violations as soon as possible after the incident. If the Title IX Coordinator determines that the complaint should be filed with another department, the Title IX Coordinator will direct the Complainant to the appropriate department. The Title IX Coordinator also investigates incidents that have been reported to other University officials and referred to the Title IX Coordinator.

To file a complaint pertaining to this policy, please contact the University's Title IX Coordinator at:

Rachael Brooks, JD, MSW  
Title IX and Prevention Services Coordinator  
Bethel University  
325 Cherry Ave.  
McKenzie, TN 38201  
731-352-4246  
[brooksra@bethelu.edu](mailto:brooksra@bethelu.edu)

Complainants or third-party reporters who write to the Title IX Coordinator should provide as much of the following information as possible: what happened, where, and when; names of all parties involved, including witnesses (if any); supporting documentation (if any); and contact information. Everyone is encouraged to report sexual misconduct or relationship violence, even if some or all information is unavailable or cannot be provided.

If a Complainant calls or visits the Title IX Coordinator's office or if the Title IX Coordinator receives a report in writing, the Title IX Coordinator or a staff person will explain to the Complainant the role of the Title IX Coordinator, the options for reporting an incident, available supportive measures, the Complainant's right to file a formal complaint and the process for filing a formal complaint. In addition, the office of the Title IX Coordinator will explain how any request for confidentiality will be evaluated and how confidentiality may limit the University's ability to investigate the incident.

### **1. Responsible Employees Reporting for Title IX and Other Sexual Misconduct and Relationship Violence**

**In order for a student/employee to provide notice to the University of an incident of sexual misconduct or relationship violence, the student/employee must report the incident to a Responsible Employee.**

Under this policy, a "Responsible Employee" (RE) is an employee:

- Who has the authority to take action to redress sexual misconduct/relationship violence;
- Who has been given the duty of reporting incidents of sexual misconduct/relationship violence by students to the Title IX Coordinator or other appropriate school designee; or
- Who a student/employee could reasonably believe has either the authority or the duty listed above.

Most employees to whom students/employees might reasonably report an incident of sexual misconduct or relationship violence will be REs. Responsible Employees should explain to the student/employee making the report that REs are not confidential resources before a student/employee reveals something that they may want to keep confidential. If a person begins talking about the incident(s) with no warning, the RE should interrupt immediately (but nicely) and inform them that the conversation cannot be considered confidential. The RE

should also assure them that the RE wants to be supportive, but if they do not want the incident(s) to potentially be reported then they should make an appointment with a confidential resource. If the person has already told the RE enough information characterizing a possible sexual misconduct or relationship violence incident, the RE must make a Title IX report. In emergency situations, where a person's health or safety is in immediate danger, call 911.

This policy considers it notice to the institution if an RE "knew, or in the exercise of reasonable care should have known" about the sexual misconduct/relationship violence. This includes incidents that are reported directly; are witnessed or reported by a third party (parent, other student); are posted on fliers around campus or published in a local newspaper; etc. Each of these examples should be reported to the Title IX Coordinator.

All BU employees who are designated as supervisors, with a few exceptions (including counselor(s) in the Office of Counseling Services, chaplain(s) and associate chaplain(s) in the Office of the Chaplains, and licensed physician(s), nurse(s), or other healthcare provider(s)), are considered "Responsible Employees." This includes some select undergraduate student employees such as resident assistants (RAs). For more information on reporting confidentially, please see the section below entitled "Confidential Resources."

Also considered Responsible Employees are:

- Security Officers and related employees
- Student Affairs/Activities Staff
- Human Resources Staff
- Athletics and Recreation Staff
- Academic Advisors
- Faculty, Instructors, and Teaching Assistants
- Graduate Assistants that are supervising other students
- Work Study students
- Individuals designated as Campus Security Authorities (CSAs)

NOTE: Faculty, instructors, and teaching assistants are not required to report sexual misconduct or relationship violence if this information is disclosed in the context of academic work and discussions. Additionally, Security Officers have a separate requirement to report incidents of sexual assault and other criminal acts of a serious nature to the McKenzie Police Department.

Responsible Employees are to report allegations of sexual misconduct/relationship violence that take place on or off campus to the Title IX Coordinator in order to give the University the best chance to investigate and potentially address and eliminate sexual misconduct/relationship violence. REs should NOT attempt to determine if the sexual misconduct/relationship violence actually did occur.

The information that should be reported includes all the relevant information that the individual has shared and that may be useful in the investigation. This includes names of the alleged perpetrator, the student/employee who allegedly experienced the misconduct/violence, any other student/employee involved, and the date, time, and location of the alleged incident.

If the student/employee wants to tell an RE what happened, but does not want the complaint investigated or the student/employee's name disclosed, the RE will tell the student/employee that the University will consider the request, but cannot guarantee that the University will be able to honor it. A report to the Title IX Coordinator does not necessarily lead to a full investigation. Any action is typically determined based on the Complainant's choices. However, the Coordinator will make a safety assessment to determine if there is a safety risk to the community. If it is likely that there is continued risk, the Title IX Coordinator may have to proceed with the investigation without the Complainant's consent. The RE should let the student/employee know that conversations with REs are otherwise kept private to the extent possible and are only disclosed to those with a need or right to know. In reporting the details of an incident to the Title IX Coordinator, the RE will also inform the Title IX Coordinator of the student/employee's request for confidentiality. For more information on this, see the section below entitled "Title IX Requests for Confidentiality."

A Responsible Employee who receives notice of an incident of sexual misconduct or relationship violence SHALL NOT:

- 1) Pressure a Complainant to request confidentiality or make a full report;
- 2) Guarantee to a Complainant that the RE will keep information confidential;
- 3) Share information about the incident with a person who does not have a University-related need to know;
- 4) Share the Complainant's name with law enforcement or campus security without the Complainant's consent; or
- 5) Investigate or otherwise attempt to resolve the report without the approval of the Title IX Coordinator.

## **2. Campus Security Authorities**

Many Responsible Employees are also considered Campus Security Authorities (CSA) under the Clery Act, which is a law related to Title IX. The function of a Campus Security Authority ("CSA") is to report to the Security Department, those allegations of Clery Act crimes that he or she receives. CSAs are responsible for reporting allegations of Clery Act crimes that are reported to them in their capacity as a CSA. This means that CSAs are NOT responsible for investigating or reporting crimes that they overhear students talking about in the hallway; that a student mentions during an in-class discussion; that a victim mentions during a speech; or that a CSA learns about in an indirect manner.

A CSA is a Clery Act specific term that encompasses groups of individuals and organizations associated with an institution listed below:

- Campus Security, which includes all members that are employed in the Security Department.
- Any individual or individuals who have responsibility for campus security, but do not constitute a security department (e.g., an individual who is responsible for monitoring the entrance into institutional property). This category would include Resident Directors, Resident Assistants, and Hall Monitors.
- An individual that has significant responsibility for student and campus activities. This category would include: Dean of Student Development, Academic Dean, Housing Director, Coaches – including assistant coaches and GA's, Athletic Director, Title IX Coordinator, Director of Student Engagement, Faculty Advisor of an organized group, and a satellite campus coordinator.

Examples of individuals who would not meet the criteria for being campus security authorities include: a Faculty member who does not have any responsibility for student and campus activity beyond the classroom; and clerical support or cafeteria staff. Exemptions to being a CSA include a counselor and the University Chaplain.

The definition of who is a CSA is broad for a good reason: it recognizes that frequently the first person a victim of crime talks to about what happened is someone he or she knows well and trusts. How that first person responds may determine whether or not the victim feels supported and affects the decisions he or she makes moving forward.

The function of a CSA is to document and report to Bethel Security allegations of crimes. CSAs, like REs, are not responsible for determining whether the crime took place. CSAs do not need to prove what happened or who was at fault and it is not their responsibility to find the perpetrator. When in doubt, report. Let the student/employee know that you must share the information with Campus Security. Only include the name of the victim in the report if the victim wishes to be identified. **CSAs must also report Title IX offenses to the Title IX Coordinator and must report ALL known information to the Title IX Coordinator, regardless of the victim's wishes to remain anonymous.**

The criminal offenses that CSAs must report are:

- Murder/Non-negligent manslaughter
- Negligent Manslaughter
- Sex Offenses (*rape/sodomy/sexual assault w/object/fondling and non-forcible incest and statutory rape*)
- Robbery

- Aggravated Assault
- Burglary
- Motor vehicle theft
- Arson
- Hate Crimes
- Domestic Violence
- Dating Violence
- Stalking
- Liquor Law Violations
- Drug Law Violations
- Weapons Law Violations.

CSAs must disclose offenses that occur on campus; in residence facilities; in non-campus property or buildings owned or controlled by the institution or a recognized student organization; and on-campus public property adjacent to and accessible from campus.

CSAs and REs serve a very important role at BU. CSAs and REs are here to help their fellow students and employees, and to do that, they must understand that their role goes beyond just a legal obligation. When a victim reports a crime to a CSA or RE, that person becomes a first responder and the victim has placed their trust in the CSA or RE. Victims deserve compassion and they deserve clear information about resources to help them understand their options moving forward. CSAs and REs have a responsibility to help the reporting student/employee with his or her reporting options.

NOTE: All allegations involving the abuse of minors must be reported to law enforcement and the University.

### **3. Title IX Requests for Confidentiality**

All requests for confidentiality will be evaluated by the Title IX Coordinator. In doing so, the Title IX Coordinator will consider the interests of the Complainant and the University's commitment to a safe and non-discriminatory environment for all members of the University community. Although the University affirms the right of the Complainant to decide whether they wish to be involved in any process to address sexual misconduct, individuals should understand that if the conduct at issue poses a threat to campus safety or the individual's safety the University must take action regardless of whether the Complainant wishes to proceed with their individual complaint. Circumstances which may pose a threat to campus or individual safety include, but are not limited to, threats, acts of violence, the use of weapons, cases involving multiple respondents, previous allegations involving the Respondent, patterns of alleged misconduct by the Respondent, and/or the likelihood of repeated offenses.

If a Complainant's request for confidentiality is granted, the University's ability to provide supportive measures and investigate the incident may be limited. The Complainant cannot file a formal complaint while remaining anonymous or while using a confidential identity. In such situations, the University may, to the extent possible, take steps to mitigate the effects of the alleged sexual misconduct and prevent its recurrence without initiating formal action against the alleged offender or revealing the identity of the Complainant. Such actions include, but are not limited to, increased monitoring, supervision, or security at locations or activities where the alleged misconduct occurred; providing training and education for students and employees; revising and publicizing the University's policies on sexual misconduct and relationship violence, and conducting climate surveys regarding sexual misconduct and relationship violence.

If the University determines that it must proceed with a formal complaint and/or protective measures, notwithstanding the Complainant's request for confidentiality, it will inform the Complainant prior to notifying the Respondent of the investigation; the University will also implement protective measures, as necessary, to protect the Complainant and ensure the safety of the University community. Under no circumstances will the University require a Complainant to participate in any investigation or disciplinary proceeding.

A Complainant who initially requests confidentiality is not precluded from later requesting that a full investigation be conducted.

#### **4. Third-Party Reporting**

Bethel encourages third parties to report incidents of sexual misconduct or relationship violence to Campus Security and/or the Title IX Coordinator. Third parties may also report incidents to any Responsible Employee. The University may not be able to move forward with third-party reports if the victim does not wish to cooperate with an investigation. After providing a report, third parties are not entitled to information about the University's investigation and response due to privacy concerns and applicable federal and state laws.

Bethel encourages anyone who witnesses, experiences, or has information about possible sexual misconduct and/or relationship violence to take reasonable actions to prevent or stop such actions. This may include reporting the behavior (in accordance with the reporting options outlined above), directly intervening when it is safe and reasonable to do so, contacting law enforcement, or other means. A person who has been subjected to sexual misconduct and/or relationship violence need not confront the other party; the appropriate process to address the conduct is through this policy.

#### **5. Amnesty for Students who Report Sexual Misconduct or Relationship Violence to the University**

Bethel recognizes that a student who is under the influence of alcohol and/or drugs at the time of an incident may be hesitant to report such incident to the University because of fear of disciplinary sanctions for the student's own violation of Bethel's policies and procedures including Bethel's Student Code of Responsibility.

However, a student who reports sexual misconduct or relationship violence to the University generally will not face disciplinary charges solely for possessing or being under the influence of alcohol and/or drugs.

#### **6. False Reporting**

An accusation of sexual misconduct or relationship violence may have severe consequences for a Respondent. Any individual who makes a report that is later found to have been intentionally false or made maliciously without regard for its truth may be subject to disciplinary action, up to and including, termination of employment or dismissal from the University. This provision does not apply to reports made in good faith, even if the facts alleged in the report are not later substantiated by an investigation.

#### **7. Public Awareness Events**

Public awareness events such as "Take Back the Night," candlelight vigils, protests, "survivor speak outs," prevention/awareness trainings, or other forums in which students disclose incidents of sexual violence, are not considered notice to the University of sexual misconduct and/or relationship violence for purposes of triggering its obligation to investigate any particular incident. Such events may, however, inform the need for campus-wide education and prevention efforts, and the University may provide information about students' Title IX rights at these events.

#### **8. Protection of Minors on Campus**

Bethel University is dedicated to the welfare and safety of minors who visit Bethel's campuses, who participate in Bethel's programs, or who are entrusted to Bethel's care. Every member of the University community (not limited to individuals who interact with minors) is required by law to report known or suspected instances of the abuse of, neglect of, or inappropriate interactions with minors. Members making a report in good faith are protected from criminal and civil liability for making the report. Everyone is required by Tennessee law to report any type of suspected abuse, neglect, or inadequate care, including suspected child sexual abuse. Two reports, one external and one internal, must be made:

- *External Report:* Tennessee law requires every person who suspects sexual, emotional, or physical abuse or neglect of a minor to report it. Failure to report is a Class A misdemeanor. The required report may be made to the State of Tennessee Child Abuse Hotline at 877-237-0004, online at <https://apps.tn.gov/carat/> or to a Tennessee sheriff's office or police department. If the situation is a life-threatening emergency, contact 911.
- *Internal Report:* Every member of the University community has a further obligation to immediately report to Bethel University known or suspected abuse or neglect of a minor on campus or in a Bethel program. The preferred method is to contact Rachael Brooks, the Title IX and Prevention Services Coordinator at 731-352-4246 or [brooksra@bethelu.edu](mailto:brooksra@bethelu.edu).

## B. How to Report to Law Enforcement

Sexual misconduct or relationship violence may constitute a violation of both this policy and criminal law. **Civil or criminal proceedings are separate and distinct from internal University proceedings.** As such, the University encourages persons to report incidents of sexual misconduct and/or relationship violence to law enforcement. Prompt reporting of an incident to law enforcement is especially critical as the collection and preservation of evidence relating to sexual misconduct and relationship violence is often essential for law enforcement investigations and criminal prosecutions.

NOTE: When Campus Safety and Security Officers are contacted about sexual assault and other criminal acts of a serious nature, they are required to contact the McKenzie Police Department. Campus Safety and Security Officers and Officers with the McKenzie Police Department will work together to assist victims. For all offenses, the McKenzie Police Department will typically conduct the investigation, followed by an investigation conducted by the Title IX Department, when applicable.

### Contact Information for Local Law Enforcement

Incident Location	Contact
Regardless of where incident occurs	Call 911 in an emergency
In the City of McKenzie	McKenzie Police Department 2470 Cedar Street, McKenzie, TN 38201 (731) 352-2265
In Carroll County, but outside the City of McKenzie	Carroll County Sheriff's Office 200 Norandal Dr, Huntingdon, TN 38344 (731) 986-8947
Outside Carroll County	Contact the law enforcement agency that has jurisdiction over the location where the incident occurred

#### 1. Relationship between University Policies/Procedures & Criminal Procedures

The University will cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process, to the extent permitted by law. However, this policy may differ in significant respects from criminal law. A Complainant may seek resolution through the University's procedures outlined in this policy, may pursue criminal action, may choose one but not the other, or may choose both. Neither law enforcement's determination whether to prosecute a Respondent nor the outcome of any criminal prosecution is determinative of whether sexual misconduct or relationship violence occurred in violation of this policy. Procedures under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. The University normally provides deference to law

enforcement until a criminal investigation or proceeding is concluded before conducting its own investigation and/or taking other appropriate action. Although the University may need to delay temporarily the fact-finding portion of its investigation while law enforcement is gathering evidence, the University will provide supportive measures as needed to assist the Complainant during such delay. Decisions made or sanctions imposed by the University are not based on a result of criminal or civil charges against a Respondent arising from the same incident being dismissed, reduced, rejected, sustained or not prosecuted; however, a Respondent's plea(s) or a finding against a Respondent in a criminal or civil proceeding may, at the University's discretion be taken into consideration by the University in a disciplinary proceeding.

## **2. Right to Decline to Report to Law Enforcement**

A Complainant has the right to decline to report the incident to law enforcement. Even if a Complainant does not report the incident to law enforcement, the Complainant may still request supportive measures from the University by reporting the incident to the Title IX Coordinator or another Responsible Employee. In contrast, if the Complainant reports the incident to law enforcement, the Complainant will also need to report the incident to the Title IX Coordinator or a Responsible Employee if the Complainant wants the University to take any action.

## **Care and Support for Complainants**

The following resources are available to any member of the Bethel community who has experienced sexual misconduct or relationship violence, regardless of whether the Complainant chooses to make a formal complaint or participate in an investigation or criminal process. As discussed in the "Reporting an Incident" section above, some of these resources are subject to mandatory reporting requirements.

### **A. Confidential Resources**

Some resources are completely confidential and will not communicate any information to the University, law enforcement, or any other third party, unless required by law in limited circumstances. Confidential resources include counselors/mental health providers, such as those at the Counseling Services Center; the University Chaplain or any of the University's pastoral counselors acting in that capacity; and licensed medical professionals, such as those at clinics or hospitals. These resources do not report any information about an incident to the Title IX Coordinator without a Complainant's permission. Off-campus counselors and health care providers will also generally maintain confidentiality and not share information with the University unless the Complainant requests the disclosure and signs a consent or waiver form. However, these resources may have reporting obligations under state or federal law. For example, healthcare providers and certain other individuals are required to notify law enforcement when a victim seeks treatment for injuries related to a violent crime, including sexual assault. Similarly, all persons are required to notify law enforcement when they receive a report of abuse or neglect of a minor. Information

communicated to a person identified as a confidential resource in this section does not constitute actual notice or a report to the University of an incident of sexual misconduct or relationship violence.

## **B. Confidential Resources and Support**

*(not required to notify Title IX Coordinator or law enforcement in most cases):*

### **1. On Campus**

- A psychologist, psychiatrist or counselor in the Counseling Services Center: (731) 352-6786 (office); (731) 415-1058 (cell); [gacounseling@bethelu.edu](mailto:gacounseling@bethelu.edu)-for appointments
- Office of the University Chaplains: Chaplain: (731) 352-4066; [hamesa@bethelu.edu](mailto:hamesa@bethelu.edu); Associate Chaplain: (731) 352-6449; [burnsg@bethelu.edu](mailto:burnsg@bethelu.edu)

### **2. Non-University**

- Carey Counseling Center Crisis Line: 1-800-353-9918
- Tennessee Coalition to End Domestic & Sexual Violence 24-Hour Hotline: 1-800-356-6767
- Sexual Assault Center Hotline: 1-800-879-1999
- Love is Respect-- National Dating Abuse Hotline: 1-866-331-9474 or text Loveis to 22522
- Wo/Men's Resource and Rape Assistance Program: 1-800-273-8712
- A personal attorney; clergy member; physician or Qualified Mental Health Counselor.

## **C. Immediate Assistance: Level of Confidentiality**

Any member of the Bethel community who has experienced sexual misconduct or relationship violence may seek immediate assistance from one or more of the following resources. As discussed in the "Reporting an Incident" section above, some of these resources are subject to mandatory reporting requirements. This policy indicates the level of confidentiality offered by each of the listed on-campus resources.

The McKenzie Police Department is available for emergency response, facilitating medical transport, investigating incidents of a criminal nature, referrals, and preserving evidence. As discussed above, members of Bethel's Office of Safety and Security are required to report potential violations of this policy to the Title IX Coordinator and to report incidents of sexual assault and other criminal acts of a serious nature to the McKenzie Police Department.

### **1. Law Enforcement**

- McKenzie Police Department (MPD): (731) 352-2265; Emergency: 911

### **2. Campus Security**

- Office of Safety and Security: (731) 352-4222, (731) 415-7599 (24/7), or [busecurity@bethelu.edu](mailto:busecurity@bethelu.edu); Emergency: 911 (Not confidential — required to notify Title IX Coordinator and local law enforcement in most circumstances)

### 3. **Medical Service Providers**

- McKenzie Medical Center's BU Hometown Health Clinic: (731) 352-4027
- Baptist Memorial Hospital: (731) 986-4461; Emergency: 911
- Henry County Medical Center: (731) 642-1220; Emergency: 911
- Jackson-Madison County General Hospital: (731) 541-5000; Emergency: 911  
(Closest Location with a SANE [Sexual Assault Nurse Examiner] available)

## D. **Medical Care**

A victim may seek medical care at any time following an incident of sexual misconduct and/or relationship violence. The medical service providers listed above are available for treatment of injuries, preventative treatment for sexually transmitted diseases, other health services, and consultations. In cases of sexual misconduct and/or relationship violence, it is critical for a victim to seek immediate medical attention to determine the presence of physical injury, address pregnancy concerns, determine the possibility of exposure to sexually transmitted diseases, and, if the victim later decides to pursue legal options, to obtain evidence to assist in criminal prosecution, a civil action and/or in obtaining a civil protection order. **Prior to seeking medical care, victims should not change their clothing or bedding, bathe, shower, douche, comb their hair, clean up, brush their teeth, change clothes, or drink liquids.**

**The collection of evidence for use in a criminal prosecution or an order of protection hearing relating to sexual assault can only be performed by trained personnel, a Sexual Assault Nurse Examiner (SANE), at a hospital emergency room; physical examinations by other healthcare providers are likely to impede future legal remedies. The nearest SANE to the Bethel University (McKenzie campus) is located at the Jackson-Madison County General Hospital in Jackson, TN (731-541-5000).**

Tennessee law requires all medical personnel to report to law enforcement when a victim seeks treatment for injuries related to a violent crime, including sexual assault. Medical personnel are also required to report to law enforcement and/or Child Protective Services when a minor presents for treatment for any injury or condition that reasonably indicates it was caused by violence or abuse, including physical or sexual abuse. Medical personnel are also required to report to law enforcement and/or Adult Protective Services when certain vulnerable adults present and there is reasonable belief that they are victims of adult abuse, neglect, or exploitation.

## E. **Preserving Evidence**

Victims should not clean up until police or SANE personnel have had a chance to gather evidence. If a victim has already changed clothes or cleaned up/showered, evidence may still be

collected. Leave any clothes or bedding unfolded and undisturbed, if possible. If clothing or bedding must be moved, try to keep each item separate to prevent transfer of body fluids or other trace evidence and **store evidence in folded and stapled paper bags**. Make sure to **save/screenshot any text messages, emails, voicemails, written notes, social media posts, or any other documents** that may be relevant.

## **University Procedures for Resolving Reports of Sexual Misconduct and Relationship Violence**

### **A. Complainants' and Respondents' Rights**

In addition to rights for Complainants and Respondents described in other sections of this policy, under Title IX, which is a law to protect students and employees from sexual discrimination, Complainants and Respondents have the following rights, which are more fully explained and discussed in other sections of this policy:

- The right to receive notice about the University's Title IX procedures, the complaints and allegations, any supportive measures, investigations, interviews, delays/extensions of time frames, a live hearing, determinations, and appeals of supportive measures and final determinations.
- The right to the presumption of non-responsibility.
- The right to have the Title IX complaint dismissed if the allegations do not fall within Title IX.
- The right to have complaints determined under the preponderance of evidence standard, which is "more likely than not."
- The right to supportive measures determined case-by-case.
- The right to an immediate appeal of emergency removal measures.
- The right to informal resolution, agreed to by both parties, in appropriate cases.
- The right to a prompt, thorough, unbiased, and equitable (fair) investigation of a Title IX complaint, including the right to present an explanation of the facts during the investigation and the right to receive copies of the evidence.
- The right to have an advisor with you during the course of a Title IX investigation.
- The right to get a copy and respond to the investigation report before any live hearing.
- The right to a live hearing at which you can call witnesses, including expert witnesses, and at which your advisor can cross examine the other party and their witnesses.

- The right to a reasoned determination of responsibility by a live hearing panel after a live hearing.
- The right to appeal the determination rendered by the live hearing panel.

## **B. Standards Applicable to Reports**

1. **Intake:** Upon receiving a report, the Title IX Coordinator will assess the nature of the report through an intake process. If the allegations do not involve a violation of this policy or other anti-discrimination/retaliation policies, the Title IX Coordinator will refer the Complainant to the appropriate department.
2. **Notice to the Complainant:** If the report falls under Title IX law and/or Bethel's Sexual Misconduct and Relationship Violence Policy, the Title IX Coordinator will initiate immediate and appropriate steps by the University to provide notice to the Complainant with the following information: the supportive measures available to the Complainant (which are provided with or without the filing of a formal complaint), the Complainant's right to file a formal complaint, and how to file a formal complaint.
3. **Supportive Measures:** After a Responsible Employee or Title IX Coordinator receives a report of sexual misconduct or relationship violence, Bethel will implement supportive measures, as appropriate, designed to assist the parties in restoring or preserving equal access to Bethel's education program or activity, deter the reported sexual misconduct or relationship violence, and protect persons involved in the matter, including potential witnesses. Supportive measures may be implemented on Bethel's own initiative or in response to a request from a Complainant or Respondent. These supportive measures must be non-disciplinary, non-punitive, and not unreasonably burdensome to the other party. The supportive measures must be kept confidential, to the extent that maintaining such confidentiality would not impair Bethel's ability to provide the supportive measures.

### Supportive measures for students may include, but are not limited to:

- access to on-campus counseling services and assistance in setting up an initial appointment
- "no-contact directives" (also known as stay away orders or directives to desist)
- rescheduling of exams and assignments
- providing alternative course completion options
- changing class schedules, including the ability to transfer course sections or withdraw from a course without penalty
- changing work schedules, job assignments, or job locations for University employment

- changing residence hall assignments
- providing an escort to ensure safe movement between classes and activities
- providing academic support services, such as tutoring
- limiting or barring an individual's or organization's access to certain Bethel-owned facilities or activities
- emergency removal of the Respondent
- interim suspension of the Respondent
- student-requested leave of absence

Supportive measures for faculty and staff may include, but are not limited to:

- changing work schedules, job assignments, or job locations
- "no-contact directives" (also known as stay away orders or directives to desist)
- limiting or barring an individual's or organization's access to certain Bethel-owned facilities or activities
- providing an escort to ensure safe movement on campus
- emergency removal of the Respondent
- administrative leave
- Bethel-imposed leave or physical separation from individuals or locations

#### **4. Procedures for Emergency Removal of a Respondent:**

The Respondent may be removed from Bethel's educational program or activity on an emergency basis after consultation from other need-to-know Bethel employees who conduct an individualized safety and risk analysis and determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and then provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. Those employees tasked with performing the individualized safety and risk analysis may include the Dean of Student Development, the Director of Housing, and/or the Chief of Safety & Security.

Immediately after the emergency removal has occurred, but no later than three (3) calendar days after the removal, the removed Respondent may challenge the emergency removal by submitting to the Title IX Coordinator a written challenge showing any of the following:

- a. The “individualized safety or risk analysis” was based upon generalized, hypothetical or speculative beliefs or assumptions that a Respondent could pose a risk to someone's physical health or safety;
- b. The “immediate threat” justifying and compelling an emergency removal was (i) based solely on the complainant's subjective fear of a threat and not based on an objective reasonable person standard; (ii) did not assess the Respondent's propensity, opportunity, and ability to carry out a stated or potential threat; or (iii) was not fact-specific, nuanced, and was not the product of a careful evaluation of whether there were more appropriate and less restrictive supportive measures that would have negated or sufficiently minimized the likelihood of a threat's occurrence;
- c. The immediate threat was not related to the “physical health or safety” of one or more individuals, who may be the Respondent, the Complainant, or any other individual, like a third-party witness;
- d. The emergency situation did not specifically arise from the allegations of sexual harassment;
- e. The removal decision did not give full and appropriate consideration to the applicable disability laws, and the challenging Respondent falls within and is covered by an applicable disability law. Applicable disability laws include the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and any relevant State laws;
- f. The emergency removal amounted to or effected an improper imposition of sanctions without first following grievance process because the analysis was not the product of careful and cautious balancing of these factors: (i) Bethel's obligation to offer and provide prompt supportive measures to a Complainant to ensure equal educational access; (ii) the adverse impacts of separating a Respondent from educational opportunities and benefits; and (iii) Bethel's obligation to protect the health and safety of its community; or
- g. The Respondent did not receive notice of the emergency removal that was sufficiently detailed to alert the Respondent to the specifically identified emergency threat of physical safety or harm that compelled the removal decision. In all challenges of an emergency removal, the Respondent has the burden of proof on all grounds in the written challenge and the safety and risk analysis to the Dean of Student Development or other appropriate University official. Upon receipt of the written challenge, the Title IX Coordinator will relay the written challenge and the safety and risk analysis to the Dean of Student Development or other appropriate University official, whose decision will be rendered within three (3) calendar days and will be final.

The emergency removal procedures may not apply to employee respondents on Administrative Leave enacted by Bethel's Human Resources Department.

5. **Privacy:** Subject to the University's legal disclosure obligations and need to assess the campus community's safety, information about the report will be shared on a case-by-case basis, with need-to-know University investigators, administrators, and personnel. Additionally, information about the report will not be shared with witnesses or the Respondent prior to the filing of a formal complaint, except in relation to the exceptions above concerning legal disclosure obligations and safety considerations for the Complainant and campus community.
6. **Filing a Formal Complaint:** Regarding reports that do not involve a safety risk to the Complainant or campus community, the Complainant will have the option to choose whether the Complainant wants to file a formal complaint. Even if the Complainant chooses not to file a formal complaint, the Complainant can still receive supportive measures.

If the report involves a safety risk, including, but not limited to threats, acts of violence, the use of weapons, multiple respondents, previous allegations involving the Respondent, patterns of alleged misconduct by the Respondent, and/or the likelihood of repeated offenses, the Title IX Coordinator may choose to file a formal complaint, with or without the Complainant's approval. The Title IX Coordinator may also file a formal complaint when a safety risk is present, even when the Complainant's identity is unknown. All formal complaints must be signed (physically or electronically) by the Complainant or the Title IX Coordinator.

7. **Dismissal of the Formal Complaint:** Once a formal complaint is filed, the Title IX Coordinator must determine whether the formal complaint meets requirements to be dismissed.

a. A formal Title IX complaint MUST be dismissed under Title IX if:

- The conduct alleged, even if proved, would not constitute a violation of this Policy;
- The conduct alleged did not occur in the University's education program or activity; and/or,
- The conduct alleged did not occur within the United States of America.

Formal complaints dismissed under Title IX may still be pursued by the Title IX Coordinator under this policy as "Other Sexual Misconduct and Relationship Violence" generally.

b. The Title IX Coordinator MAY choose to dismiss a formal complaint if:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any of its allegations;
- The Respondent is no longer enrolled or employed by the University; and/or,

- Specific circumstances prevent the Title IX Coordinator or Investigator from gathering evidence sufficient to reach a determination as to the formal complaint or any of its allegations.

Formal complaints that are dismissed by the Title IX Coordinator can still be referred to and resolved by other disciplinary departments on campus, under other procedures, such as the Student Code of Responsibility or the Employee and Faculty Handbooks. Complainants can also appeal the dismissal of a formal complaint using the Appeals Process indicated further below in this policy.

## **8. Choosing Between Informal and Formal Resolutions Processes**

The Complainant will have the option to choose between proceeding with the Informal Resolutions Process or the Formal Resolutions Process, except in cases in which the Title IX Coordinator has determined that a safety risk is present, in which case, the Title IX Coordinator will determine if the Formal Resolutions Process is necessary and required. Additionally, Informal Resolution cannot be used in Title IX cases in which the Complainant is a student, and the Respondent is an employee.

### **a. Informal Resolutions Process**

Bethel offers an Informal Resolutions Process designed to eliminate the conduct prohibited by Title IX, stop its recurrence, and remedy its effects in a way that meets the needs of the parties involved and, at the same time, maintaining the safety of the Bethel community. During the Informal Resolutions Process, the Title IX Coordinator and the Informal Resolutions Facilitator, with input from the Complainant and Respondent, will choose the most appropriate process or combination of processes for the resolution of the case, including, but not limited to, Mediation, Restorative Justice, and an Educational Conference with the Dean of Student Development. In certain cases, such as those involving sexual assault, stalking, dating violence, and domestic violence, the Informal Resolutions Process may not be an option given to the parties by the Title IX Coordinator, dependent upon the safety concerns presented in those cases. All Informal Resolutions Processes will be conducted by the Informal Resolutions Facilitator, unless the Facilitator has a conflict of interest, in which case, the Title IX Coordinator or appointed facilitator will step in. The Informal Resolutions Process is not available to cases of sexual harassment, sexual assault, dating violence, domestic violence, and stalking, involving student Complainants and employee Respondents.

At the onset of the Informal Resolutions Process, the Title IX Coordinator will provide to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal

complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

*i. Important Rules for the Informal Resolutions Process:*

- Both parties must agree to participate in the Informal Resolutions Process, which includes individual meetings with the Title IX Coordinator and Informal Resolutions Facilitator.
  - Neither party can be forced to participate.
- Any or both parties may withdraw from the Informal Resolutions Process at any time prior to the signing of an agreement.
  - Once a party has withdrawn from the Informal Resolutions Process, the case will continue through the Formal Resolutions Process (see below).
- The Informal Resolutions Process can only be utilized once by the same Complainant and Respondent concerning the same alleged violation, unless the Informal Resolutions Process chosen initially was "Consultation with the Dean of Student Development." In that case, the Title IX Coordinator has the discretion to consider other Informal Resolutions measures.
  - The Title IX Coordinator has the discretion to deny the Informal Resolution Process to any repeat Respondents.
- If the parties do not agree to follow all recommendations and stipulations in the resolution agreement or no agreement is reached, the Complainant or the Title IX Coordinator will have the opportunity to continue with an investigation under the Formal Resolutions Process.
- Information shared during this process will not be used in the investigation or determination of responsibility, but can be used in the sanctioning phase of the Formal Resolutions Process.
  - Additionally, information shared during this process and the Formal Resolutions Process can be subpoenaed by a court of law.
- The University reserves the right to suspend or terminate the Informal Resolutions Process and continue with the Formal Resolutions Process at any time prior to the signing of the agreement. Instances in which this could happen include, but are not limited to if the Title IX Coordinator or Informal Resolutions Facilitator believes that either or both of the parties are not acting in "good faith" or are not participating voluntarily. No one will be allowed to compel, threaten, pressure, force, coerce,

intimidate, or otherwise manipulate either party into participating in the Informal Resolutions Process.

- By participating in the Informal Resolutions Process in “good faith” and by completing the agreement between the parties, the Respondent will not face any disciplinary sanctions in relation to the allegations under this policy.
- Any agreement reached between the parties during the Informal Resolutions Process must be physically or electronically signed by the parties and must be approved by the Title IX Coordinator.
- At the discretion of the Title IX Coordinator, the parties can pursue the Informal Resolutions Process, while proceeding through the Formal Resolutions Process, but the Informal Resolutions Process will not be available to the parties after the commencement of the Live Hearing.
- Once an agreement is signed, if either party violates the agreement, the party can be found responsible for violating the Student Code of Responsibility in the Student Handbook under “Failure to Comply with University Officials.”
- The Informal Resolutions Process is not subject to appeal.

ii. Types of Informal Resolutions Offered:

- *Restorative Justice*: a framework in which the Informal Resolutions Facilitator focuses on restoring the relationships between the parties. The goal of restorative justice is to repair the harm caused to the Complainant and, sometimes, the parties' communities by giving the Respondent an opportunity to make amends. Generally, in this process, the Respondent must take responsibility for the harm caused to the Complainant; however, the Respondent will not be charged with a violation of the policy when participating in this process.
- *Mediation*: a flexible framework in which the Informal Resolutions Facilitator will assist the parties in understanding each other's position and reaching a mutually acceptable resolution. During mediation, the Facilitator will conduct separate sessions with the parties and may conduct joint sessions, if agreed to by both parties. Mediation does not require the Respondent to take responsibility for the harm caused to the Complainant.
- *Educational Conference with the Dean of Student Development*: when requested by the Complainant, a Respondent can be asked to attend a meeting with the Dean of Student Development. During this meeting, the Dean of Student Development will inform the Respondent that the Complainant has filed a formal complaint against the Respondent and will inform the Respondent of what could

happen in the future if the Complainant decides to pursue the Formal Resolutions Process. An agreement between the parties is not required and the Respondent is not required to take responsibility for the harm caused to the Complainant during this consultation.

*iii. Possible Options for Agreements in the Informal Resolutions Process:*

An agreement reached during an Informal Resolutions Process will be unique and specific to the parties, harm, and conduct involved in each case in order to adequately address the needs of those involved. Examples of potential options that the parties could use as part of their agreement include, but are not limited to:

- **Counseling Sessions:** Either or both parties can participate in counseling sessions with the University's Director of Counseling Services, covering a range of topics related to the harm caused.
- **Educational/Awareness Sessions with the Title IX Coordinator:** Either or both parties can participate in educational/awareness sessions one-on-one with the Title IX Coordinator or can attend group sessions and presentations coordinated by the Title IX Coordinator and open to the campus community. These sessions will cover prevention topics, including, but not limited to: consent, healthy relationships, alcohol/drug use, etc.
- **Restorative Circles:** Restorative Circles are led by the Informal Resolutions Facilitator and provide an opportunity for the parties and others in the parties' communities, who have been affected by the Respondent's actions, to meet together and work toward repairing the harm that has been done and restoring the Respondent's relationships with others in the community. Restorative Circles facilitate better understanding of the others' perspectives and assist Respondents in gaining greater insight into the effects of their actions.
- **Voluntary Statements:** Voluntary statements are statements made by either or both parties concerning the harm caused to another and may be written, artistically depicted, recorded, typed, or delivered in person. Voluntary statements can include, but are not limited to: impact statements made by Complainants and others affected by the harm describing their experience and the impact of the Respondent's actions; apology letters written by the Respondent; statements in which the Respondent demonstrates his understanding of the harm caused and its effect on others; etc.
- **Regular check-in meetings with the Title IX Coordinator:** Possible intervals for these meetings would be monthly, bi-monthly, or weekly.

- Restrictions on involvement in the University's extracurricular activities, clubs, social events, etc.
- Community Service: the parties can participate in community service, which can be coordinated by each party or the University's Director of Community Engagement.
- Mutual "No-contact Directives" (also known as stay away orders or directives to desist)

### **b. Formal Resolutions Process**

If the Formal Complaint alleges conduct that falls *outside of Title IX* and the Informal Resolutions Process was not pursued or did not lead to a resolution, then the Formal Complaint will proceed through the Non-Title IX Formal Resolutions Process. During this process, the Title IX Coordinator or an appointed Investigator will conduct the investigation in a manner appropriate to the circumstances of the case. Investigations typically include interviews of the Complainant, the Respondent, and any witnesses. As part of the investigation, the University will provide an opportunity for the Complainant and the Respondent to identify witnesses and other evidence. Neither the Complainant nor the Respondent may be restricted from speaking to other people about the investigation. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence, as appropriate and available. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be reasonably prompt, thorough and equitable, and all persons will be treated with appropriate sensitivity and respect. At the conclusion of the investigation, the Investigator will prepare a written report containing their findings concerning whether a violation of the University's policy occurred, and recommendations related to any sanctions, if applicable. Alleged violations of this policy will be investigated and decided by the preponderance of the evidence standard (whether it is more likely than not that the University policy has been violated by the conduct alleged). The Investigator will then send the written report to the parties and the Decision-maker. The Title IX Coordinator will appoint the Decision-maker, who will review the report and determine whether the Sexual Misconduct and Relationship Violence Policy was violated and any applicable sanctions. The Decision-maker will provide the parties with letters outlining the decision(s) made. The parties will then have 10 calendar days from receipt of the decision to file an appeal. The parties may refer to section *viii. Appeals Process for Determinations of Responsibility* below which applies to appeals of decisions made by Decision-makers, as well as Hearing Panels.

If the Formal Complaint alleges conduct that falls *under Title IX*, then Bethel's Title IX Formal Resolution Process will be followed. During Bethel's Title IX Formal Resolution Process, the Title IX Coordinator or Investigator will provide written notice to the Complainant and Respondent of the following: the allegations, the Respondent's presumption of

non-responsibility, the parties' rights to advisors of their choice, the parties' and advisors' rights to inspect and review evidence directly related to the allegations including inculpatory and exculpatory evidence, the prohibition against false statements and retaliation, a statement that the Title IX Coordinator will send amended notice if this information changes, and a link to the University's applicable Sexual Misconduct and Relationship Violence Policy.

- i. Selecting an Investigator: The Title IX Coordinator is responsible for selecting an Investigator(s) of his/her choosing to investigate the complaint or serving as the Investigator, provided that the Investigator(s) has received training on an annual basis on issues related to sexual misconduct, and other relationship violence, and in conducting investigations in a manner that protects the well-being and safety of the parties and the University community. Any Investigator(s) chosen to conduct the investigation must be impartial and free from any conflict of interest. The Investigator(s) may be the Title IX Coordinator, a University employee, a team of University employees, an external Investigator(s) engaged to assist the University in its fact-gathering, or a team of Investigators that pairs an external Investigator(s) with a University employee. If a party believes that the Investigator has a conflict of interest/bias, the party has five (5) calendar days to provide a written response supporting the party's claim to the Title IX Coordinator. The Title IX Coordinator will then determine if the Investigator will proceed, or a new Investigator will be appointed. In the event that the Title IX Coordinator is the Investigator, then the determination will be made by another Bethel employee.
- ii. Investigation: The Investigator selected by the University will conduct the investigation in a manner appropriate in light of the circumstances of the case, which will typically include interviews with the Complainant, the Respondent, and any witnesses. As part of the investigation, the University will provide an opportunity for the Complainant and the Respondent to identify witnesses and other evidence. Neither the Complainant nor the Respondent may be restricted from speaking to other people about the investigation. The interviews will be supplemented by the gathering of any physical, documentary, or other evidence, as appropriate and available. The investigation is designed to provide a fair and reliable gathering of the facts. The investigation will be reasonably prompt, thorough and equitable, and all persons will be treated with appropriate sensitivity and respect. The investigation will be conducted in a manner that is respectful of individual privacy concerns; however, neither parties nor witnesses may remain anonymous during the investigation. Prior to the conclusion of the investigation, the Investigator will provide both parties and their advisors an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations, including the evidence upon which the Investigator does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to

the evidence. If a party does not have an advisor before the directly related evidence is provided to the parties, Bethel University may provide to that party, at no charge, an advisor of Bethel's choosing to assist the party. The advisor may be, but is not required to be, an attorney. Neither party nor party's advisor may copy, forward, scan, print, duplicate, or otherwise distribute any evidence, or other relevant information, given to them by the Investigator to another person outside of the party to whom the evidence was intended and that party's advisor. The Investigator must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the Investigator will consider prior to completion of the investigative report. At the conclusion of the investigation, the Investigator will prepare a written report containing their findings concerning whether a violation of the University's policy occurred.

- iii. Past Relationships and Conduct: Questions and evidence about a party's sexual history with anyone other than the opposing party are deemed irrelevant during the investigation and are prohibited during the Live Hearing, except under two circumstances: (1) where such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or (2) where the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. If the Respondent is found to have violated Bethel's Sexual Misconduct and Relationship Violence Policy, the Respondent's past sexual misconduct may become relevant in determining sanctions.
- iv. Preponderance of the Evidence Standard: Alleged violations of this policy will be investigated and decided by the preponderance of the evidence standard (whether it is more likely than not that the University policy has been violated by the conduct alleged). The burden of proof to meet the preponderance of the evidence standard is with the University and the Respondent is presumed not responsible.
- v. Advisors and Support Persons: Both the Complainant and the Respondent will be permitted to ask an advisor of their choosing to be present during all relevant meetings related to alleged violations of this policy. The advisor may accompany the Complainant or Respondent and may confer privately with them, but the advisor may not speak on behalf of the Complainant or Respondent or otherwise participate in any meeting, excluding the Live Hearing. Upon the request of any party, the Title IX Coordinator has the discretion to consider and to allow an advisor to participate to the extent the Title IX Coordinator deems appropriate. An advisor's failure to comply with these guidelines may result in the termination of the meeting or the advisor no longer being permitted to be present. University personnel employed in the offices responsible

for the disciplinary proceedings described in this policy, along with those in the chain of command above them, and others whose participation could create a conflict of interest with their University duties are not eligible to serve as advisors. The parties may choose to have a different advisor with them at the Live Hearing than they had at previous meetings during the investigation. If there is a question or concern about a possible advisor, please consult with the Title IX Coordinator.

vi. Live Hearing Policy: In all cases, the Respondent is presumed to be not responsible for the alleged violation.

(1). *Generally*

(a). Definitions. A Live Hearing is Bethel's formal determination proceeding of sexual misconduct and relationship violence allegations by which the Title IX Coordinator will hold a virtual Live Hearing in front of a Sexual Misconduct and Relationship Violence Hearing Panel that will hear and weigh the relevant evidence and determine if a sexual misconduct or relationship violence claim has been substantiated and if a Respondent is responsible or not responsible for an alleged violation of Bethel's Sexual Misconduct and Relationship Violence Policy. If the Respondent is found in violation of the Sexual Misconduct and Relationship Violence Policy, the Respondent may be subjected to disciplinary action.

(i) *Sexual Misconduct and Relationship Violence Hearing Panel* means a three-person panel, including a Chairperson and two other panel members, none of whom will have been previously involved in the investigation of the allegation, and all of whom will hear and weigh the relevant evidence and determine if the evidence substantiates the alleged violation.

(ii) *Relevant* means any inculpatory or exculpatory evidence that helps to either substantiate or disprove the allegation.

(iii) *Weigh the relevant evidence* means the act of determining whether, using the preponderance of the evidence standard, it is more likely than not that the Respondent is responsible for the alleged violation of Bethel's Sexual Misconduct and Relationship Violence Policy.

(iv) *Substantiated* means the Respondent has been found to be responsible for the alleged violation of Bethel's Sexual Misconduct and Relationship Violence Policy.

(v) *Participate or Participation* means a party's electronic appearance at a Live Hearing.

(b). Material for the Live Hearing; confidentiality of material. At least ten (10) calendar days before a Live Hearing, the Title IX Coordinator will provide to the parties, the parties' advisors, if any, and to the Sexual Misconduct and Relationship Violence Hearing Panel a physical or electronic copy of the investigation report and a physical or electronic copy of other information relevant to the hearing. The Hearing Panel will also receive a copy of the evidence obtained as part of the investigation that is directly related to the allegations, which the parties and their advisors have previously received. The investigation report and other relevant information likely will contain private FERPA-protected information and is confidential material. Receipt by any party of the investigation report, evidence, other relevant information, or any combination of them, is conditioned upon that party's and that party's advisor's agreement not to disclose any of the information to anyone after the Live Hearing has ended. Neither party nor either party's advisor may copy, forward, scan, print, duplicate, or otherwise distribute to any other person any copy of the investigation report, any evidence, or other relevant information given to them by the Title IX Coordinator/Investigator or by any member of the Hearing Panel. All physical material used in Live Hearing must be returned to the Title IX Coordinator after the conclusion of the Live Hearing and all electronic material used in the Live Hearing must be deleted by any party or that party's representative.

(c). Party witnesses; witness lists; sequence of witness testimony.

Each party may present witnesses at the Live Hearing to testify on their behalf. Any witness expected to appear at the Live Hearing must first have been interviewed by the Title IX Coordinator/Investigator, or must have given the Coordinator a written statement, unless all parties consent to the participation of that witness. Each party is responsible for presenting their own witnesses at the Live Hearing, either personally or through an advisor. To help make the Live Hearing run smoothly, at least three business (3) days before the Live Hearing, the parties each must give to the Title IX Coordinator their respective written lists identifying their respective attendees and witnesses and setting out the sequence in which the parties expect to call their witnesses. The Title IX Coordinator will share this information with the other party, so the other party can prepare accordingly. The respective attendee/witness lists and expected sequence will not strictly bind any party, and the Hearing Panel has the discretion to alter the sequence as needed. If the investigation report shows the previous testimony of any witness for any party is not relevant to the facts at issue, the Title IX Coordinator, in consultation with the Chairperson of the Hearing Panel, may at the Title IX Coordinator's discretion, exclude the witness(es), including any character witness(es) from participating in the hearing. The parties

may object to this exercise of discretion, but the Title IX Coordinator is the ultimate decision maker on this issue. After receiving the parties' witness lists, the Hearing Panel has the discretion to request that the Title IX Coordinator call additional witnesses, when the Panel deems necessary.

- (d). Live Hearings recorded and closed to public. All Live Hearings under this section will be recorded or transcribed and will be closed to the public. Any party is welcome at their own expense to retain a court reporter to transcribe the hearing, with permission from the Title IX Coordinator. Generally, each party may have one advisor, two non-advisor attendees, and that party's witnesses, subject to the exercise of the Title IX Coordinator's discretion in Paragraph 3. Campus Security Officers may also be asked to be present during the Live Hearing, at the request of the Title IX Coordinator.
- (e). State and federal rules of evidence and procedure. Neither the state nor federal rules of evidence, criminal procedure, or civil procedure will apply at a Live Hearing.
- (f). Party participation; parties kept apart. The Hearing Panel will convene virtual hearings. No in-person attendance will be required or allowed and no party will be required to be present for the entire virtual hearing. Participation in the Live Hearing gives the parties, or their advisors, the opportunity to offer their facts and evidence to the Hearing Panel, and, when any party or witness does not submit to cross examination, either by refusal or lack of participation in the Live Hearing, that person's previous statements will not be taken into account as evidence by the Hearing Panel. The parties and witnesses will be required to be in separate rooms during the course of the hearing, but the audio and video feed of the hearing will be streamed in real time to the separate rooms where the respective parties and witnesses are present.
- (g). Altering time frames. In limited circumstances, the Title IX Coordinator will have the discretion to alter the timing requirements in the Live Hearing Policy, as needed, including the discretion to alter the timing to avoid conflicts with exams, holiday periods and school closures. The Title IX Coordinator has the discretion to convene a Live Hearing over the academic calendar breaks or during other instances when students are not required or allowed to be on campus.

(2). *Live Hearing Procedure and Determinations of Responsibility*

The following is a general outline describing how the Live Hearing will be conducted. The Sexual Misconduct and Relationship Violence Hearing Panel has the discretion to alter, as necessary, how the actual Live Hearing will proceed.

- (a). Calling and sequestering witnesses; character evidence. Each party will be allowed to call their own witnesses to testify on their behalf, and all witnesses will be asked to affirm that they are telling the truth. Witnesses not testifying at that moment will be excluded from the hearing until it is time for them to testify. The Hearing Panel will not consider information from character witnesses or character testimony unless it relates to the truthfulness of the parties or witnesses.
- (b). Questions and order of questioning; no party directly questions any participant. The Hearing Panel and the parties' advisors will each have an opportunity to question the following, if desired: (1) the opposing party, assuming the opposing party's participation in the hearing, (2) every witness who appears at the hearing, and (3) the Title IX Coordinator/Investigator. At no point, however, will the parties, themselves, be allowed to directly question the opposing party, witnesses, or the Title IX Coordinator/Investigator. If a party does not have an advisor present at the Live Hearing, Bethel University will provide to that party, at no charge, an advisor of Bethel's choosing to develop and submit cross-examination questions on that party's behalf. The advisor may be, but is not required to be, an attorney. The questioning will occur in this order:
- (i) No later than five (5) calendar days before the start of the Live Hearing, each party and the Title IX Coordinator may submit to the Chairperson for consideration any questions they wish to have asked of the other party, of witnesses, or of the Title IX Coordinator/Investigator. The Chairperson has the discretion to consider questions brought outside the deadline on a showing of good cause.
  - (ii) The Hearing Panel Chairperson will determine if the questions are relevant, and if deemed not relevant, will orally explain why at the Live Hearing as the questions arise for a particular witness.
  - (iii) The Chair will open the hearing by providing a general statement of expectations about how the hearing will be conducted.
  - (iv) The Title IX Coordinator may give an opening statement containing a summary of the factual findings from the investigation report, and each party will give an opening statement summarizing their position.
  - (v) After opening statements, the Chair or panel members may ask questions of the Title IX Coordinator/Investigator, including questions deemed relevant that were submitted by the parties prior to the hearing. Afterwards, the Complainant's advisor, followed by the Respondent's advisor, will each have the opportunity to ask questions directly to the Title IX Coordinator/Investigator. The Chair will determine if each additional

question is relevant before the question is answered. If the question is determined to be irrelevant, the Title IX Coordinator/Investigator will be instructed not to answer the question.

- (vi) The Chair or the panel then may ask questions of the Complainant, including questions deemed relevant that were submitted by the Respondent or the Title IX Coordinator prior to the hearing. Afterwards, the Complainant's advisor, followed by the Respondent's advisor and the Title IX Coordinator, will each have the opportunity to ask questions directly to the Complainant. The Chair will determine if each additional question is relevant before the question is answered. If the question is determined to be irrelevant, the Complainant will be instructed not to answer the question. When this questioning is through, the hearing will proceed with the Complainant's witnesses.
- (vii) The Complainant then may call their witnesses, one by one, and the Chair or the panel then may ask questions of the Complainant's witnesses, including questions deemed relevant that were submitted by the Respondent or the Title IX Coordinator. Afterwards, the Complainant's advisor, followed by the Respondent's advisor and the Title IX Coordinator, will each have the opportunity to ask questions directly to the Complainant's witnesses. The Chair will determine if each additional question is relevant before the question is answered. If the question is determined to be irrelevant, the witness will be instructed not to answer the question. When this questioning is through, the Complainant's witnesses will return to their waiting area.
- (viii) The Chair or the panel then may ask questions of the Respondent, including questions deemed relevant that were submitted by the Complainant or the Title IX Coordinator. Afterwards, the Respondent's advisor, followed by the Complainant's advisor and the Title IX Coordinator, will each have the opportunity to ask questions directly to the Respondent. The Chair will determine if each additional question is relevant before the question is answered. If the question is determined to be irrelevant, the Respondent will be instructed not to answer the question. When this questioning is through, the hearing will proceed with the Respondent's witnesses.
- (ix) The Respondent then may call their witnesses, and the Chair or the panel then may ask questions of the Respondent's witnesses, including questions deemed relevant that were submitted by the Complainant or the Title IX Coordinator. Afterwards, the Respondent's advisor, followed by the Complainant's advisor and the Title IX Coordinator, will each have the opportunity to ask questions directly to the Respondent's witnesses. The

Chair will determine if each additional question is relevant before the question is answered. If the question is determined to be irrelevant, the witness will be instructed not to answer the question. When this questioning is through, the Respondent's witnesses will return to their waiting area.

- (x) If necessary, in the discretion of the Hearing Panel Chairperson, the Chairperson and Hearing Panelists may recall the Title IX Coordinator/Investigator, either party, or any witness for further questioning.
- (xi) After questioning ends, the chair will dismiss the witnesses and closing statements of the Title IX Coordinator and the parties may be heard. Neither the Title IX Coordinator, nor the parties are required to make closing statements. Closing statements are confined to the evidence admitted during the hearing and arguments made about the admitted evidence.
- (xii) After closing statements are heard, the Chair will dismiss the Title IX Coordinator and the parties, and the Chair and Hearing Panel will meet in private to deliberate.
- (xiii) The Hearing Panel Chairperson will have the discretion to alter the order of questioning and to permit additional rounds of follow-up questions, as they deem necessary. The Hearing Panel will ensure the questions and the questioning are fair and comply with the terms of the Live Hearing Policy, but the panel will not limit the scope of the parties' questions, except in relation to relevancy. However, questions seeking to elicit solely character evidence that do not relate to the truthfulness of the parties or witnesses, irrelevant information, unduly cumulative evidence, or questions that badger or harass a witness will not be allowed. Parties, advisors, witnesses, participants, or other attendees of the hearing who speak or act in a way that is not respectful to everyone involved in the hearing will not be allowed to participate in the hearing. The Hearing Panel Chairperson has the discretion to restrict anyone's participation in the hearing process.
- (xiv) Questions and evidence about a party's sexual history with anyone other than the opposing party are prohibited during the Live Hearing, except under two circumstances: (1) where such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or (2) where the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. If the Respondent is found to have violated Bethel's Sexual Misconduct and Relationship Violence Policy, the Respondent's past sexual misconduct may become relevant in determining sanctions. The Title IX

Coordinator will provide the panel with information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

(xv) The Hearing Panel will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized confidentiality, such as doctor-patient privilege, unless the party it applies to has waived the privilege.

(xvi) If a party or witness does not submit to cross-examination at the Live Hearing, the Hearing Panel cannot rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the panel cannot draw an inference about responsibility for the alleged conduct based solely on a party's or witness's absence from the Live Hearing or refusal to answer cross-examination or other questions.

(c). Evidence: exclusion and weight. The Sexual Misconduct and Relationship Violence Hearing Panel has the discretion to exclude or to give lesser weight to information or evidence introduced at a Live Hearing that was not earlier given to the Title IX Coordinator/Investigator to consider during the investigation.

(d). Title IX Coordinator role. The Title IX Coordinator will be present throughout the Live Hearing and may assist with procedural and logistical matters, but the Title IX Coordinator will not participate in the Hearing Panel deliberations.

(e). Panel Deliberations. In its deliberations, the Hearing Panel will consider the evidence given by the respective parties, their respective witnesses, the Title IX Coordinator/Investigator, and from other permitted sources. The panel will determine whether a violation of Bethel's Sexual Misconduct and Relationship Violence Policy has occurred using the preponderance of the evidence standard—that is, whether it is more likely than not that the Respondent violated the Policy—and will issue a written determination. The written determination will include:

(i) Identification of the allegations potentially constituting a violation of the policy;

(ii) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(iii) Findings of fact supporting the determination;

- (iv) Conclusions regarding the application of Bethel's Sexual Misconduct and Relationship Violence Policy to the facts;
- (v) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- (vi) Bethel's procedures and permissible bases for the Complainant and Respondent to appeal.

(f). Decision. The Hearing Panel will make its decision based on a majority vote, will notify the Title IX Coordinator of its decision, and will impose sanctions, if any.

(g). Appeal. Decisions from the Live Hearing may be appealed as set out in the Appeal Section below.

(3). *Notices of Outcome*

(a). Written notice. Within three (3) business days from the Sexual Misconduct and Relationship Violence Hearing Panel's decision, the Title IX Coordinator will provide the Complainant and the Respondent written notice of the determination of the Live Hearing, including the applicable sanctions (if any) and a description of the appeals procedure. This notice will be provided to the Complainant and Respondent simultaneously by personal delivery or by email (with automated return receipt). The Complainant and Respondent will be deemed to have received notice on the date of personal delivery or email notification.

(b). Enforcement of determination of responsibility. The Dean of Student Development, Human Resources Department, or other applicable department will enforce the determination, if any.

vii. Remedies and Sanctions: Non-exhaustive lists of ranges of remedies and sanctions in sexual misconduct and relationship violence cases, when a Respondent has been found to have violated this policy, are set forth below. The Hearing Panel may deviate from the range of sanctions when appropriate based on all the relevant facts and circumstances, including any previous conduct infractions by the Respondent.

(1). *A range of remedies for student Complainants includes:*

A "no contact directive;" providing an escort to ensure that the Complainant can move safely between buildings, classes, activities, and offices; exploring changes in class, dining, and extracurricular schedules, including adjustments so that the Complainant and the Respondent do not share the same classes; assisting the

Complainant in communicating with faculty; providing academic support for the Complainant, including tutoring; and exploring options for re-taking a course, dropping a course, or withdrawing for a semester without financial or academic penalty.

(2). A range of remedies for employee Complainants includes:

A "no contact directive;" Providing an escort to ensure that the Complainant can move safely between buildings, classes, activities, and offices; exploring changes in work schedules and work requirements; and referral to the Human Resources Department for additional remedies.

(3). A range of sanctions for student Respondents includes:

Loss of privileges and/or transportation, dining, and working arrangements; mandatory completion of assessments; mandatory participation in an evaluation and/or treatment program(s) by an approved counseling service; community service; mandatory participation in an educational, awareness, or prevention session(s)/program(s); restitution; disciplinary reprimand; disciplinary probation; suspension; and/or expulsion.

(4). A range of sanctions for employee Respondents includes:

Loss of privileges, and/or transportation, dining, and working arrangements; mandatory participation in an evaluation and/or treatment program(s) by an approved counseling service; mandatory participation in an educational, awareness, or prevention session(s)/program(s); restitution; oral or written corrective action; disciplinary reprimand; disciplinary probation; demotion; indefinite suspension with or without pay; suspension for a specific period of time with or without pay; and/or termination.

Inappropriate behavior that does not constitute sexual misconduct and/or relationship violence may be addressed through other corrective action, or remediation, consistent with the Student and Employee Handbooks, depending on all relevant facts and circumstances.

The determination regarding responsibility becomes final either on the date that the Appellate Officer provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely, the eleventh (11<sup>th</sup>) calendar day following receipt by the parties of the Hearing Panel's determination. The Title IX Coordinator is responsible for effective implementation of any remedies provided to Complainant.

viii. Appeals Process for Determinations of Responsibility:

Complainants and Respondents who are University students or employees have the right to appeal the final determination of responsibility and/or the resulting sanction. Complainants may also use this section and the following Grounds for Appeal to appeal a dismissal of a Title IX complaint. The Complainant and Respondent will be notified of this right and the procedures for appeal simultaneously in writing. Such appeals will be decided by an Appellate Officer for Sexual Misconduct and Relationship Violence. Appellate Officers will be full-time employees selected by the Title IX Coordinator, who will receive annual training on issues involved in sexual misconduct and other forms of power-based relationship violence. Assignment to cases will be on a rotating basis, unless the assigned Appellate Officer has a conflict, such as a conflict of interest or scheduling conflict, in the applicable case.

A petition for appeal, signed by the petitioning party, must be submitted in writing, either by hand delivery to: 325 Cherry Avenue, McKenzie, TN 38201, or by email attachment to the Title IX Coordinator, no later than 4:30 pm on the tenth (10th) calendar day following the date the parties are notified of the Hearing Panel's determination.

The petition must include the following: a statement of the grounds for appeal, supporting explanation, and copies of, or reference to, all evidence the Petitioner wishes the Appellate Officer to consider. Except where explicitly provided below, no documents or other evidence may be included with an appeal unless previously submitted to the Title IX Coordinator/Investigator. Once an appeal is filed, the Title IX Coordinator will provide written notice to the non-petitioning party that the appeal was filed and implement appeal procedures equally for both parties.

*(1). Grounds for Appeal*

The grounds for appeal are as follows:

- (a). Procedural irregularities sufficient to affect the determination and/or sanction imposed by the Hearing Panel. The Live Hearing Panel members are expected to conduct themselves in accordance with their policies and procedures. Deviation from those policies and procedures which render their actions fundamentally unfair constitutes a sufficient procedural basis for an appeal to the Appellate Officer. Procedural irregularities that are considered by the Appellate Officer to be harmless and that did not, in the judgment of the Appellate Officer, adversely affect the outcome of the matter are not a basis for upsetting the determination and/or sanction imposed by the Hearing Panel.
- (b). New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter. All available information, including testimony of witnesses, is expected to be

presented at the live hearing. Only on that basis can the Hearing Panel render a fair and reasonable determination of responsibility. An appealing party who seeks to introduce new information has the burden of demonstrating that the information was not reasonably available for presentation to the Hearing Panel, and that the introduction of such new information can be reasonably expected to affect the outcome of the matter. If the Appellate Officer determines that the appealing party has satisfied this burden, the Appellate Officer remands the case to the Hearing Panel with instructions to reconsider the case in light of the new information.

- (c). The Title IX Coordinator, Investigator(s), or Hearing Panel had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter. A conflict of interest can arise when the Title IX Coordinator, Investigator, or Decision Maker's personal interests or relationships conflict with the ability of that person to act in a neutral manner with regard to the Complainant, Respondent, or both.

(2). *Consideration of Petition and Determination of Appeal*

Upon receipt of a petition, the Title IX Coordinator will notify all persons who received formal notification of the determination that a petition for appeal has been filed and that the sanction (if any) should not be implemented pending the result of the appeal. This does not preclude the University from taking supportive measures to ensure the safety and security of the Complainant, Respondent, or campus community.

- (a). Upon receipt of the petition, the Appellate Officer will also request from the Title IX Coordinator the entire record of the case.
- (b). The Appellate Officer will then proceed to review the petition and the record with all deliberate speed to determine whether the petition, when considered in the light most favorable to the Petitioner, presents sufficient grounds for an appeal.
- (c). If the Appellate Officer determines that the petition does not set forth sufficient grounds for the appeal, the petition will be dismissed, and the Hearing Panel's decision will be final.
- (d). If the Appellate Officer determines that sufficient grounds for appeal are presented in the petition, the Appellate Officer forwards a copy of the petition to the Hearing Panel Chairperson, as well as the non-petitioning party, with instructions to respond to it (or such parts of the petition that the Appellate

Officer has determined present sufficient grounds for appeal) within ten (10) calendar days of receiving the Appellate Officer's notification.

- (e). Upon receiving any responses from the Hearing Panel Chairperson, as well as the non-petitioning party, the Appellate Officer will send the responses to the Petitioner and offer the Petitioner an opportunity to reply. Replies must be submitted within five (5) calendar days.
- (f). The Appellate Officer then proceeds to consideration of the appeal. The Appellate Officer's consideration of the appeal must be based only on the original record and the petition, any new information the Appellate Officer determines should be considered, and all responses/replies submitted.
- (g). After reviewing the record, the Appellate Officer decides whether to affirm, modify, or reverse the determination and/or sanction imposed by the Hearing Panel or to remand the case to the Hearing Panel with instructions.
- (h). In cases where there has been a procedural error, or that new evidence should be considered, the Appellate Officer will remand the case to the Hearing Panel with instructions.
- (i). The Appellate Officer will notify the Complainant, the Respondent, Hearing Panel, and Title IX Coordinator (which, in turn, will notify all persons who received notice of the determination or sanction) of the Appellate Officer's decision and the reasons for the decision.
- (j). While a case is pending, policy changes that might affect the case cannot be considered in the appeal.
- (k). If the Appellate Officer has a question about the meaning or application of a University policy or procedure, the Appellate Officer may consult with Bethel University's private counsel to determine how best to proceed. At no time may the Appellate Officers substitute their opinions or values for University policy.
- (l). An Appellate Officer may not consider an appeal if the Appellate Officer has a conflict of interest. Each Appellate Officer is responsible for determining whether or not a conflict of interest exists and may consult with the University's private counsel, if necessary. If a conflict does exist, the case is assigned to the next panelist in the rotation.
- (m). Once a final determination has been made, all records of the Title IX Coordinator will be returned to that authority.

*(3). Additional Petition for Penalty of Expulsion or Dismissal*

Students who have been expelled from Bethel University and/or employees who have been dismissed as a result of a violation of this policy may, upon completion of the appeals process, submit a written petition within ten (10) calendar days to the President or the President's designee, requesting reconsideration. The decision of the President or the President's designee is final.

9. **Time Frame:** Complaints will be resolved within a reasonably prompt time frame; however, what is "reasonably prompt" may differ in each case. Complaints that are resolved through the involuntary resolutions process generally may be resolved in a shorter amount of time than complaints in the formal resolutions process. Some of the factors that can affect the time frame include, but are not limited to: the complexity of the allegations; the complexity of the investigation and resolution; the severity and extent of the alleged misconduct; the number of parties, witnesses, and the types of other evidence (e.g., forensic evidence) involved; the availability of the parties, parties' advisors, witnesses, and evidence; a request by a party to conduct an investigation or resolution at a slower pace; the effect of a concurrent criminal investigation; the need for language assistance or accommodations of disabilities; any intervening University holidays, breaks, or other closures; and/or other unforeseen circumstances. In addition, the time frame for completion can be affected by the requests of a party for a temporary delay or a limited extension of time. For good cause, this policy permits the Title IX Coordinator, the Complainant, or the Respondent to make a written request for a temporary delay of the grievance process or the limited extension of time frames. When good cause is shown and the delay or extension is granted, written notice will be given to the Complainant and the Respondent of the delay or extension, which will state the reasons 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 accommodation of disabilities. In general, informal resolutions of a complaint may take approximately one to two months and formal resolutions of a complaint may take approximately two to six months, but these are approximate time frames and the actual time might vary. Appeals procedures and decisions are generally decided within one month from the date of the appeal.

10. **Recordings and Evidence:** The recording of any meeting conducted as part of an investigation under this policy is prohibited, except for the recording or creation of a transcript at the live hearing which will be coordinated by the Title IX Coordinator.

## **Prevention, Education, and Training**

Bethel provides numerous programs that address sexual misconduct and relationship violence, including the related issue of drug and alcohol misuse. Bethel's programs include various public awareness events such as "Take Back the Night," seminars, "survivor speak outs" and other campus-wide education and prevention efforts, such as online educational modules.

Several individual departments and offices, and student organizations also provide regular and ongoing programming on these important issues.

Bethel also provides regular and ongoing training to faculty and staff, beginning at the start of their association with the University. This training includes:

- New staff and faculty orientation including a discussion of non-discrimination laws and policies;
- Reference guide for faculty and staff; and,
- Annual training for faculty, staff, and student groups on sexual misconduct and relationship violence and the University's policies pertaining to these issues.

The Title IX Coordinator/Investigator, Informal Resolutions Facilitator, Hearing Panel, Appellate Officers, and others involved in responding to, investigating and adjudicating sexual misconduct and relationship violence cases receive additional training in these areas.

### **Dissemination**

This policy is to be disseminated to all Bethel University's students and employees on an annual basis.

### **Frequency of Review**

This policy is to be reviewed on an annual basis.

### **Monitoring/Responsible Parties**

This policy is to be maintained and reviewed by the Title IX and Prevention Services Coordinator. This policy is to be enforced by the Title IX and Prevention Services Coordinator, Dean of Student Development, Hearing Panel, and Appellate Officers.

### **Publication**

This policy will be posted on the University website and sent by email to all Bethel students and employees.